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WORKMEN'S COMPENSATION IN NORTH AND SOUTH CAROLINA*

WILLIAM H. WICKER
AND
ROBERT A. McPHEETERS

I. The Industrial Situation

Although North and South Carolina are traditionally and fundamentally agricultural states, the days have passed in which King Cotton's title was undisputed and each southern plantation was an economic entity, which was to a large extent self sustaining. The use of modern machinery, the division of labor, and the development of the factory with the consequent factory village, is fast working a transformation in the old order of things. Capitalists are more and more securing Carolina mill sites in order to have the close proximity to forests, water power, cotton fields, and a native population untainted by what they consider "radical proclivities." Until today, in addition to the claim to preëminence as cotton producing states, the Carolinas are fast becoming one of the important industrial units in the country, and it is believed that their future is assured.

In 1920 the total population in North Carolina was 2,559,123 and of this number, 895,852 or 35 per cent were engaged in gainful

* William H. Wicker is at present a member of the faculty of the College of Law in the University of Tennessee. As part of his graduate work at the Harvard Law School, Mr. Wicker presented a paper on "The Need of a Workmen's Compensation Act in South Carolina," which is the basis of the present article. The plan of Mr. Wicker's paper is intact, and he is responsible for all of the general discussion and the South Carolina statistics and case references.

Robert A. McPheeters is at present a research assistant in the Institute of Social Research at the University of North Carolina. Mr. McPheeters has worked up all of the North Carolina statistics and case references and has incorporated these into Mr. Wicker's paper, making changes where necessary, to produce the present joint article.—Editor.

occupations.[1] Of the number engaged in gainful occupations, 477,-686 or 53 per cent were engaged in agriculture, forestry, and animal husbandry, while 258,314 or 28 per cent were engaged in extraction of minerals, manufacturing and mechanical industries, transportation and public service.[2] According to the 14th census of the United States, of the 48 states, North Carolina ranked 14th in population, 28th in area, 18th in density of population, 13th in the number of wage earners employed in manufacturing establishments, 17th according to the cost of raw materials used in its manufacturing establishments, 15th according to the value of its manufacturing products, and 13th according to the value added by the manufacturing process.[3]

In 1920 the total population of South Carolina was 1,683,724 and of this number 674,257 or 40 per cent were engaged in gainful occupations.[4] Of the number engaged in gainful occupations 420,-635 or 62 per cent were engaged in agriculture, forestry, and animal husbandry. According to the 14th census, of the 48 states, South Carolina ranked 26th in population, 39th in area, 17th in density of population, 28th in the number of wage earners employed in manufacturing establishments, 32nd according to the cost of the raw materials used in its manufacturing establishments, 32nd according to the value of its manufacturing products, and 31st according to the value added by the manufacturing process.[5]

Massachusetts manufactures more cotton goods than any other state, being followed by North and South Carolina. These three states produce more than one-half of the cotton goods manufactured in this country. In 1919 there were 311 cotton mills in North Carolina, and the average number of wage earners employed in these mills was 67,297; while there were 145 mills in South Carolina employing 48,079. Of these establishments in the two states, 98 employed less than 100 wage earners in North Carolina while only 19 employed less than 100 in South Carolina; 154 employed from 101 to 250 in North Carolina while in South Carolina, 56 employed from 101 to 250 wage earners; 33 employed from 251 to 500 in North Carolina while in South Carolina, 37 employed from 251 to 500 wage earners; 21 employed from 501 to 1000 in North Carolina

[1] Abstract 14th Census, p. 497.
[2] Abstract 14th Census, p. 500.
[3] Abstract 14th Census, p. 920.
[4] 14th Census, Population, Vol. 4, p. 44.
[5] 14th Census, Manufactures, Vol. 8, p. 18, Table 10.

while in South Carolina, 28 employed from 501 to 1000; 5 employed more than 1000 in North Carolina while in South Carolina, 5 also employed over 1000 wage earners. In 1923 there were in North Carolina 2,670 manufacturing establishments employing 173,687 wage earners and turning out products to the value of $951,910,599; while in South Carolina there were in 1923, 1,180 manufacturing establishments employing 96,802 wage earners turning out products to the value of $360,445,737.

The following table shows the distribution of wage earners in the manufacturing industries located in North and South Carolina:

CENSUS OF MANUFACTURES, 1923

SUMMARY FOR MANUFACTURING INDUSTRIES IN NORTH AND SOUTH CAROLINA FOR THE YEAR 1923.

DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, WASHINGTON.

INDUSTRY	NORTH CAROLINA			SOUTH CAROLINA		
	Number of Establishments	Wage Earners (Average Number)	Per Cent	Number of Establishments	Wage Earners (Average Number)	Per Cent
All Industries	2,670	173,687	.....	1,180	96,802	.....
Cotton goods	351	81,041	46.6	152	62,479	64.4
Lumber and timber	587	19,960	11.6	308	17,307	17.8
Fertilizers	64	1,721	.9	48	1,547	1.5
Planing mill products	125	2,985	1.6	39	1,160	1.1
Oil, cake and meal	52	1,226	.6	46	827	.8
Clay products	67	1,892	1.0	22	673	.6
Knit goods	109	12,351	7.0			
Tobacco	26	13,959	7.9			
Furniture	113	10,624	6.1			
All other industries	1,176	27,928	15.7	565	12,809	12.7

In addition to the wage earners in the manufacturing industries, in 1920 there were 47,292 persons engaged in various transportation industries, extracting minerals, and public service in North Carolina; while in South Carolina, there were 22,092 engaged in the same industries.[6] Thus there were 258,314 wage earners alone who could possibly get the benefit of a Workmen's Compensation Act in North Carolina; while in South Carolina, there would be probably 125,000. However, for one reason or another, part of this number would be excluded. For example, the federal statutes govern cases of railway

[6] 14th Census, Population, Vol. 4, p. 1014, *et seq.*

employees injured while engaged in inter-state commerce, and compensation acts are usually not compulsory as to employers employing less than 6 employees. But the number of those excluded would not be as numerous as one might expect. In 1919, only 5.3 per cent[7] of the total wage earners employed in manufacturing industries in North Carolina were employed by concerns employing less than 6 wage earners, while in South Carolina it was 2.8 per cent. It should also be remembered that the figures mentioned were compiled in 1923 and since that time, there has been a considerable increase in the number of employees engaged in these industries. It therefore seems clear that 250,000 is a conservative estimate for North Carolina and 125,000 for South Carolina. This makes a total of 375,000 wage earners who would be benefitted by a Workmen's Compensation Act, which is anything near as broad as it should be.

Broadus Mitchell, a member of the Department of Political Economy in Johns Hopkins University, writing in the Yale *Review* for April, 1925, said:

"In the making of competitive cloths the New England mill is doomed. The southern manufacturer employs a comparative advantage that averages about 30 per cent. The New England mill in competition with the Southern mill is 'Marginal'—that is, is must be content with a smaller profit in good times, and must reduce operations or close down altogether when depression overtakes the industry. There are agents and superintendents in the non-cotton growing states who stupidly shut their eyes to the facts. There are others who, with sufficient dread of the real situation, keep up an optimism by relying upon the well established character of their manufacture and by reminding themselves of the traditional ingenuity of the Yankee in cutting corners. Still others, with disappearing profits in the last two years, have pressed their labor harder, only to find the workmen rebelling. Finally, there is the large number of manufacturers, many of them presiding over the oldest and greatest establishments north of Mason and Dixon's line, who acknowledge defeat in the north and seek salvation by moving south.

"In the last eleven months of 1923, a New England authority estimates, the spindles in place in the south increased by 518,000, while in the non-cotton growing states they decreased by 107,000. Massachusetts alone lost 35,000 spindles. The tide has turned. The old attitude towards the south has changed. It is not pretended that many New England manufactories will move south. Geographically, shifts in a great industry come less obviously, but no less certain. What happens is that a Lowell or Lawrence company in contemplating extensions, looks only to the south, or a visitor goes down

[7] Abstract 14th Census, p. 1000.

an impressive alley of mills lining a century-old canal; though yard men are about, and here and there a building vibrates with machinery the leaves that have fallen from the elms and litter the vacant street seem somehow symbolic. Cloth that cost 34 cents per pound to manufacture here, cost the same company in its southern factory, only 22 cents. One mill makes as much as the other loses, and so the disadvantaged New England establishment continues to live on sufferance. But further along one comes to a great structure that is utterly silent. This plant has earned its capitalization several times over in better years, and now will never open as a cotton mill again."

It is freely admitted that the 375,000 employees who will come within the provisions of Compensation Acts in North and South Carolina are a relatively small number when compared with the total number of workers in the manufacturing centers of the nation. But it is too large a group to leave unprotected when measured in terms of human life and economic welfare, and as has been previously shown, the reasons for expecting a continued increase in this number are substantial. The states are under a positive duty to see to it that hard working citizens or their dependent families are promptly compensated, when the inevitable casualties of industry deprive them of life or impair their efficiency as productive units.

II. Industrial Accidents

It is not commonly realized how many workers are killed or maimed as a result of modern industrial conditions. Notwithstanding important precautions taken to safeguard workers, especially in states having compensation laws, there seems to be little if any abatement in the number of accidents that occur annually.

Dr. E. H. Downey,[8] late Compensation Actuary of the Insurance Department of Pennsylvania, describes the situation as follows:

"The machine technology which more and more prevails in the modern industry makes use of stupendous forces—steam, electricity, explosives, chemical reagents—forces that multiply human power a thousand fold while kept in leash, but are equally potent for destruction when out of command. . . .

"Safely to perform their work, the operatives of a modern mill, mine, or railway, should think consistently in those mechanical terms in which the industrial process runs. They should respond automatically to most varied mechanical exigencies and should be as insensible to fatigue and as invariable in behavior as the machines they operate. Human nature, inherited from uncounted generations that knew not the machine, does not possess these attributes in anything

[8] Downey, (1924) *Workmen's Compensation*, 6.

like the requisite degree. The common man is neither an automaton nor an animated slide rule. . . . All of which comes to saying that the human organism is imperfectly adapted to a mechanical environment. The requisite adjustment is not likely soon to be attained, because the mechanization of industry proceeds faster than the processes of habituation. . . ."

