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THE HUMAN ELEMENT:

BIRTH AND DEVELOPMENT OF WORKMEN'S COMPENSATION

IN GREAT BRITAIN, 1880-1906

BY

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CHAPTER I - INTRODUCTION

The workmen's compensation laws passed by the British Parliament between 1880 and 1906 did not reach the statute books in a historical vacuum. The late Victorian years were years of political reforms (as exemplified by Disraeli's Reform Act of 1867 and Gladstone's Reform Act of 1884), of imperical reforms (as exemplified by the Commonwealth of Australia Act of 1900), and, most of all, of social reforms which laid the groundwork for the twentieth-century welfare state. The Education Act of 1870 was only one of several important statutes that undermined the Laissez-Faire predilections of the disciples of Adam Smith and of their late-Victorian Social Darwinist sympathizers. The British state was showing increasing responsibility towards the social concerns of its people.

Social reform was not limited to Great Britain. Both Germany and France were busy during the later nineteenth century with various legislative moves to provide workers with rights, to allow a greater number of citizens to vote, and to, generally, institute social safeguards for their people. In the United States, the years after the Civil War (post 1865) brought about a great deal of change, notably the "Civil War Amendments" giving citizenship to former slaves and ensuring due process in legal matters to all citizens. Therefore, Great Britain could be viewed as simply being caught up in the tide of reform.

In looking at the development of Workmen's Compensation, it is also important to note the effect of industry on the subject. Great Britain's industrial might was growing, and large industries such as mining, railways, engineering, and quarrying were employing thousands of workers. The days

of the craftsman and his apprentice were drawing to an end as mass production moved ahead. These growing trades were dangerous. There were few health and safety laws and often those that existed were violated by employer and employee alike. A mining explosion that killed fifty men in one pit was a common occurrence. Enginemen and switchmen were equally vulnerable on the railroad lines. Even farm laborers were not immune with the growth of heavy farm machinery to harvest, thresh, and plow. The growth of industry, while it may have brought better wages and better living conditions, also carried with it a high price in death and injury.

Another factor which influenced Workmen's Compensation legislation was the growth of trade unions and the election into Parliament of men with labour backgrounds. Trade unions gave the workers a united voice with which to respond to the employers' demands. The Trades Union Council, the Miners National Union, and other groups became the quasi-legal representatives of the workers. They helped to make the workers aware of their rights, they organized the workers, and most importantly, they continually sought the Government's attention through studies, speeches, and private conversations with M.P.'s. But they could not influence Parliament enough until workers themselves became members of Parliament. Foremost among those of worker background who were involved in the liability debates was the untiring Alexander MacDonald whose efforts helped bring about the 1880 Employers' Liability Act. Others who followed him, such as Thomas Burt and Henry Broadhurst, saw to it that the workers were never forgotten amid the bureaucratic red tape.

The 1838 Priestley v. Fowler decision does seem to have instigated the debate on employer liability. Prior to 1838 there simply are no records

of either cases or attempted legislation on employer liability. Surely there were incidents of employees injured at work. However, it can be assumed that they were not viewed as vital in either a legal or a moral sense until the nineteenth century period of social reform had begun.

The issue though is whether the development of Workmen's Compensation was solely part of the general pattern of social legislation in the late Victorian years or whether it contained within it certain special characteristics not consistent with other social reforms of the time. Can a natural progression be traced in examining the acts of 1880, 1897, 1900, and 1906? Did each act give birth to the next act by virtue of unresolved issues or was each act separate unto itself with little discernable correlation to the other acts? Were the early court rulings, beginning with the Priestley decision, truly the instigators of the 1876-1877 Select Committee Hearings or merely unrelated events? Can the first compensation act, the 1880 Employers' Liability Act, be considered as a common base upon which the subsequent legislation was enacted?

Furthermore, if a pattern can be traced, was it significant? Did it imply that Great Britain was truly becoming more socially responsible or simply reflecting the political climate of the day? This is a valid problem because the Parliamentary debates occasioned by each measure were littered with dire warnings and idealistic pledges. Even as late as 1906, there were some M.P.'s who refused to accept the premise that an employer should be responsible for his employees. Similarly, there were the idealistic M.P.'s who felt that only by being made legally responsible could an employer consider himself a moral person.