Due in no small part to the fact that a few states have no compensation or accident reporting laws, no one knows with any fair degree of accuracy how many industrial accidents occur annually in the United States. Using all the statistical data available, the United States Bureau of Labor Statistics estimates that there are every year in the United States, 2,543,418 industrial accidents which cause a loss of more than 25,000,000 working days, with a total wage loss of $1,022,264,866.[9]

III. General Theory of Compensation Legislation

Mr. Justice Pitney, speaking for a unanimous court in the well known case of *New York Central Railway v. White*,[10] which upheld the constitutionality of the present New York Act stated the general principles of Workmen's Compensation Legislation as follows:

"Reduced to its elements the situation to be dealt with is this: Employer and employee, by mutual consent, engage in a common operation (intended to be advantageous to both. . . . In the nature of things there is more or less of a probability that the employee may lose his life through some accidental injury arising out of the employment, leaving his widow or children deprived of their natural support, or that he may sustain an injury not mortal but resulting in his total or partial disablement, temporary or permanent, with corresponding impairment of earning capacity. . . .

"This is a loss arising out of the business, and however it may be charged up is an expense of the operation as truly as the cost of repairing broken machinery or any other expense that ordinarily is paid by the employer. Who is to bear the charge? It is plain that, on grounds of natural justice, it is not unreasonable for the state while relieving the employer from responsibility from damages measured by common law standards and payable in cases where he, or those for whose conduct he is answerable, are found to be at fault, to require him to contribute a reasonable amount according to a reasonable and definite scale, by way of compensation for the loss of earning power incurred in the common enterprise—irrespective of the question of negligence, instead of leaving the entire loss to rest

[9] U. S. Bureau of Labor Statistics, Monthly Labor Review, November, 1923.

[10] (1916) 243 U. S. 188.

where it may chance to fall—that is, upon the injured employee or his dependents. Nor can it be deemed arbitrary and unreasonable from the standpoint of the employee's interest, to supplant a system under which he assumed the entire risk of injury in ordinary cases, and in others had a right to recover an amount more or less speculative upon proving facts of negligence that were often difficult to prove, to substitute a system under which in all ordinary cases of accidental injury, he is sure of a definite and easily ascertained compensation, not being obliged to assume the entire loss in any case but in all cases assuming any loss beyond the prescribed scale.

"Much emphasis is laid upon the criticism that the act creates liability without fault. . . . Liability without fault is not a novelty in the law. The common law liability of the carrier, of the innkeeper, or him who employed fire or other dangerous agency, or harbored a dangerous animal, was not dependent altogether upon questions of fault or of negligence."

The fundamental idea underlying compensation statutes is that since the injury to the worker is an incident in the process of production, the industry should include compensation for the injury as one of the elements in the final cost of the production. Just as a mill owner must pay for repairing a broken machine, he should pay the economic loss resulting from injuries to workers in the course of their employment. The expense in both cases is to be taken into account in fixing the selling price of the finished product. In other words, all of us, and not merely the luckless workman injured, should bear the loss incident to the operation of modern civilization. In order to accomplish this result the law imposes "a legal liability upon some one who is in a position to bear it in the first instance, and imposes it ultimately upon the community in the way of charges for services rendered."[11]

It has often been suggested that such a rule will make workmen careless and that it is unfair to hold the employer liable when he is not at fault. As a matter of fact no American Compensation Act compensates for pain and suffering or even gives full economic reparation. It is submitted that a workman who did not value his life and limbs more than partial economic reparation would indeed be a *rara avis*.

As to the second suggestion, Dr. Downey makes these pertinent remarks:[12]

[11] Pound, (1924) *Law and Morals*, pp. 80-81.

[12] Downey, *Workmen's Compensation*, 8, 9.

"Broadly considered, the injuries which so arise in the course of employment are nobody's fault, in a personal sense—workmen did not intend suicide nor do employers desire the death or maiming of employees. Every accident, it is true, may be ultimately traceable to some act or omission, some want of foresight or insight, some failure of attention, skill or care, on the part of some human agent. But this is only to say that to omniscience the unexpected does not occur. Humanly speaking, as all intensive studies or mass statistics go to show, work injuries, in the main, are attributable to inherent hazards of industry. . . . So much is this the case that each industrial employment comes to have a predictable total hazard; of a thousand men who erect structural steel a certain number will fall to death, and of a thousand girls who feed metal strips into stamping presses a certain number will have their fingers crushed. By the same token, every consumable commodity may be said to have a definite cost in human suffering—a life for so many tons of coal, a mangled hand for so many laundered shirts."

The Chairman of the Employer's Liability Commission of Ohio[13] stated that:

"Fault or negligence of the employer can be proven in much less than 20 per cent of the cases, and what is more startling, no matter how careful the employee and employer are, or how high the efficiency of the state may rise in the prevention of accidents, the cause of 50 to 55 per cent of all accidents to employees is solely due to the natural hazards or dangers of the business. . . . On the other hand, the cause of 16.8 per cent of all accidents is traceable to the negligence of employers and the cause of 28.9 per cent of all accidents is attributable to the negligence of employees.

"Under the practical operation of the common law remedy based upon fault, it is impossible to prove the employers negligent in anything like 16.8 per cent of the cases of injuries to employees. For that reason, the old theory of making fault the basis for an action for compensation to injured workmen has been abandoned."

When we find that more than half of the injuries to workmen occur as a result of natural hazards rather than negligence, it seems clear that a system which leaves all of these out of account is far from satisfactory. Certainly it is far better to hold the employer absolutely liable and let him figure this in his expenses than let half the workmen injured in the industry bear a blow incurred by no fault of their own, and which their economic status does not allow them to shift directly to the consumer, but which the general public

[13] J. H. Boyd, (1911) 38 Annals of American Academy of Political and Social Science, 23.

has to bear in the guise of appropriations for hospitals, poor houses, and homes for the unfortunate.

IV. History of Compensation Legislation

The first workmen's compensation law was enacted in Germany in 1884. Austria followed in 1887. Great Britain's first compensation act was passed in 1897. This movement gained headway with great rapidity. At the present time, at least 50 foreign countries and provinces have some sort of workmen's compensation for industrial accidents, covering altogether some 60,000,000 wage earners, and paying benefits ranging from 60 to 80 per cent of the wages received at the time of the injury. Practically all of the countries of Europe and the provinces of Canada and Australia had enacted compensation legislation before the first compensation law was enacted in the United States.[14]

In the United States the period that might be called the period of investigation began somewhat late as compared with the European countries. The first American state legislative commissions that led to the enactment of laws were appointed in New York, Wisconsin, and Minnesota in 1909; legislation followed in New York in 1910, in Wisconsin in 1911, and Minnesota in 1913. Since 1909 at least 36 commissions, either appointed or voluntary, have considered the subject of compensation, and compensation legislation has been enacted and is today in force in 43 of the American states as well as in Alaska, Hawaii, Porto Rico, and the Philippine Islands. At the present time the only American states which have no compensation laws are Arkansas, Mississippi, Florida, and the two Carolinas. In every state in which the legislature has appointed a commission to study the matter, compensation legislation has followed the commission's report, except in the case of the Arkansas commission appointed in 1919.

As far back as 1911 the Supreme Court of Washington in upholding the constitutionality of the Washington Act, speaking through Judge Fullerton said:[15]

"It was the belief of the legislature that they (losses through accident) should be borne by the industries causing them, or perhaps more accurately by the consumers of the products of such industries.

[14] This and the following paragraph is based on information contained in U. S. Bureau of Labor Statistics, Bulletins 203, 272, 275, and 1 Schneider (1920) *Workmen's Compensation Law,* section 2.

[15] *State v. Clausen* (1911) 65 Wash. 156, 117 Pac. 1101.

That the principle thus sought to be put into effect is economically, sociologically, and morally sound, we think must be conceded. . . . It is so conceded by all modern statesmen, jurists, and economic writers who have voiced their opinion on the subject and all of the civilized countries of Europe. . . . Indeed so universal is the sentiment that to assert to the contrary is to turn against the enlightened opinion of mankind."

In view of such statements coming from men as conservative as Supreme Court justices usually are, and the presumption in favor of workmen's compensation legislation created by its widespread adoption, it behooves North and South Carolina to seriously ask themselves whether they can longer afford to ignore the experience of sister states. Certainly something more than a general denial of the principle involved, without an adequate investigation of the present conditions in each state, is demanded. Most assuredly North and South Carolina do not want to "be different" at the expense of sanity and progress.

V. General Theory of the Present System

1. *Duties of the Employer*

Under the present system of employers' liability in North and South Carolina, an employer must use ordinary care for the safety of those in his employment, provide a reasonably safe place to work, reasonably safe tools and appliances, and a sufficient number of reasonably competent and careful workmen to conduct his business in a reasonably safe manner. He must instruct inexperienced employees engaged in the performance of hazardous duties and warn the employees of the dangers which are not readily discoverable by them but which are or ought to be known to him. In general any breach of this duty to exercise reasonable care is negligence and for an injury to an employee approximately caused thereby, the employer is liable. But an employer who has exercised reasonable care in these respects, is not liable for industrial accidents to employees that inevitably occur despite these precautions. In other words, the inherent hazards of the industry fall exclusively upon the employees.

2. *The Employer's Defenses*

Unless an employer is remiss in the performance of one or more of the duties just discussed, an employee will have no ground of action against him for an injury arising out of the employment.

Even where an employer had failed to perform one of these duties and an injury is approximately caused thereby, the employer may still be able to avoid liability by setting up one or more of the defenses available to him. These defenses are contributory negligence, assumption of risk, and the fellow servant rule.

a. *Contributory Negligence*

Under the doctrine of contributory negligence, even though an employer may have neglected to perform his duty and his neglect may have been a concurrent cause of an injury to an employee, the latter cannot recover if his own negligence contributed in any degree to produce the injury. It matters not that the negligence of the employee may have been slight and that of the employer gross by comparison; if the injured employee by the use of due care, could have avoided the accident, he cannot recover.

b. *Assumption of Risk*

Under the doctrine of assumption of risk, on accepting employment, the employee assumes all the ordinary risks incident to the employment, whether it be dangerous or otherwise, and all risks which he either knows or in the exercise of reasonable care should know to exist. The theory upon which this doctrine is based is, that it was the privilege of the employee to refuse employment or if already employed, to demand that the defects be repaired and quit his job when compliance was refused.

c. *The Fellow-Servant Rule*

Logically the fellow-servant rule is a phase of the doctrine of assumption of risk, but for the sake of convenience, it will be treated in this paper as a separate defense. This rule is that among the ordinary hazards of the industry which the employee assumes and for which the employer is not liable, are included those arising from the negligence of co-employees or fellow-servants. As previously stated the employer is under a duty to exercise reasonable care in the selection of employees and to discharge any that have shown themselves to be reckless or incompetent. But in general the employer is not answerable to one employee for the negligent acts or omissions of another who is engaged in the same common employment.[16]

[16] The general propositions of liability herein stated are supported by practically all the authorities. See cases discussed and cited *infra*.

3. *Criticism of the Present Theory*

The present law of employers' liability was formulated during the period when motor driven machinery was in its infancy, and as a rule employees worked with hand tools side by side with the employer, and injuries generally occurred in the latter's presence and resulted from his negligent conduct or that of the injured man or another servant. But the advent of modern machinery and the erection of modern factories has largely taken away the personal relationship between the employer and the employee. As this relationship becomes more remote it becomes increasingly difficult to prove that the employer was negligent in any particular case.

The present system is based on the extreme individualistic notions which were current in much of the juristic writings of the past century, but which, due perhaps in part to the writings of sociological jurists, are happily disappearing. The common law of employers' liability assumes that every workman is in a position to chose his own occupation, to quit it when he will and to exact whatever wage he can. The fact is that abstractions proceeding upon a theoretical equality do not fit a society divided into classes by conditions of industry. Generally speaking, the workman assumes the risk of accidents because he needs food and clothing, and the wages received, are fixed by competition, not by the hazard of the employment. Under the doctrine of assumption of risk, the workman must assume the risk, both physically and finacially, of inevitable accidents or quit his job, and, of course, few workmen are in a position to take the latter alternative. To a large extent, this statement is also true of injuries which are commonly regarded as due to the negligence of the employee.

Dean Roscoe Pound ably satirized the theory on which our present system is based when he said:[17]

"In the law of torts, few doctrines have been more irritating than those of assumption of risk and contributory negligence, as applied to injuries to employees. . . . The employee is a free man, guided by his own conscience. . . . He chooses for himself. So choosing, he elects to work in a dangerous employment in which he runs a risk of being injured. He knows that others are to be employed with him; he knows that they may be negligent and that if they are, he may be injured. Very well; he is a free man, let him bear the loss. The master has done no wrong. The servant . . . must stand or fall by the consequences of his own conduct.

[17] Pound, *The Spirit of the Common Law*, 47.

. . . Again, a workman, engaged constantly upon a machine, so that he comes to be a part of it and to operate mechanically himself, omits a precaution and is injured. The common law says to him, 'You are a free man, you have a mind and are capable of using it; you chose freely to do a dangerous thing and were injured; you must abide the consequences.' As a matter of fact, it may well be that he did not and could not choose freely. Before the days of workmen's compensation it was said that statistics showed the great majority of industrial accidents happened in the last working hour of the day, when the faculties were numbed and the operative had ceased to be the free agent which our theory contemplated. But there was no escape from the legal theory. That very condition was a risk of the employment, and was assumed by the laborer."

VI. How the Present System Works in Practice

1. *Abstracts of Cases Taken to the Supreme Court*

The last twenty volumes of the North Carolina Supreme Court Reports (Vol. 169-190 inclusive) have been searched in order to get the most recent information on the subject, while volumes 110 through 124 of the South Carolina Reports were gone through. Of course only a small percentage of the actual number of cases involving industrial injuries ever reach the Supreme Court. But because the cases that do go up to that court are the most hotly contested cases, they perhaps show most clearly the good or evil in our present system. An abstract is set out below of forty cases, selected as representative, from the Supreme Court reports of the two Carolinas, stating in so far as is ascertainable from the reports, the cause and nature of each injury, the date of the injury, the trial and the decision on appeal, the issues involved, and the decision of the jury, the trial court, and the Supreme Court. In this study, some 88 cases in all were digested, 44 from North Carolina and 44 from South Carolina. The cases not abstracted below are treated in footnote 58 herein.

Cochran v. Young-Hartsell Mills Co.[18]

The plaintiff was a mechanic employed in the defendant cotton mill and was injured by the alleged negligence of the defendant in removing the ground wire of a motor without notifying the plaintiff of that fact, so that the plaintiff was badly burned with the result that one leg had to be removed; defense of contributory negligence. The injury occurred on Sept. 13, 1913, and trial was had in Nov. 1914 resulting in a verdict of $5000 for the plaintiff; this was affirmed May 5, 1915.

[18] 169 N. C. 57, 85 S. E. 149.

Lynch v. Carolina Veneer Co.[19]

Action for personal injuries to the plaintiff while in the employ of the defendant; the plaintiff's task was to handle logs in the boiling vats of the defendant, by standing upon a narrow platform from which the railing had rotted away and it is alleged that the absence of the railing caused the injury to the plaintiff, whereby he fell into the vat and was seriously burned; defense of contributory negligence. No date of the injury is given but trial was had in Sept. 1914, resulting in a verdict for the plaintiff, the amount of damages not being given. This was affirmed May 19, 1915.

Klunk v. Blue Pearl Granite Co.[20]

Action to recover damages for injuries to the plaintiff while in the defendant's employ in that while he was so engaged, as a stone cutter, a small piece of a defective tool struck his eye, thus causing the loss of sight in one eye. No date of the injury is given but the first trial was held in the spring of 1915 resulting in a nonsuit from which the plaintiff appealed. The fall term, Nov. 10, 1915, sent the case back for a new trial.

Renn v. Seaboard Air Line Ry. Co.[21]

Action under the Federal Act for injuries to the plaintiff due to the defendant's alleged negligence in allowing ice to stay upon a footpath, thus causing the plaintiff to fall. The injury occurred on Jan. 15, 1912; defense of assumption of risk was set up. The trial resulted in $3500 damages for plaintiff in June, 1915; that was affirmed Nov. 17, 1915.

Yarborough v. Geer Co.[22]

Action for injuries to the plaintiff while an employee of the defendant Fire Proofing Construction Co., caused by the plaintiff's falling off of a scaffold which was due to the alleged negligence of the defendant in the erection thereof. Defense of assumption of risk was set up. The date of the injury is not given but the trial was had in Nov. 1915, resulting in a verdict for the plaintiff for $5000 from which the defendant appealed. Verdict affirmed April 12, 1916.

Parker v. Marlboro Cotton Mills[23]

Action by the plaintiff cotton mill employee for injuries received during the course of his employment, it being alleged that the injury

[19] 169 N. C. 169, 85 S. E. 289.
[20] 170 N. C. 70, 86 S. E. 800.
[21] 170 N. C. 129, 86 S. E. 964.
[22] 171 N. C. 334, 88 S. E. 474.
[23] 114 S. C. 156, 103 S. E. 512.

occurred because a belt broke with result that the employee's arm was broken; defense of assumption of risk. The trial court granted a nonsuit. The injury occurred Oct. 2, 1915; trial was had in summer of 1919; and this was reversed for a new trial June 28, 1920.

Morgan v. Springstein Mills[24]

Action for injury to plaintiff, while in the employ of the cotton mill, it being shown that the injury occurred due to a fellow servant starting an engine too soon, thus mangling plaintiff's hand; defense of assumption of risk in that plaintiff knew the fellow servant to be insane. No date of the injury is given; trial was had in the spring of 1918 resulting in verdict for plaintiff, amount not given; this was reversed and a nonsuit ordered Jan. 27, 1919.

Lynch v. Dewey Bros.[25]

Action for damages to the plaintiff while in the employ of the defendant planing mill, due to the defendant's alleged negligence in keeping an old machine, whereby two fingers on plaintiff's hand were cut off while he was doing certain planing. The injury occurred in Aug. 1917 and trial was had in Nov. 1917 resulting in a verdict for the plaintiff, the amount of damages not being given; this was affirmed Feb. 27, 1918. The defense set up was that of contributory negligence.

Winborne v. Cranberry Furnace Co.[26]

Plaintiff, a carpenter, was employed by the defendant cooperage company for the purpose of taking down some cars to salvage the iron, and in the course of such employment, while plaintiff held a cold chisel which his helper struck with an axe, plaintiff's foot was severely injured by the axe head flying off and striking him—there was an allegation of negligence on the part of defendant for furnishing a defective tool and the defense was that of contributory negligence. The injury occurred in Aug. 1917 and the trial was held in April 1919 resulting in $550 damages for the plaintiff; this was reversed Sept. 24, 1919, and sent back with instructions to sustain defendant's motion for a nonsuit.

Barnes v. Seaboard Air Line Ry. Co. and American Express Co.[27]

Action for the death of the plaintiff's intestate caused by the alleged negligence of the defendants; deceased was employed in loading a heavy shafting into one of the cars under the direction of the express company's agent; defense of contributory negligence. No date of the injury is given but the first trial was had in March 1919

[24] 111 S. C. 368, 97 S. E. 825.
[25] 175 N. C. 152, 95 S. E. 94.
[26] 178 N. C. 88, 100 S. E. 194.
[27] 178 N. C. 264, 100 S. E. 519.

resulting in a nonsuit as to both defendants; this was reversed for a new trial on Oct. 15, 1919.