What in sum did this series of acts signify? Was it a partisan movement from its inception or were all political parties actively involved

in its development? Was it merely a superficial struggle between master and servant or did it have deeper, more widespread implications? This paper begins at the initial stage of the process that brought about Workmen's Compensation. The ancient maxims and the landmark decisions are examined first so that the legal foundation of employer liability may be understood. The hearings in 1876-1877 are equally important because they demonstrate where and how the battle lines were drawn for the future. Each Act and the methods which were used to bring it to fruition will then be discussed. The purpose of this examination is to attempt to discern whether or not a pattern exists, if so what type of pattern it is, and the eventual significance of the findings. The paper spans the period from 1838 to 1906 in this attempt.

CHAPTER 2 - BACKGROUND OF THE CONCEPT AND LANDMARK DECISIONS

The concept of an employer being liable for the acts of his servant did not originate with the 1880 Liability Act nor even with an earlier decree set forth by Charles II. The concept dates back to the Roman Empire and it is to Roman law that the origins of employer responsibility and liability may be traced. Roman civil law stated: "If a slave committed a delict by his master's orders, the master alone was answerable and even when the master could have prevented the wrong, the injured person had the right to action against the master."[1] The only way a master could escape the liability was if he surrendered his slave or if the slave died before a judgement could be brought. The action, therefore, died with the slave, a premise consistent with tort law at that time.

The Roman law translated itself into English tort law known by the maxim, Respondeat Superior: the master will answer for the acts of his servant.[2] Its earliest finding is in the concluding section of the Statute of Westminster II, c. 11, during the 13th year of the reign of Edward I (1285). This maxim is the formula to use in applying liability to its source. It denotes the basic responsibility and where such responsibility lies. It does not, however, explain why the master should be liable for his servant's actions.

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1 Thomas Beven, Negligence in Law (London, 1895); Vol. I, p. 572.

2 Alfred Ruegg, K.C., Employers' Liability and Workmen's Compensation (London, 1910); p. 11.

For the why of liability another maxim is necessary: Qui facit per alium facit per se. He who acts by another acts for himself.[3] If the master ordered his servant to do something, any and all consequences of his order were to be his responsibility. Although the responsibility was limited to only those events which occurred in the course of the employee's duties, it widened the principle of employer liability. Thomas Beven, Barrister of the Inner Temple, in commenting on this maxim wrote: "The principle at the bottom of this very extensive liability is an irrebutable presumption - that the master authorized every act done in advancement of the master's business, pending the authority, and covered by its objects."[4]

It is now clear why Respondeat Superior was a responsibility and how such responsibility would be used. Put together, the principle behind the two maxims stated that a master was liable for the acts of his servant while the latter was performing some duty assigned to him. The grounds for such a principle were that the true principal (i.e., the employer) of such an act should be responsible for its consequences and that such responsibility should go hand in hand with the benefits of the relationship between principal and assignee.

The concept of liability as just stated and as it grew and developed, can be found in the Yearbooks under both Henry IV and Henry VI.[5] Under Charles I, the principle was restated: "If a servant keep his master's

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3 Beven, p. 573.

4 Beven, p. 574.

5 Ibid., p. 576.

fire negligently, an action lies against the master."[6] In all these cases the liability alluded to was where a servant's action brought damage to a stranger. This is fairly simple to comprehend. The master-servant relationship was very much a one-to-one type. Employers in business usually hired one assistant, as with a blacksmith and his journeyman or a grain seller and his clerk. Servants working in the houses or on the grounds of their masters were more numerous but even they worked under at least a perception of one-to-one relations. This leads to the conclusion that familiarity with employer, coupled with little or no education and a steadfast belief in the status quo, led the employees to not question whether liability of the employer applied only to strangers.

The actions brought against masters were in the nature of liability towards a stranger. Thus a string of cases (Michael v. Alestree, Kingston v. Booth, Tuberville v. Stampe, and Jones v. Hart) preceded the case that was to mark a definite deviation in the concept of employer liability. Priestley v. Fowler[7] was originally heard in 1836 at the Linconshire Summer Assizes. The case consisted of the following: A servant was directed by his master to go with another servant on a wagon full of items to be delivered to some shop. The servant, Priestley, did this. The wagon was apparently overloaded and broke down. This caused the servant to be thrown to the ground whereupon he broke his thigh. The servant sued the employer holding him responsible for the wagon being overloaded and for ordering

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6 Ibid., p. 576.

7 English Reports, Full Reprint, Vol. 150, p. 1030.

the plaintiff to get on the wagon. In the Assizes, Priestley proved Fowler liable and Fowler was fined L100.[8]

The case was then taken on appeal to the Lord Justices of the Exchequer where judgement was rendered in 1838. Lord Abinger, Chief Baron, determined the question to be whether an employer who directs his employee to perform a certain duty, in this case delivery of the goods on the wagon, should be held liable when, in performance of the duty, the employee is injured. In his opinion, he ruled, "...the mere relation of the master and the servant never can imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do of himself."[9] He ruled therefore to reverse the lower court decision on the grounds that the claim "contained no premise from which the duty of the defendant...could be inferred in law."[10] His ruling set forth a clear statement: an employer could not be held liable for injury to his servant because no law existed to uphold it.

Following the Priestley decision, an American case further emphasized the concept of non-liability and added another reason for why such liability could not exist. Farwell v. Boston and Worcester Railroad Corporation[11] was an 1842 case heard in the Supreme Court of the Commonwealth of Massachusetts. A railroad engineer, Farwell, had been injured during the course of a run due to the fault of a switch man. The justices, citing

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8 Revised Reports, Vol. 49, p. 497.

9 English Reports, Vol. 150, p. 1032.

10 Law Journals, Exchequer Court, Vol. 7, p. 42.

11 Revised Reports, Vol. 14, p. 262.

Priestley v. Fowler, said that any implied contract of indemnity between a master and his servant does not exist as it relates to damages received from a fellow servant. In their words, "each employee is an observer of the conduct of the others..."[12] because their respective safety depends on the actions of each other. Furthermore, the justices added, if precautions are not taken by the employer, the employee is free to leave the job.

The implication of the Farwell decision lay in the legal exemption it set forth. The concept of "common employment", hinted at in the Priestley case, was now stated in full. Ruegg defined "common employment" thus: "If the person occasioning and the person suffering injury are fellow workmen engaged in a 'common employment' and having a common master, such master is not responsible for the consequences of the injury."[13] "Common employment" was the final seal of protection needed by employers against liability. The employer was now not responsible for his servant's injury when done by another servant because of "common employment." In the next few years, common employment would grow to include a great variety of situations.

Ironically, in 1846, the Fatal Accident Act, better known as Lord Campbell's Act, was passed, giving workmen's survivors rights of legal action. Previous to the act, all personal actions died with the person entitled to bring it. This was perhaps a tort maxim preserved from Roman law and a reasonable supposition is that industrialization and increased

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12 Ibid., p. 165.

13 Ruegg, p. 15.

fatalities brought about this particular act. It provided that if a workman was killed while employed at the time of death, his estate could lay a claim against the employer.[14] It should be noted that negligence and direct involvement of the employer had to be proven in order that the claim be good. While the act provided a long-needed change in the realm of tort claims, the specter of "common employment" coupled with the factor that growing industrialization was removing the employer from direct involvement with the employee in effect nullified the major intent of Lord Campbell's Act.

Four cases after Farwell and the 1846 Fatal Accident Act reinforced the legal concept of "common employment" and changed it from a judge's ruling to a maxim. It was never to be fully eliminated though changes in the law would eventually render it a powerless excuse. The first case, Hutchinson v. The York, Newcastle, and Berwick Railroad Company,[15] was ruled on in 1850. The facts were that an engineer of the rail line was killed in a collision between his train and another train belonging to the same company. Despite the plaintiff's claim that a servant should have the same remedy that a stranger might have and that to nullify this remedy for the servant implied a nullification for a stranger, the defendant's case was upheld. Justice Alderson, in his ruling, based the defendant's rights on three proposals: that the common employment of Hutchinson with the employees in the other train negated the employer's responsibility, that any risks in the job were implicitly accepted when agreeing to employment,

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[14] Ruegg, p. 14.

[15] Law Journals, Vol. 19, p. 296.

and that if the employer carefully selected his workmen he could not be held responsible for their subsequent actions.[16] This case thus reaffirmed the concept of "common employment" by saying that an injury caused by a fellow servant was a risk contracted between master and servant upon hiring.