Beck v. Sylva Tanning Co.[28]

Action for personal injuries to plaintiff alleged to have been caused by the negligence of the defendant tannery, while plaintiff was in its employ. The injury was caused by plaintiff's stumbling over obstructions negligently left in the walk ways between tubs, in such a way that plaintiff fell into a tub, thus having his feet and legs severely burned; defense of contributory negligence and assumption of risk. No date of the injury is given but trial was had in May 1919 resulting in verdict for the plaintiff, damages not given. This was affirmed Dec. 20, 1919.

Jones v. Taylor and Co.[29]

Action for damages by the plaintiff, an employee of the defendant construction company. It appeared that the plaintiff was engaged in breaking up stone by the use of a sledge hammer and while so engaged, a piece of stone flew off putting out one eye; defense of contributory negligence and assumption of risk. The injury occurred in March 1917; trial was had in Oct. 1919 resulting in a verdict for the plaintiff for $2000; this was affirmed May 10, 1920.

Berry v. Dillon Mills[30]

Action by plaintiff, an employee of the mill, for injuries sustained in the course of his employment; plaintiff attempted to put out a fire and in doing so, wet a moving belt which ran off its pulley and inflicted serious injuries; defense of contributory negligence and assumption of risk. No date of the injury is given; trial was had in the spring term, 1921, resulting in verdict for plaintiff, amount not given; this was affirmed Aug. 17, 1922.

Harwell v. Columbia Mills[31]

Action by employee of the mill for injuries sustained during the course of the employment, it being alleged that plaintiff slipped on the floor which was wet due to a leaky ice box; defense of assumption of risk and the fellow servant rule. The injury occurred Oct. 4, 1916; trial was had in the summer of 1918 resulting in verdict for plaintiff, amount of damages not given; this was affirmed Jan. 27, 1919.

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[28] 179 N. C. 123, 101 S. E. 498.
[29] 179 N. C. 293, 102 S. E. 397.
[30] 120 S. C. 333, 113 S. E. 348.
[31] 112 S. C. 177, 98 S. E. 324.

Kinsley v. Collection Cypress Co.[32]

Action for damages for the death of plaintiff's intestate which occurred while he was in the course of his employment with defendant as a feller of trees; it appeared that deceased was inexperienced; that when the tree he was cutting started to fall, he ran in the opposite direction and was hit by a dead tree which fell at the same time; defense of contributory negligence and assumption of risk. No date of the injury appears; trial was had in March 1921 resulting in verdict for plaintiff, amount of damages not given; this was reversed Jan. 25, 1922 with instructions that a verdict should have been directed for defendant.

McMeekin v. Walker Elec. and Plumbing Co.[33]

Action by the defendant's foreman for injuries caused by the alleged negligence of the defendant; it appeared that defendant employed a group of unskilled, foreign workmen who could not understand plaintiff's orders, with the result that they brought two large pipes together in such a way as to cut off two fingers; defense of contributory negligence and assumption of risk. No date of the injury is given but trial was had in the fall of 1919, resulting in a verdict for the plaintiff, the amount of damages not being given; this was affirmed June 28, 1920.

McMahan v. Carolina Spruce Co.[34]

Suit by plaintiff, an employee of the defendant lumber company, alleging two causes of action and seeking damages; first, plaintiff claimed that while in the course of his employment working on defendant's lumber dock, that due to defendant's negligence in failing to furnish sufficient help, the plaintiff's left arm was broken in two places; second, that the doctor employed by the defendant to treat its employees administered aid to the plaintiff in such a negligent manner that serious consequences resulted. Defense of contributory negligence. No date of the injury is given but trial was had Aug. 1920 resulting in a verdict for plaintiff with $6335 damages on the two counts; this was affirmed Dec. 24, 1920.

Capps v. Atl. Coast Line R. R. Co.[35]

Plaintiff's intestate was a carpenter employed by the defendant and was killed in Virginia in the course of such employment, and this action resulted for alleged negligence in connection with the death. Plaintiff first brought suit under the federal statute but was nonsuited and then sought to recover under the Virginia statute

[32] 118 S. C. 234, 110 S. E. 393.
[33] 114 S. C. 346, 103 S. E. 590.
[34] 180 N. C. 636, 105 S. E. 439.
[35] 183 N. C. 181, 111 S. E. 533.

which contained a provision that suit must be started within one year after the injury, with which provision the plaintiff failed to comply, hence the action was finally dismissed. The injury occurred Aug. 16, 1915; the first action was instituted in May 1916, and finally dismissed March 22, 1922.

Gaither v. Clement Co.[36]

While in the course of his employment with the defendant construction company as a carpenter, plaintiff was injured by having an eye put out while trying to unloose a drill and this action resulted for damages, alleging that the defendant had failed to furnish plaintiff with the proper equipment; defense of contributory negligence. The date of the injury is not given but trial was had in Nov. 1921 resulting in a verdict for the plaintiff, the amount of damages not being given; this was reversed for a new trial May 3, 1922, because of lower court's instructions holding defendant to a higher standard than due care.

Tritt v. Lumber Co.[37]

Action for damages for the death of the plaintiff's intestate due to the alleged negligence in so jerking the train upon which the deceased was a brakeman, that he was knocked off and killed; defense of contributory negligence. The injury occurred on June 4, 1921 and trial was had in Dec. 1921 resulting in a verdict for the plaintiff, the amount of damages not being given. This was reversed for new trial May 17, 1922, because of charge of lower court holding employer to too high a standard of care.

Lacey v. Ideal Hosiery Co.[38]

Action for injury to the plaintiff while in the regular course of his employment with the defendant, it being alleged that the plaintiff's arm was so badly torn that it had to be amputated; defense of contributory negligence. The injury occurred in July, 1919, and the trial took place in Feb. 1922 resulting in $7131 damages for the plaintiff and this was affirmed Sept. 13, 1922.

McKinney v. Adams Co.[39]

While in the course of his employment with the defendant lumber company, plaintiff was injured by cutting his foot while using defendant's axe which was alleged to have had a handle known to the defendant to be defective; no evidence offered by defendant.

[36] 183 N. C. 450, 111 S. E. 782.
[37] 183 N. C. 830, 111 S. E. 872.
[38] 184 N. C. 19, 113 S. E. 497.
[39] 184 N. C. 562, 114 S. E. 872.

The injury occurred in Sept. 1919; trial was had in July 1922 resulting in verdict for plaintiff for $1000 and this was affirmed Dec. 20, 1922.

Pollard v. Savannah River Lumber Co.[40]

Plaintiff was employed as a grader in defendant's mill when the injury occurred, alleged to have been caused by defendant's negligence in failing to cover properly a trim saw so that plaintiff's hand was badly cut; defense of contributory negligence and assumption of risk. No date of the injury is set out but trial was had in the spring of 1919 resulting in a verdict for the plaintiff, the amount of damages not being given; this was affirmed on Aug. 26, 1919.

Richardson v. Union Seed & Fertilizer Co.[41]

Plaintiff was employed by the defendant to do some creosote painting and furnished a brush obviously defective; as a result plaintiff's eyes were injured; defense of assumption of risk. No date of the injury is given but the case was tried July 11, 1918 resulting in a nonsuit for the plaintiff; this was affirmed Jan. 21, 1919.

Tisdale v. Union Tanning Co.[42]

Action for the alleged negligent killing of plaintiff's intestate while he was in the course of his employment with the defendant; defense of assumption of risk. At the close of the evidence, the court directed a nonsuit from which the plaintiff appealed. The injury occurred in Jan. 1923; and the case was sent back for a new trial May 26, 1923.

Beal v. Carolina Coal Co.[43]

Action for personal injury to the plaintiff, an employee of the defendant mining company. The injury occurred Apr. 25, 1923, while plaintiff was on duty, the cause being an explosion which took off plaintiff's right arm and caused other injuries. Trial was had in July 1923 resulting in damages for the plaintiff, the amount not given; affirmed Dec. 20, 1923. The type of defense is not set out.

Whitt v. Rand and Ward[44]

Plaintiff, an employee of the defendant construction company, was injured by having a piece of stone strike his eye while in the course of his employment as a chiseler; the alleged negligence was

[40] 112 S. C. 553, 100 S. E. 145.
[41] 111 S. C. 387, 98 S. E. 134.
[42] 185 N. C. 497, 117 S. E. 583.
[43] 186 N. C. 754, 120 S. E. 333.
[44] 187 N. C. 805, 123 S. E. 84.

failure to provide eye glasses or goggles; defense of assumption of risk. The injury occurred Aug. 28, 1922 and the trial court awarded $2000 damages in Mar. 1924 which was affirmed May 31, 1924.

Dellinger, Adm. v. Elliott Building Co.[45]

Action for damages for the death of plaintiff's intestate who was killed by an accident while in the defendant's employ. No date of the injury appears but trial was had in Jan. 1924 when plaintiff obtained $5000 damages; plaintiff's case was based upon negligence and the doctrine of *res ipsa loquitur* while the defendant pleaded contributory negligence and the fellow servant rule. Decision affirmed May 31, 1924.

Medford v. Rex Spinning Co.[46]

Action by the plaintiff against the defendant employer for injuries to his hand received in the course of his employment while adjusting belt on moving machine to which the defendant pleaded assumption of risk and contributory negligence. The time of the injury is not given but trial was had in Oct. 1923 resulting in judgment for the plaintiff, the amount not set out. New trial was granted June 21, 1924, for error in instructions.

Michaux v. Lassiter and Co.[47]

Action for personal injuries to the plaintiff's intestate an employee of the defendant road contractor. The defense interposed was that of the fellow servant rule and that no negligence on the part of defendant was shown. The injury occurred in May 1922; trial was had in Nov. 1923 at which the plaintiff was nonsuited; defense of the fellow servant rule being applied. Judgment affirmed June 21, 1924.

Cobia v. Atlantic Coast Line R. R. Co.[48]

Case tried under the Federal Employers' Liability Act; deceased was killed Dec. 14, 1922; the case was tried in March 1924 resulting in verdict for $4000 from which defendant appealed. The defenses set up were assumption of risk, contributory negligence, and the fellow servant rule. The decision was affirmed Oct. 29, 1924.

Mangum v. Atlantic Coast Line R. R. Co.[49]

Action under the federal act for permanent injuries to plaintiff due to the defendant's alleged negligence. It appeared that as the

[45] 187 N. C. 845, 123 S. E. 78.
[46] 188 N. C. 125, 123 S. E. 257.
[47] 188 N. C. 132, 123 S. E. 310.
[48] 188 N. C. 487, 123 S. E. 18.
[49] 188 N. C. 689, 125 S. E. 549.

train upon which the plaintiff was a fireman neared a town crossing, it collided with a car in such a way that the train was derailed; the act of negligence alleged was that the cowcatcher was not in such condition to shove objects out of the way. No specific defense is set out. The injury occurred Dec. 13, 1921; trial was had in March, 1924 resulting in a verdict of $22,500 for plaintiff, $15,000 being for permanent injuries and $7,500 for pain and suffering; this was affirmed Dec. 10, 1924.

Crisp v. Hanover Thread Mills[50]

Jury trial was had in May 1924; appeal and the verdict affirmed Jan. 24, 1925; no date of the injury being given. Action for injuries to plaintiff, employee of the defendant mills, the former's job being to carry out spools from the thread machine. The injury was alleged to have been caused by the defendant's failure to furnish plaintiff with a helper to carry the great weight; defense of assumption of risk. The trial court awarded $1000 damages and this was affirmed.

Roberts v. Columbia Ry. & Nav'n. Co.[51]

Action for injuries resulting from exposure while plaintiff was in the course of his employment with defendant; it appeared that plaintiff was keeping logs from striking defendant's boat during a flood; that the boat broke loose; that plaintiff was rescued by a government boat and set ashore upon an island and that in wading to the mainland, plaintiff was caught and had to take to a tree and wait 8 hours before he was again rescued; defense of contributory negligence. The injury occurred in Jan. 1915; trial was had in May 1919 resulting in damages for plaintiff; this was reversed March 22, 1921.

Nichols v. Seaboard Air Line Ry. Co.[52]

Action for injuries to plaintiff, a switchman, while coupling cars, caused by a brick falling off the top of the car and striking plaintiff in the eye; verdict of $500 for the plaintiff in the trial court, June 1922. The defendant appealed and the case was reversed with instructions to direct a verdict for the defendant on the grounds that no negligence was shown. No date of the injury is given.

Southwell, Amd. v. Atlantic Coast Line R. R. Co.[53]

Plaintiff's intestate was an engineer employed by the defendant and after putting his engine up for the night and while still on de-

[50] 189 N. C. 89, 126 S. E. 110.
[51] 115 S. C. 512, 106 S. E. 505.
[52] 122 S. C. 359, 115 S. E. 323.
[53] 189 N. C. 417, 127 S. E. 361.

fendant's premises but on his way home, deceased was shot by the assistant yard master, acting as special policeman during a strike. Defense that the deceased was engaged in interstate commerce, hence that this case is controlled by the federal act which predicates recovery upon proof of injury proximately resulting from defendant's negligence and never upon willful homicide committed by the defendant's employees. The injury occurred July 18, 1922; trial was had in Oct. 1924 resulting in a nonsuit; and a new trial was awarded April 8, 1925, because, in the court's opinion, there was enough evidence of defendant's negligence to go to the jury.

Satchell, Adm. v. McNair and McKay[54]

Action by plaintiff for the death of her 15 year old son alleged to have been caused by defendant's negligence in employing the deceased as a tripper for the sawmill contrary to the instructions of the mother and also for negligence in handling the sawmill after the deceased was employed. Held that the trial court erred in its instructions and that the case must be sent back for a new trial. Jury trial took place in Sept. 1924; and this was reversed April 15, 1925. No date of the injury appears.

Thomas v. W. H. and T. H. Lawrence[55]

Plaintiff was injured by a falling brick striking him on the head while in the course of his employment with the defendant construction company; defense of assumption of risk and the fellow servant rule. No date of the injury is given; trial was had in Sept. 1924 resulting in $5000 for plaintiff; and this was affirmed April 22, 1925.

Barnes and Walden v. Phoenix Utility Co.[56]

Action for damages for the death of the plaintiff's intestate, alleged to have been caused by defendant's negligence in providing a safe place to work. The injury occurred Nov. 13, 1924, suit was brought in March 1925 resulting in $6500 damages for the plaintiff from which the defendant appealed; defenses of contributory negligence and assumption of risk. Decision affirmed Nov. 4, 1925.

Gordon v. Stehly Silks Corporation[57]

Action against the defendant hosiery factory for serious injury to the plaintiff's leg by being caught between uncovered cogwheels which were alleged to have been negligently left uncovered. Defense of contributory negligence. No date of the injury is given but

[54] 189 N. C. 472, 127 S. E. 417.
[55] 189 N. C. 521, 127 S. E. 585.
[56] 190 N. C. 382, 130 S. E. 1.
[57] 178 N. C. 470, 100 S. E. 884.

trial was had in March 1919 resulting in damages for the plaintiff, the amount not being given; this was affirmed Nov. 19, 1919.[58]

[58] Other cases analyzed follow:

NORTH CAROLINA—*Gregory v. Easton Cotton Oil Co.* (1915) 169 N. C. 454, 86 S. E. 162 (plaintiff denied damages for broken leg on ground that no negligence of defendant was shown); *Deligny v. Tate Furniture Co.* (1915) 170 N. C. 189, 86 S. E. 80 (verdict of $1500 for broken arm sustained); *Wooten v. Holleman & Dennegan* (1916) 171 N. C. 461, 88 S. E. 480 (carpenter denied relief for injuries sustained when scaffolding gave way); *Buchanan v. Cranberry Furnace Co.* (1919) 178 N. C. 643, 101 S. E. 518 (recovery for broken arm caused by rock falling from mine roof); *Angell v. Carolina Spruce Co.* (1919) 178 N. C. 621, 101 S. E. 384 (lower court's judgment against plaintiff for injuries caused by falling tree, reversed); *Sutton v. Melton Rhodes Co.* (1922) 183 N. C. 369, 111 S. E. 63 ($1500 verdict for broken foot injured in wood working machine); *Moore v. Atl. Coast Line R. R. Co.* (1923) 185 N. C. 189, 116 S. E. 409 (recovery for death under federal statute); *Wilson v. Blackwood Lumber Co.* (1923) 185 N. C. 571, 118 S. E. 1 (recovery for injuries to back caused by defendant's failure to supply enough hands in lifting logs); *Murphey v. Suncrest Lumber Co.* (1923) 186 N. C. 746, 120 S. E. 342 (type of injury and amount of damages not set out); *Hairston v. Erlanger Cotton Mills* (1924) 188 N. C. 557, 125 S. E. 124 ($700 for injured shoulder caused by falling weight); *Corbitt v Royer Ferguson Co.* (1924) 188 N. C. 565, 125 S. E. 118 (recovery for hand mashed by defendant's negligence); *Perkins v. Wood & Coal Co.* (1925) 189 N. C. 602, 127 S. E. 677 ($5000 for injuries caused by defendant's servant allowing steam shovel to drop without warning); *Richardson v. Am. Cotton Mills* (1925) 189 N. C. 653, 127 S. E. 834 (verdict refusing damages for injuries reversed because of instructions); *Cable v. Kitchen Lumber Co.* (1925) 189 N. C. 840, 128 S. E. 329 (new trial granted because of error in instructions).

SOUTH CAROLINA—*Barnhill v. Cherokee Falls Mfg. Co.* (1919) 112 S. C. 541, 100 S. E. 151 (lower court's verdict denying damages for intestate's death reversed); *Farr v. Pacolet Mfg. Co.* (1919) 112 S. C. 448, 100 S. E. 146 ($3000 for injuries sustained by fall upon slippery floor reversed because of instructions); *Leopard v. Beaver Duck Mills* (1921) 117 S. C. 122, 108 S. E. 190 (directed verdict for defendant reversed on grounds that there was evidence of negligence); *Howell v. Union Buffalo Mills* (1923) 121 S. C. 133, 113 S. E. 577 (recovery for injury to eye caused by defective shell shooting oil into face); *Rickard v. Middleburg Mills* (1919) 113 S. C. 137, 101 S. E. 643 (recovery for injury caused by carelessly stacked bale); *Honercutt v. Pac. Mills* (1919) 111 S. C. 514, 98 S. E. 795 (recovery for injury, while moving heavy box, and being struck by fellow servant doing same type of work); *Abbott v. Columbia Mills Co.* (1918) 110 S. C. 298, 96 S. E. 556 (recovery for injury to fingers while threading revolving spools); *Wix v. Columbia Mills* (1918) 110 S. C. 377, 96 S. E. 616 ($2500 for fall caused by oil negligently left on floor); *Sentell v. Norris Cotton Mills* (1919) 111 S. C. 430, 98 S. E. 141 ($3000 for loss of arm while cleaning carding machine); *Ballinger v. Fisk Carter Const. Co.* (1919) 111 S. C. 434, 98 S. E. 193 ($2000 for death of intestate caused by being thrown from railroad car); *Henry v. Morris Bros. Inc.* (1919) 111 S. C. 437 98 S. E. 197 (recovery for severe wounds inflicted by fall against revolving machine); *Holmes v. Hamilton Ridge Lumber Co.* (1922) 120 S. C. 165, 112 S. E. 536 (recovery for injuries sustained while coupling cars on defendant's logging road); *Kell v. Fertilizer Co.* (1923) 123 S. C. 199, 116 S. E. 97 (verdict reversed on grounds that there was evidence of negligence); *Bradley v. Van Wyck et al* (1921) 111 S. C. 386, 108 S. E. 149 (nonsuit affirmed in action for death); *Grice v. Hann et al* (1921) 117 S. C. 106, 108 S. E. 195 (in suit for death, nonsuit reversed); *Eargle v. Sumter Lighting Co.* (1918) 114 S. C. 346, 96 S. E. 909 (directed verdict for defendant in suit for death of engineer reversed); *Donald v. A. C. L. R. R. Co.* (1921) 117 S. C. 4, 108 S. E. 180 ($5000 for death affirmed); *Howell v. South. Ry. Co.*

2. *Statistics and Other Data*

Of the forty-four North Carolina cases involving personal injuries to employees which were studied, eleven were against construction companies, eight against lumber companies, seven each against cotton mills and railroads, two each against tanneries, mines, planing mills, and one each against a veneer company, a cotton seed oil mill, a furniture company, a granite company, and a cooperage company. Forty were decided under the laws of North Carolina and four under the Federal Employer's Liability Act. The reports show that eleven of the injuries resulted in death, three in the loss of an arm, one in the loss of a leg, five in a broken leg, two in a broken arm, four in the loss of an eye, one in the loss of two fingers, one in the loss of a foot, eleven in severe burning, one in cutting a foot, eleven in permanent injuries, and eleven in injuries the type not being specified.