The second case, Wigmore v. Jay,[17] was ruled on by Justice Pollock only a few days after the Hutchinson decision. In this case an employee of an engineering firm was killed by the fall of some scaffolding erected by other employees. The deceased, though employed as an errand boy and thus having nothing to do with the actual construction, was ruled to be in "common employment" with the builders of the scaffold. Such "common employment", according to Justice Pollock, ruled out any possibility of employer liability.

Barton's Hill Coal Company v. Reid,[18] ruled on in 1853, was an extremely important decision. Where the Priestley ruling held that employers could not be held liable and the Hutchinson case ruled that the risks of the job were an implied contract between master and servant, Barton's Hill firmly established "common employment" as a "principle of universal application."[19] The case originated in Scotland where Reid, a miner employed by Barton's Hill Coal Company, was killed when being raised from a shaft. The operator of the engine which raised a cage up, neglected to stop the engine

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[16] Law Journals, Vol. 19, p. 299.

[17] Ibid., p. 300.

[18] Jurist Reports, Vol. 4, p. 767.

[19] Ibid., p. 770.

when Reid was at the platform of the mine. The cage, containing Reid and another miner, was dashed against the scaffold platform where it was overturned, throwing Reid to the ground from a height of about sixty feet.[20] The Scottish Court awarded Reid's widow with an unnamed amount of compensation. The coal company immediately took the case to the House of Lords for appeal on the Scottish ruling. In his ruling, Lord Cranworth, Chancellor, stated that both men were "contributing directly to the common object of their common employer in bringing the coal to the surface."[21] He did not feel that both men had to be engaged in the same work in order to be held in "common employment." Then, abolishing any differential treatment in the British Realm he stated: "The law as established in England is founded on principles of universal application, not on any peculiarities of English jurisprudence; and unless, therefore, there has been a settled course of decision in Scotland to the contrary..." the same law should apply in Scotland as it does in England.[22] This case in effect gave "common employment" a judicial status in England and Scotland.

The last of the four cases took place in 1876. Lovell v. Howell[23] served to reinforce the risk of employment. In ruling against the plaintiff, Justice Archibald stated that, "The principle of the master's exemption is that the servant in return for his wages tacitly undertakes to bear all ordinary risks of his employment, of which the risk from negligence of

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20 Jurist Reports, Vol. 4, p. 768.

21 Charles M. Smith, A Treatise on the Law of Master and Servant (London, 1906); p. 190.

22 Jurist Reports, Vol. 4, p. 770.

23 Weekly Reporter, Common Pleas Division, Vol. 24, p. 672.

fellow-servants is one."[24] The importance of Lovell is that injury from fellow servants was now considered an ordinary risk. This signified that an implied contract was not even necessary to claim exemption. The sks were now an ordinary, regular part of the job involving no contractua obligations.

What these cases and others of the same period suggested was that "common employment" would now be a proper defense against any claim, notwithstanding the 1846 Fatal Accident Act. The one-to-one relationship of master and servant which would have allowed legal action even in the case where the servant was killed was rapidly changing to a situation of an employer who had agents working for him who would be judged to be in "common employment" with the plaintiff. Various such "commonly employed" people showed up in the courts as time went by: a captain and his crew were held in "common employment" as were a miner and an "underlooker" who supervised mini g operations. A guard at a railroad station and a platelayer laying down railroad tracks were "commonly employed." The foreman of a gang of sc folders and one of the scaffolders were also; so to were a ma ger of barges and a man employed in lowering sacks onto th barges

Several things were apparent by 1876. A Common Law and nt Roman Law) doctrine, that of a master being answerabl or he ts of his servant, had been constricted fi st to those acts g wh n h performance of duty and second ly to those acts wh at ned to f ect a "stranger." The maxim of Qui facit per alium f ct , (He who a ts by another acts for himself) had g n way to Vo nti n injuria No

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[24] Ibid., p. 672.

wrong arises to one consenting). Out of these occurences, "common employment", the perfect justification and rationalization for non-liability in the employer, was born. But a "law" existed now for which no statute had been enacted and which had grown on several judicial decisions, one following another and each adding to the last.