The date of the injury is ascertainable from the reports in only 23 of the 44 cases. For these 23 cases, the average period between

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(1920) 114 S. C. 21, 102 S. E. 856 (recovery for injuries sustained when sudden jar threw plaintiff under loose trucks in tool car); *Grant v. Director Gen. of Railroads* (1920) 114 S. C. 89, 102 S. E. 854 (verdict for injuries, sustained by being thrown from a handcar, reversed for improper joinder of parties); *Washington v. A. C. L. R. R. Co.* (1918) 110 S. C. 371, 96 S. E. 553 ($1200 for broken leg); *Cline v. South. Ry. Co.* (1920) 101 S. C. 493, 86 S. E. 17; 110 S. C. 534, 102 S. E. 641 (series of actions extending over 6 years for personal injuries to plaintiff who died before final appeal, affirming the lower court's decision finally dismissing action).

South Carolina Cases Brought Under Federal Employer's Liability Act—*Johnson v. A. C. L. R. R. Co.* (1921) 112 S. C. 47, 99 S. E. 755; 116 S. C. 135, 107 S. E. 31 (nonsuit reversed because some evidence of negligence); *Strickland v. South. Ry. Co.* (1918) 107 S. C. 521, 93 S. E. 187; 111 S. C. 248, 97 S. E. 695 ($8000 for death of intestate following blood poisoning incurred while cleaning dirty air reservoir of locomotive); *Williams v. C. & C. W. Co.* (1922) 121 S. C. 23, 113 S. E. 300 ($4000 for injuries sustained when defective rope broke); *Mathews v. Payne, Director Gen.* (1921) 121 S. C. 84, 113 S. E. 381 (recovery for flagman's death when rear of his train was hit by approaching train); *Southerland v. Davis* (1923) 122 S. C. 511, 115 S. E. 768 ($5790 for injuries sustained in course of employment); *Thornhill v. Davis* (1922) 121 S. C. 49, 113 S. E. 370 ($14,600 for death caused by defendant's negligence); *Templeton v. C. & C. W. Ry. Co.* (1921) 117 S. C. 44, 108 S. E. 363 ($5000 for injured brakeman reversed because of improper admission of testimony); *Patterson v. Director Gen. of Railroads* (1921) 115 S. C. 390, 105 S. E. 746 (nonsuit to yard conductor, for injuries while operating switch engine in violation of defendant's rules, affirmed); *Pendergrass v. South. Ry. Co.* (1920) 114 S. C. 78, 103 S. E. 150 ($2000 for death of employee working under car when it was hit by another shunted onto the switch in violation of rules); *McDowell v. South. Ry. Co.* (1920) 113 S. C. 399, 102 S. E. 639 (nonsuit reversed on grounds that evidence should have been submitted to jury); *Harmon v. Seaboard Air Line* (1918) 110 S. C. 153, 6 S. E. 253 (nonsuit sustained where it was shown that back was strained while lifting timber); *Ettison v. South. Ry. Co.* (1918) 110 S. C. 122, 96 S. E. 680 (recovery for loss of arm caused by unexpected jerk of car).

the date of the injury and the decision on appeal is twenty-six months; and in five of those cases, the case was reversed by the Supreme Court for further proceedings so that the above average would be lengthened. It is noted that one case required six years and eleven months for final determination.[59] The average length of the time required between the date of trial and the handing down of the decision by the Supreme Court in these 44 cases, is seven and one-half months, not taking into account the additional time involved in those instances where the case is sent back for further proceedings. Subtracting these two periods, we get eighteen and one-half months as the average period between the date of an injury to an employee and the trial in the Superior Court. Of these 44 cases, the trial court's decision was affirmed in thirty-one instances, leaving thirteen cases which were reversed for further proceedings. In twenty-seven cases, the plaintiff recovered damages. The defenses set up were as follows: assumption of risk in fourteen cases; contributory negligence in twenty-one cases; and the fellow servant rule in eight cases; in some cases two or more defenses were set up while in a few the type of defense was not specified.

As to the 44 South Carolina cases which were studied, all of which involved personal injuries to employees, eighteen were against railroads, thirteen against cotton mills, six against lumber companies, two against fertilizer companies, and one each against an electric and plumbing company, an electric light company, a mattress factory, a street railway and navigation company, and an individual. Thirty-two of these cases were decided under the laws of the state and twelve under the Federal Employer's Liability Act. The reports show that at least thirteen of the injuries resulted in death, four in the loss of or injury to one or both eyes, and four in the loss of an arm or leg. Three of these forty-four cases involved more than one appeal to the Supreme Court. The date of the injury is ascertainable from the reports in only fourteen of the other forty-one cases. For these fourteen cases the average period between the date of the injury and the date of the trial is twenty-one months. In one of these forty-one cases, the date of trial is not stated in the report. The average period between the date of the trial and the decision on appeal in the other forty cases is twelve months. Adding these two periods, we get thirty-three months as the average period between the date of an injury to an employee and a decision

[59] 135 N. C. 181, 111 S. E. 533.

on the case involving it, by the Supreme Court. The delay in the three cases which involved more than one appeal to the Supreme Court is of course much longer. In one,[60] over four years elapsed from the date of the injury and the affirmance on the second appeal of a verdict for the plaintiff; in another,[61] four years and three months; in the third case,[62] six and one-half years elapsed between the date of the injury and the third decision on appeal, affirming the trial court's dismissal of the action.

Of the forty-one cases, twenty-nine were cases in which the employee had been victorious in the first round, all being based on verdicts of juries. Twenty-two of these verdicts were allowed to stand in the Supreme Court and seven were upset. In three of these seven cases, the Supreme Court ordered a new trial, in three others a verdict directed for the defendant, and in one a nonsuit. In other words the injured man or his dependents got a final judgment awarding compensation in approximately one-half of the cases within the scope of this inquiry.

Of the twelve cases decided under the Federal Employer's Liability Act, the plaintiff secured a final judgment in only seven cases. This seems to indicate that something more than the mere modifications of the doctrines of contributory negligence and the assumption of risk is necessary in order to adequately protect injured employees and their dependents.

Of the forty-four South Carolina cases within the scope of this study, the Supreme Court was called upon to pass upon the application of the rules as to the employers' negligence in fifteen, the fellow servant rule in five, the employees' contributory negligence in eighteen, and the employees' assumption of risk in twenty-seven.

The Federal Employer's Liability Act was passed by Congress, acting under its power to regulate inter-state commerce, and applies only to employees engaged in such commerce. It abolishes both the doctrine of contributory negligence and the doctrine of assumption of risk in cases in which the injury was caused wholly or in part by the defendant's violation of any federal statute passed for the safety of employees and in other cases allows contributory negligence to diminish the amount recoverable but not entirely to defeat recovery.

[60] 112 S. C. 47, 99 S. E. 755; 116 S. C. 135, 107 S. E. 31.

[61] 107 S. C. 521, 93 S. E. 187; 111 S. C. 248, 97 S. E. 695.

[62] 101 S. C. 483, 86 S. E. 17; 110 S. C. 534, 96 S. E. 532; 113 S. C. 440, 102 S. E. 641.

The truth of the matter is that a logical application by the jury of these abstract rules as they exist in our Supreme Court Reports today would have prevented a recovery in practically every one of the cases considered, but fortunately for injured employees and their dependents, these rules do not square with the layman's notion of justice. This conflict between the law in the books and the law in action is largely responsible for much of the present litigation between injured employees and their employers and the resulting inevitable delay and general dissatisfaction, because even in the ordinary case, it makes the effective application of undisputed general principles a matter of great uncertainty.

This difficulty was clearly recognized by Mr. Justice Marion in *Kell v. Fertilizer Co.*,[63] in which he said: "The correct application of the familiar principles of employers' liability to the facts of a given case, particularly one involving the doctrine of fellow servant, is rarely free from difficulty."

It is submitted that this difficulty can only be satisfactorily eliminated by following the lead furnished by forty-three of our sister states: that is, enacting a Workmen's Compensation Act under which the industrial employers are made insurers of all accidents to their employees which arise in the scope of their employment, and thereby eliminate all of the difficult issues previously considered.

With an adequate compensation law and a competent commission to administer it, each of the eighty-eight plaintiffs in the cases abstracted, would have received financial aid, certain and reasonable in amount, and paid at the time when he or his family needed it most. The eighty-eight employers, on the other hand, would have been obliged to take out insurance against the accident risk, and this insurance would have been immediately available and at the disposal of the commission with a minimum of delay and worry for the employee.

It may be urged that under the average Workmen's Compensation Law the amount paid to the injured man by the commission falls far short of that awarded to him by the jury. Of course there is a considerable difference in particular cases. The data in the cases within the scope of this inquiry obviously affords an insufficient basis for any trustworthy general conclusions as to the amounts of jury verdicts, but it does have a tendency to show that with a few

[63] 123 S. C. 199, 116 S. E. 97.

exceptions Carolina jurors are not particularly magnanimous to injured employees or their surviving dependents.