Common employment was thus, a judge-made law. It began as a rather modest concept rationalizing why employers could not be held liable for their servants' injuries. The concept of implied risk and hence implied contract between master and servant was added. The final addition was the finding that all workers besides the master, whatever their duties were, were in "common employment" with each other. From that point, the ideology of "common employment" was seemingly engraved in British Law. It can be argued that it was a practical concept, born out of the necessity of employers having to protect themselves from excess litigation. But it was also an illogical proposition. In terms of contract, a man who through an agent sold goods to another and then refused to deliver, was still liable for the delivery of the goods. Why then would a person using an agent (i.e., an employee) not be liable for his agent's actions towards his employees?

The concept of liability to a servant and the judicial protection that arose in opposition were perhaps related to the growing industrialization of Great Britain. Certainly there are no records of employees suing for compensation before the Priestley case. No doubt injury did occur. Perhaps t[illegible]s in the growth of mining, engineering, quarrying, and the [illegible]ad indu[illegible] in [illegible] late 18th and early 19th Centuries. The risk of [illegible] and [illegible] injury were high in these fields. Related to

the growth of these industries was the fact that more and more men were being employed in these areas and as explained above the one-to-one relation of master and servant was changing to a situation of a larger employer with many employees and with agents or foremen who supervised the workers. However, this is all assumption. The hard fact was that a judge-made law was in existence.

The mid-19th Century in Great Britain is reknown as the initial period of social reform in both criminal and civil areas. Therefore, it was only natural that Parliament should look at employer liability as one of many reforms needed. That there was already a legal claim to liability, if the employer was personally involved and if direct negligence could be proven, was a fairly solid fact. What was now needed was a means to make a legal claim if either one or both of those requirements was absent. The ramifications of such legal rights were to affect the industrial world in a manner still relevant today.

CHAPTER 3 - 1876 and 1877 SELECT COMMITTEE HEARINGS AND REPORT

In 1876, as a result of a Bill presented to Parliament by Alexander MacDonald, a Select Committee was named to investigate the question of employer liability. The Bill proposed to eliminate "common employment" as a defense against liability. The Committee's duty was to investigate whether an employer could be held liable for injuries his employees received when these injuries were the result of actions by the Managers and Foremen appointed by the employer. The Committee was also to investigate whether "common employment" could be defined by legislative enactment in a clearer way than it stood now before the law.[1]

A Select Committee is bi-partisan in nature, its role being investigative not legislative. Findings from such a Committee are presented to Parliament in the form of a Report. There may be one report if the Committee agrees on the findings or there may be a majority report and one or more minority reports. The 1876 Committee would reach no conclusions and its investigations would be resumed in 1877. Several members sat on both the 1876 and 1877 committees. Some of these were Robert Lowe, chairman, Alexander MacDonald, Sir Henry Jackson, George Shaw-Lefevre, Sir Daniel Gooch, Robert Knowles, and Charles Tennant. This assorted group of Liberal and Tory part members initially sat from July 11, 1876 to July 21, 1876, hearing testimony dealing with employer liability and "common employment."

Among the Committee members, Lowe and MacDonald were the most steadfast in their desire to see <u>something</u> resolved on the problem of liability.

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[1] Sessional Papers, 1876, Vol. 9 - #372, p. 669.

Lowe had demanded that a Select Committee be named.[2] A Liberal with a "short tongue,"[3] he often made enemies of people who might have been friends. But he was sincere in his desire to see the workman protected. His desire was to "rectify the dictum, which judges had fabricated out of thin air, that when an employee took a job he contracted for the risk that his fellow workmen might cause him injury."[4] After 1880, when he sat in the House of Lords as Viscount Sherbrooke, he seldom intervened in debate except to talk about employer liability.

Alexander MacDonald was one of the first working-class members to sit in Parliament. A miner, whose father was also a miner, he had been elected to Parliament in 1874. As a miner, he understood perhaps better than anyone the need for remedy in the case of accidents on the job. After years of the National Miner's Conference, the Trades Union Congress, the Amalgamated Society of Railway Servants, and the Miners National Union instigating possible bills, labor had a member of its own and he sat on the Select Committee. Though he would be known as the M.P. who "grilled" the employer witnesses without mercy, the main source of his effectiveness lay "in his exact appreciation of the particular changes that would remedy the miners' grievances, and in his tactical skill with which he embodied these changes in legislative form."[5]

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2 James Winter, Robert Lowe (Toronto, 1925); p. 306.