In comparing the amounts of compensation payments with North and South Carolina jury verdicts, under our present negligence system, the attorney's fees and the cost of litigation should be considered, especially as most industrial accident cases are handled on a contingent fee basis, ranging as high as fifty per cent of the judgment. To sum up: under the present state laws, the injured employees or their surviving dependents, after waiting the average period of thirty-three months in South Carolina and twenty-six months in North Carolina, got a legal right in fifty per cent of the cases to be paid such sums as the juries had awarded them, minus attorneys fees and the cost of litigation.

The fact that most cases of industrial accidents are so clearly covered by the ordinary Workmen's Compensation Act and the damages are so easily computed, makes settlement in the ordinary cases almost a matter of routine, and largely eliminates the need of lawyers. Even when the liability is contested, it is often not necessary for the injured employee to be represented by a lawyer.

Reginald H. Smith of the Boston Bar, speaking of Workmen's Compensation Acts and their administration by commissions, said:[64]

"Restriction of the attorneys' functions has been accomplished in several ways. In lieu of writs, summonses, and declarations, there are notices of injury and claims for compensation whose forms have been simplified and standardized. There are no details of service of process, for the mails are used. Questions of jurisdiction and venue have no importance, for one commission acts for the entire state. There are no pleadings and no interlocutory proceedings worth mention. Trial lists and calendars are not used; every case is assigned for hearing at a specific hour on a specific date, and notice is sent by the commission to all parties. Thus all preliminaries up to the point of trial, which in common law tort litigation required the services of counsel, are performed, either by the party himself or by a clerk of the commission.

"The law itself is infinitely more simple. The whole question of damages, on which many a lawyer has exercised his utmost ingenuity, is reduced to mathematical precision, and in a given case the precise award is determined by consulting a table which a grammar school child could understand. The issue of liability is shifted from the doubtful and contentious ground of negligence complicated by contributory negligence, assumption of risk, and the fellow servant rule, to injuries 'arising out of and in the course of the employment'."

[64] Smith, *Justice and the Poor* (1921—2nd ed.) 87.

Under the present system of course, no actual money can be recovered until after a lawsuit with all its concomitant expense, delay, and uncertainty. The result is that the industrial victim usually takes whatever is offered him by his employer or the shrewd adjuster of the casualty company and signs a release of his rights. This is without doubt invariably true of minor injuries, for the amount involved is not sufficient to justify putting in motion the present cumbersome legal machinery. Investigations of industrial accidents, made in other states prior to the enactment of compensation legislation are perhaps relevant.

The report of the New York Commission on Employers' Liability, appointed under Laws 1919 C. 518, states that of the two hundred and twenty-seven fatal cases investigated, 93, or 41 per cent, received nothing at all; 23, or 10 per cent, received less than $100; 72, or 33 per cent, received $100 to $500; 16, or 7 per cent, received $500 to $1000; 11, or 5 per cent, received $1000 to $2000; 9, or 4 per cent, received $2000 to $5000; and one per cent received over $5000. The average for all these cases was only $531.

Of three hundred and twenty-three fatal cases investigated in Pittsburg by Miss Crystal Eastman, 89, or 28 per cent, received nothing at all; 113, or 35 per cent, received less than $100; 61, or 19 per cent, received $100 to $500; 41, or 13 per cent, received $500 to $1000; and 19, or 6 per cent, received over $1000. The situation was even worse as far as non-fatal but permanently disabling injuries was concerned.[65]

Recent investigations in the District of Columbia, which, like North and South Carolina, is one of the few political jurisdictions still without compensation laws protecting private employees, show similar results. Of over one hundred accidents investigated in that jurisdiction, not a single employee who was seriously injured received adequate recompense. Insurance adjusters offered them $25 for a broken leg, $800 for a life, and more often nothing at all.[66]

VII. The Attitude of Interested Parties Toward Compensation Law

From the preceding discussion, it seems reasonable to conclude that North and South Carolina would benefit from an adequate

[65] This report and the report of the New York Commission are discussed in detail in Robinow (1913) *Social Insurance,* 94.

[66] 13 American Labor Legislative Review, 235.

Workmen's Compensation Act, and that such an act would be both a boon to industrial employees and to industrial employers. Those who have studied the problems involved from the aspect of the employer and those who have studied them from the aspect of the employee, generally unite in endorsing compensation legislation. The legislation has the unique distinction of having been indorsed both by organized capital and by organized labor, by the American Federation of Labor, and the National Association of Manufacturers, by the Railroad Brotherhoods, the Steel Corporation, and the International Harvester Company.[67]

Mr. John B. Andrews, Secretary of the American Association of Labor Legislation in a letter dated December 2, 1924, said: "In my opinion a state which has failed to enact a workmen's compensation law after the principle has been accepted practically throughout the civilized world, indicates a backwardness which is difficult to comprehend in a progressive country like the United States."

Mr. B. Harris, Commissioner of Agriculture, Commerce and Industries of the State of South Carolina, wrote that he is heartily in favor of a Workmen's Compensation Act. He has recommended the passage of such a law by the General Assembly.[68]

In order to ascertain the attitude of South Carolina employers towards a compensation act, a mimeographed letter was sent, with a self addressed postcard enclosed, to the president of each of the one hundred and forty-five cotton mills listed in the 1920 federal census for South Carolina. These mills are listed as employing 48,079 employees. In a few instances the same man was listed as president of two or more mills, so that the actual number of letters mailed was one hundred and thirty-six. Each of these letters solicited a statement in the form of a letter of the addressee's attitude toward such an act. In case he was too busy to write a letter, he was requested to fill out and return the enclosed card which contained space for a categorical answer as to whether or not he was in favor of a compensation act.

In response to these letters, answers were received from forty-one South Carolina cotton mill officers. Thirty-two of them without any qualification, endorsed and approved a Workmen's Compensation Act for South Carolina; four favored the principle involved but felt that they could not give a proposed act unqualified approval without

[67] Downey (1924) *Workmen's Compensation*, 6.

[68] Sixteenth Annual Report (1924) 15.

considering its exact terms, three were noncommittal; one stated that he would be in favor of such an act provided the cost of workmen's compensation insurance was not materially higher than his present insurance; and only one stated that he was not in favor of legislation of this type.

VIII. Suggestions as to Desirable Provisions of a Compensation Act

1. *The Scope and Application*

The act should be drawn so as to include all employees in specified wage or salary groups; in all industries employing five or more employees including among others manufacturing, lumbering, transporting, and merchandising enterprises; and state and municipal employees, with agricultural laborers, domestic servants, and casual employees specifically excluded. Every American compensation act excludes agriculture except the acts in force in Hawaii and New Jersey, and only New Jersey includes domestic service. Thirty-three American state compensation acts exempt casual employees and nine do not.[69] Such exemptions are not discriminatory and do not deny the equal protection of the laws.[70] However wrong on principle these exemptions may be, the political strength and economic condition of the employers of such labor, and the administrative difficulty of applying a compensation act to them, make their exclusion from a proposed bill expedient.

Twelve of the forty-three state compensation acts exclude all so-called non-hazardous employments.[71] It is submitted that such an exclusion is not desirable. An injury received in a mercantile establishment may be just as severe and cause as much economic distress as one received by a railroad employee. If an employment has a low degree of hazard, the cost of compensation will be correspondingly low. In states in which the act exempts non-hazardous employments, some excluded employees e.g. clerical workers, are usually employed by those conducting so-called hazardous employments. This makes needless administrative difficulties by raising many close questions of inclusion or exclusion of particular employees. It is worth noting that New York after experience with a

[69] U. S. Bureau of Labor Statistics, Bulletin 275, 23 and 24.

[70] *New York Central Railroad Co. v. White* (1917) 243 U. S. 188, 37 Sup. Ct. 247.

[71] Same as note 69 *supra*, p. 21.

hazardous and non-hazardous classification, has included non-hazardous employments.[72]

Compensation should be provided for all personal injuries in the course of the employments covered by the act, except where the injury is occasioned by the willful intention of the employee to bring about the injury or death of himself or another. Occupational diseases contracted in the course of the employment should be compensable and are included in nine states.[73]

The majority of the American compensation acts are elective in form but not in substance. It is submitted that North and South Carolina should follow the lead furnished by the twelve states which frankly make their compensation acts compulsory. The so-called elective acts usually create a conclusive presumption of election to come within the provisions of the act unless the employer or employee files a statement of rejection with the commission prior to the injury. If an employer makes such an election, his three common law defenses, assumption of risk, the fellow servant rule, and contributory negligence, are taken away from him. The result is that the employer is virtually compelled to accept the act. This curious feature is no doubt due to the general opinion current when most of the acts were passed, that this was "a device by means of which compensation legislation could be made to stand the test of constitutionality where a compulsory act would fail."[74]

But the United States Supreme Court has held in two relatively recent decisions that a compulsory act is due process of law and does not infringe any principle of the federal constitution. It has been aptly said that, in view of these decisions, "any further attempt to distinguish between the validity of a compulsory act and an elective act with a penalty for non-election, is to indulge in exploded casuistry."[75]

As one of the weightiest arguments against the present system is that it fritters away in law suits, money which should be used in caring for the injured employees, the compensation provided by the

[72] Same as note 69 *supra*, p. 9.

[73] The substance of this paragraph is taken from *Standards for Workmen's Compensation Laws* (1924) p. 8, published by the American Association for Labor Legislation, 131 East 23rd St., New York City.

[74] Laube, *Administrative Problems in Wisconsin's Workmen's Compensation* (1925), 2 Wisc. Law Review 66, 73; Rhodes, *Workmen's Compensation* (1917) 118.

[75] Laube, *Op. Ct.* Note 74 *supra*, p. 74.

act should be made the employee's exclusive remedy against the employer.[76] Law suits against the employer by the employee are not permitted in Alabama, Alaska, Colorado, Hawaii, Idaho, Kansas, Louisiana, Maine, Massachusetts, Minnesota, New Jersey, New Mexico, Vermont, Virginia, Wisconsin, and Wyoming.

2. *Compensation Benefits*

In general the employer should be required to pay the expense of all necessary medical and surgical treatment and such a percentage of the injured employee's wages as will provide for the resulting needs and yet not encourage malingering. The compensation payments for total disability, either temporary or permanent, vary in the different states from 50 to 66⅔ per cent of the average weekly wage of the employee during the year immediately preceeding the injury. It is believed that the latter percentage is none too high and is the one that should be adopted. If the employee who has been totally disabled is a minor, he should after reaching twenty-one, receive 66⅔ per cent of the wages of able bodied men in the occupation group in which he belonged.[77] The employee who has been only partially disabled should receive a percentage of his wages proportionate to the degree of his disability. The statutes in many states contain an elaborate schedule showing the per cent of impairment in earning capacity which each specific injury may be expected to cause to a worker of any given occupation. These schedules will furnish convenient guides to the kind of statute needed in North and South Carolina.

A moderate waiting period for which no compensation is payable is justifiable on the grounds of administrative cost, the danger of malingering, and the fact that the loss of wages for a short period will not create a hardship for the average workman or his family. The period is usually fixed at a week and in the writer's opinion, certainly should not exceed a week.

Every practicing lawyer knows that securing a judgment against even a solvent defendant and collecting it are often two very different things; and this is true even in the Carolinas. As the supreme test of a compensation system is the promptness and certainty with

[76] Same as note 73 *supra*, p. 9.

[77] See note 73 *supra, Standard for Workmen's Compensation Laws* (1924) p. 4; the fact that the injured employee is a minor is taken into account in fixing compensation in Cal., Colo., Conn., Ill., Iowa, Me., Mass., N. Y., N. D., Ohio, Okla., Tex., Utah, and Wisc.

which compensation awards are met, obviously an act which fails to require adequate security for the payment of compensation awards will be defective. Alabama, Arizona, and Kansas are the only compensation states which do not require the employer to secure the payment of compensation due employees, either by insurance or by the giving of a bond.

The premiums charged by the insurance carrier to employers as a whole, must cover, of course among other things, the administrative expenses of the insurance carrier. The United States Bureau of Labor completed in August, 1920, an extended investigation of workmen's compensation insurance and its administration in twenty American states and two Canadian provinces, nine of which provided for exclusive state funds, nine others for competitive state funds, and the remaining four had no state funds. This investigation[78] showed that the average administrative expense ratio of stock companies is approximately 38 per cent, of mutual companies about 20 per cent, of competitive state funds about 10.6 per cent, and of exclusive state funds about 4 per cent. Thus an exclusive state fund should cost the employers 30 per cent less than stock insurance and 16 per cent less than mutual insurance. It is submitted that this enormous saving to employers makes it expedient for North Carolina and South Carolina to follow the lead furnished by Nevada, North Dakota, Ohio, Oregon, Washington, West Virginia, and Wyoming, and adopt a system of exclusive state funds.

The usual method of creating this fund is to require all employers within the provisions of the act to pay their premiums for several months in advance. It would no doubt be expedient to make an appropriation covering the administrative expenses during the first year or two. After the second year, the cost of administering the fund should be borne by the fund itself. Notwithstanding their favorable rates to subscribers and their liberality to injured employees, most of the exclusive state funds have accumulated a large catastrophe reserve.[79] The usual method of securing such a reserve is to provide that the state funds shall set aside 10 per cent of their annual premium income as a catastrophe reserve until the reserve equals $100,000 and 5 per cent thereafter until the reserve is sufficient to cover the catastrophe hazard of all the subscribers to the fund and to guarantee the solvency of the fund.[80]

[78] U. S. Bureau of Labor Statistics, Bulletin 301, p. 21.
[79] Same as note 78, p. 56.
[80] Same as note 78, p. 55.

3. *The Administrative System*

The most sweeping changes in the present law of employer's liability will obviously fail to have the desired effect, unless there is adequate machinery to get the actual money to the injured employees or their surviving dependents with a minimum of delay and expense to them. What form shall this machinery take? Of the forty-three American states which have compensation acts, thirty-two have answered this question by creating an administrative board or commission, and the others have left the enforcement of the act to the courts.[81] No state has abandoned the administration of Workmen's Compensation Acts by a commission, while at least three states have substituted administration by commissions for administration by the courts.[82] The great predominance of the commission type of law is apparently due to the marked advantages which a commission possesses over an ordinary court in the disposition of cases such as arise under compensation acts.

The present litigious theory and practice of the court procedure involving inevitable delay and engendering a spirit of hostility between the parties[83] seems unsuited to the needs of indemnity for work injuries. Another objection to administration by the courts is that some of the problems involved are beyond the effective scope of any court. For example, courts cannot make an independent investigation of the facts of a case or exercise effective supervision over uncontested settlements. Ordinarily before an injured workman can enforce his rights in a court of law, he must take the initiative, hire a lawyer, procure witnesses, await a hearing, and prosecute his suit at his own expense or on the basis of an unfavorable contingent fee. To an injured indigent person, a costly remedy is usually in effect no remedy at all. As 75 per cent of the injured employees earn less than $15 a week[84] their obvious relief is financial relief secured cheaply and quickly. To require them to resort to ordinary court procedure for relief often in practice amounts to a total denial

[81] U. S. Bureau of Labor Statistics, Bulletin 275, p. 114.

[82] U. S. Bureau of Labor Statistics, Bulletin 272, p. 15.

[83] "The common-law theory of litigation is that of a fair fist fight, according to the canons of the manly art, with a court to see fair play and prevent interference. We strive in every way to restrain the trial judge and to insure the individual litigants a fair fight, unhampered by mere consideration of justice." Pound, *Do We Need a Philosophy of Law* (1905) 5 Col. Law Review 339, 347.

[84] Smith, *Justice and the Poor* (1921, 2nd ed.) 87.

of justice, or compels them to accept settlement on the insurance adjuster's terms.

All of the thirty-two states having administrative commissions require employers to report industrial accidents to the commissions or to some other branch of the Department of Labor.[85] This makes it possible for the commission to supervise settlements by agreement, and the actual work of the commission is actually advisory. A competent authority has estimated that at least 95 per cent of all compensation claims are settled by direct agreement between the parties without reference to any tribunal, with the commission merely reviewing and approving the settlement.[86] In case a claim is disputed, use by the commission of independent investigators, impartial physicians, simple forms and procedure, and mail service, is admirably adopted to quick, cheap and adequate determination of the dispute. With a single commission having plenary jurisdiction over all industrial injuries, it is possible to secure coördination of activities, to perfect a state regulatory scheme, and make a scientific study of such problems as accident prevention and rehabilitation.

North and South Carolina constitute a favorable field for the operation of a Workmen's Compensation Act, and an act which fails to provide for at least three adequately paid commissioners to administer it, will be defective. The present relatively small number of industrial workers would enable the commissioners to acquire first hand information and give them a fair opportunity to lay the foundation for a system of compensating industrial injuries, of which the states should justly be proud.

No argument premised upon prohibitive cost to the state or intolerable burden to the tax payers, should prevent the state from taking this important step. Also it should be remembered that the creation of such a commission would materially lessen court expenses for salaries of special circuit judges, and payments to court attendants, juries, etc. When considered from this aspect alone, Massachusetts has found that such a commission actually saved the state more money than the entire appropriation for the commission.[87]

Under any circumstances sufficient salaries should be paid to get commissioners of real ability who are in sympathy with the spirit of the act. It is believed that there would be far more likelihood of

[85] Same as note 81, p. 124.

[86] Downey, note 67 *supra*, p. 66.

[87] Smith, note 84 *supra*, p. 90.

securing such men if the tenure of office was fixed at not less than six years and the power of appointment was given to the governor to be exercised with the advice and consent of the Senate, than there would be if these offices were left for distribution between perennial office seekers at a general election. Many of the compensation acts provide for a six year tenure of office and the method of appointment mentioned.

To give greater dignity to the Commission and to expedite a final decision in case of an appeal from a decision of the Commission, the appeal should be directly to the Supreme Court of the state. The commissioners should be fully equal to the circuit judges in intellectual ability and general attainment, and the fact that the cases which they decide involve a narrow range of subjects, should enable them to become especially proficent in deciding them. It is therefore submitted that to allow a possible double judicial review would involve useless duplication and unnecessary expense and delay, and hence is not consonant with the fundamental considerations behind this legislation.

IX. General Conclusions

It is submitted that the present system of employers' liability in North and South Carolina is economically unwise and unfair, and is productive of antagonism between employers and employees. It results in a denial of recovery in a large number of cases in which the injury arose out of the employment, and in the cases in which the plaintiff is successful, the attorney usually takes a large portion of the net amount ultimately recovered. The uncertainty, expense, and irritation of the present negligence-litigation system is so great, that an injured employee who dares to sue his employer almost invariably loses his job. In describing a similar situation it was aptly said by Judge Sloss of the California Court, that it "involves intolerable delay and great economic waste, gives inadequate relief for loss and suffering, operates unequally between different individuals in like circumstances and whether viewed from the standpoint of the employer or that of the employee, it is inequitable and unsuited to the conditions of modern industry."[88]

The general theory upon which Workmen's Compensation Acts rest is economically sound and the end secured is certainly socially

[88] *Western Indemnity Co. v. Pillsbury* (1915) 170 Cal. 686, 693; 151 Pac. 398, 401.

desirable, and it is believed that the enactment of such a law in North and South Carolina would be a step forward in each state's industrial progress. Under a compensation system, employers not only do not treat injured employees as antagonists asserting adverse claims, but usually assist them in securing a prompt payment of their claims by the insurance carrier. The laws of forty-three sister states furnish convenient guides to the legislatures of North and South Carolina. Is it too much to hope that they will profit by the example?