3 Ruth Knight, Illiberal Liberal (London, 1966); p. 256.

4 Winter, p. 306.

5 Sidney and Beatrice Webb, The History of Trade Unionism (London, 1920); p. 301.

All the witnesses heard between July 11 and July 21 fit into one of three groups: those of labor background who favored employers being liable, the owners of the large industries who did not, and the legal experts who either did or did not favor liability, depending on how they rationalized it. The main themes running through all the testimony were the question of consideration of risk or injury being a part of the wages paid, the question of agent responsibility and the debate as to whether employer liability would make workers more careless or more cautious.

George Howell, Parliamentary agent for the Trade Unions, felt the central questions of liability was the "common employment" problem.[6] Used as a defense by employers, it prevented any sort of compensation to the injured employee. The injury was viewed as a risk of the job. In conjunction with this view, Henry Broadhurst, Secretary of the Trades Union Congress Parliamentary Committee, explained that the argument of risk being a factor of wages was invalid. In his experience, an employee had to do the job he was assigned, even if he was aware that it was dangerous, or risk losing his job.[7] Frederick Evans, General Secretary of the Amalgamated Society of Railway Servants, testified that the assertion that higher wages were paid in return for risk was false. The least experienced men, those new to the job, ran the greatest risk. The wage was a response to the experience of the employee, according to Evans, with higher wages used as recompense and as inducement to the senior employees.[8]

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6 Sessional Papers, 1876, Vol. 9, p. 1.

7 Ibid., p. 64.

8 Ibid., p. 67.

While the employers who testified had little to say about risk, the barristers spoke at great length. Accordingly, Barrister Courtenay Ilbert cited an 1867 decision, Wilson v. Merry, where the judge had ruled that common employment was not the issue. What was at issue was whether the damage from the accident was within the risk factor of the job.[9] But, according to Ilbert, "For practical purposes a passenger by railway knows just as well as the workman can do, the dangers that are incurred in railway journeys."[10] The Queen's Counsel, Joseph Brown, was not so willing to concede on risk. His testimony was a re-affirmation that the employee took a necessary risk when getting hired for any job, a risk taken into consideration by the payment of wages.[11] The apparent impasse of legal opinion was changed when four days after Brown's testimony, on July 18, Samuel Wright, barrister, noted that this type of consideration was a legal fiction. Apart from the more dangerous trades (and even these were only slightly affected) "...the rate of wages is governed mainly by much more general circumstances..."[12] Discomfort of the job was a more accurate wage determinant according to Wright. Below ground mine work for example drew a higher wage than such work on the surface.[13]

It would seem then that the majority of those witnesses testifying disagreed with the notion of risk being considered as part of the wage.

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9 Sessional Papers, 1876, Vol. 9, p. 23.

10 Ibid., p. 36.

11 Ibid., p. 39.

12 Ibid., p. 48.

13 Ibid., p. 55.

Although the testimony of the Trade Union members was part self-interested, the legal testimony stands on fairly firm ground. The risk factor is an implied doctrine. Seemingly, "Volenti non fit Injuria" would be an appropriate expression of the risk factor. "No wrong arises to one consenting" does deal with initial acceptance of the job and could deal even implicitly with certain remunerations being the appropriate consideration of risk.[14] The "Volenti" doctrine states that one accepting the conditions and duties entailed in the job can then lay no claim against the employer at some future point because of injury. Consideration of risk when applied to wages would signal that the "Volenti" doctrine was being adhered to. However, the doctrine negates the concept of responsibility in "Qui facit per alium f[illegible]it per se." Therefore the general testimony opposed to consideration of risk is in agreement with the "Qui facit" standard.

Agent responsibiity can best be defined as the measure of responsibility of the employer for the actions of his employees towards each other. This is very much the core of "common employment." As Howell explained, a man injured by a fellow employee was seen to be in "common employment" with the latter. This man was judged an agent by the employer, who therefore owed no compensation to the injured man.[15] Delegated authority was a very good measure of the employer's liability. If he delegated to another the task of supervision why should he then be held for the mistakes committed by the "vice-master" as it were. In response to the idea of the employee being able to caution a fellow worker who was in danger of injuring

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[14] Ruegg, p. 227.

[15] Sessional Papers, 1876, Vol. 9, p. 1.

someone, Broadhurst explained that no worker had such authority: "...I did not employ him...and I cannot order him to change his conduct."[16] Futhermore, Broadhurst felt those with delegated authority such as foremen were so anxious to please the employer that they skimped on quality and quantity of materials used and hurried the workers in their jobs.[17]

"Every act done for a corporate body...the law holds to be the act of a fellow servant."[18] This bitter assessment by Evans stands in sharp contrast to that of the representative for the Builders' Society, Benjamin Hannen. Hannen resented all forms of liability to the employer including the liability to strangers injured through the acts of his employees.[19] Hannen felt that a law making the employer responsible for acts of his employees which resulted in injury to other employees would "tend to prevent our putting a foreman, who is a protection to the workers, on works where at present we put him.[20]

The barristers were again divided in their view as to agent responsibility. Barrister Ilbert expressed the current status as an anomaly: whereas the general law made the master "liable to pay compensation for the consequences of a wrongful act, neglect, or default of his servant while in the course of his employment...,"[21] civil and criminal law excepted such

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[16] Sessional Papers, 1876, Vol. 9, p. 61.

[17] Ibid., p. 62.

[18] Ibid., p. 67.

[19] Ibid., p. 76.

[20] Ibid., p. 77.

[21] Ibid., p. 19.

liability where the servant injured a fellow servant.[22] The reason for this, according to Ilbert, was that if the employer did his best to employ competent people, he could not be held responsible for their subsequent actions. This reasoning dovetails with the idea that a servant should always be watchful of fellow employees thus promoting the safety of the whole group. Were a law passed on liability, Brown felt this duty of prudence among workers would shift to the employer entirely.[23] Wright, however, pointed out that this type of prudence promoted immunity for the master to the point where he would take care to not be directly involved in the job and would always be able to affirm his due care in hiring his employees.[24]

Based on this testimony, the concept of agent responsibility was viewed from quite different perspectives. Whereas the Trade Unions and certain barristers saw it as a legal excuse from compensation, the employers and Brown saw it as a necessary item which altruistically promoted safety among the workers. The dichotomy between these views was very central to the whole issue of liability. Unfortunately, this division tended to cloud up the important points about agent responsibility such as industry's growing distrust of the Trade Unions and the necessity for both sides to compromise. These problems coupled with most employers' abuse of the "common employment" thesis created side issues in the committee testimonies which in 1880 would unnecessarily prolong debate over employer liability.

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[22] Sessional Papers, 1876, Vol. 9, p. 61.

[23] Ibid., p. 40.

[24] Ibid., p. 49.

The third issue involved worker safety. The unions (and MacDonald) adamently opposed any notions that an Employer Liability Act would encourage workers to be more careless or at the least discourage them from being more careful. In fact, Howell and MacDonald concurred on the idea that if an employer were not liable for acts occuring under his delegated authority, there would be "less inducement...for safety...than were the employer himself superintending..."[25] Broadhurst agreed with this when he noted how reluctant employers were to let their employees use eye protection.[26] They suggested that if the employer could be held accountable, the safety protections would be greatly encouraged. The Trade Union witnesses were not concerned about very minor injuries such as cuts and bruises. Their concern lay in the major accidents that either killed or severely impaired a worker. Broadhurst suggested, in fact, that jury decisions could be used to determine the severity and compensatory status of an injury.[27]

In response to Brown's opinion that such an Act would make workers less careful, MacDonald gave figures that showed 80% of all mine accidents, one of the large industries, to have been the result of misconduct by the mine manager.[28] Barrister Ilbert, in describing the Farwell case, noted that the U.S. judge ruled that employee double-checking "would more effectually secure the safety of the employees than would a law holding the

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[25] Sessional Papers, 1876, Vol. 9, p. 5.

[26] Ibid., p. 63.

[27] Ibid., p. 64.

[28] Ibid., p. 45 - This data was part of a yearly compilation of Coroner reports under the title: Reports of the Inspectors of Mines.

employer respon ible for mployee a tion."[29] Wright, however, seemed unimpressed by this reasoning. He concurred with MacDonald that passengers who were covered under the liability of the railway company owner, were not known to be especially reckless nor deliberately seeking injury for the sake of compensation.[30]

Although there was no true consensus on this point of worker safety in relation to a compensation law, the general feeling was that this area at least was not a very important point. Consideration of risk and agent responsibility were the central issues by the end of the Committee hearings. However, the Committee did not issue a Report but instead asked leave to reconvene for further hearings in a future Session of Parliament.

When the Committee reconvened in 1877, three additional members were added: Charles Hopwood, James Bulwer, and Henry Ripley. The Committee sat from March 15, 1877 through June 22, 1877. Their function was to continue the inquiry into employer liability and "common employment."[31] Within these two subjects lay the items of Benefit Funds, agent responsibility, and job safety, the latter two carryovers from 1876.

The Benefit Societies were upheld by the owners as being the best way to handle injuries. Alfred Hewlett, a Coal and Iron Master from Lancashire, felt these were of more value to the employees and helped maintain the "bond of union between employers and employed."[32] John Simpson from Durham who

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[29] Sessional Papers, 1876, Vol. 9, p. 21.

[30] Ibid., p. 59.

[31] Sessional Papers, 1877, Vol. 10 - #285, p. ii.

[32] Ibid., p. 43.

co-owned several collieries explained that his Benefit Society paid injured men 6s per week in Durham and 5s per week in Northumberland.[33] On closer questioning, he divulged the fact that this Society was a Workers' Fund to which the owners contributed only 20% of the total funds, the remainder being contributed by the employees themselves.[34] In fact, the majority of these Benefit Societies were largely employee-funded. Such was the case with the West Yorkshire Miners' Association, funded entirely by the employees who contributed 1s per week to support it.[35] Ironically, William Firth, chairman of the West Yorkshire Iron and Coal Company, seemed to agree with the fact that most Societies were employee-funded when he stated that the Unions and Societies ought to be liable for the injuries as they had large funds set aside for that purpose whereas the owners had no such funds.[36]

A graphic example of the combined effects on the worker of agent responsibility and "worker responsibility" was explained by John Burnett, secretary of the Amalgamated Society of Engineers. A man operating a machine would have to replace a drive belt on it. The owners and managers, for the most part, preferred that the machine stay running so as to avoid a loss of production. If the employee injured himself while replacing the belt on the running machine, the employer would be excused of any liability on the grounds that the employee had no business replacing the belt in that fashion,

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[33] Sessional Papers, 1877, Vol. 10 - #285, p. 31.

[34] Ibid., p. 31.

[35] Ibid., p. 7.

[36] Ibid., p. 31.

and if he did so it was at his own risk. In the case where the manager or agent had told him to replace the belt, any claim that the agent was at fault for unsafe practices (and thus the owner liable) was countered by the fact that the manager was in "common employment" with the employee.[37]

The question of agent responsibility was argued largely between owners and Trade Union officials in their respective testimonies. John Simpson, a colliery owner, felt that the owner did his best to provide the most competent management and that having done so, his responsibility was over.[38] G. Fereday Smith, chairman of the Mining Association of Great Britain, echoed this sentiment and added that enough responsibility was already placed on employers. Speaking about collieries, he noted that owners were limited in the hiring of managers. Only those men who passed a certain examination (instituted by Parliament) could be hired as managers.[39] His contention was that the manager, in those businesses that used managers, was liable for injuries. One witness for employers, William Cole, representing the North of England United Coal Trade Association, did admit (under MacDonald's questioning) that while the owners were willing to accord their managers all the blame of an injury, they seldom disciplined them, even in cases of gross negligence.[40] In all the owners' testimony two conflicting assertions appeared again and again. While claiming that few injuries even resulted from the misconduct or negligence of a manager, the owners insisted

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[37] Sessional Papers, 1877, Vol. 10, p. 20.

[38] Ibid., p. 26.

[39] Ibid., p. 36.

that were they to be held liable for the actions of their managers they would soon be financially ruined.

The Trade Union and other labor witnesses were just as adament in their stand for liability. Speaking on behalf of the Durham Miners, William Crawford stated, "In common fairness and equity,...if the individual employer is responsible for his own act, so the owner who delegates his authority...ought to be responsible for the acts of all those that do what he himself would do if he did not so delegate his power."[41] Benjamin Pickard of the West Yorkshire Miners' Association went so far as to contend that even overtly negligent acts of a manager should be held against the owner on the grounds that the owner hired the man and must therefore bear the responsibility of that hiring.[42] This was, of course, in direct contradiction to the owners' claim that liability ended for the employer once the manager had been hired. In short, labor's stance was a re-affirmation of "Qui facit per alium facit per se." As Crawford indicated, agent responsibility for an injury should not prevent employer liability. The agent was acting for the employer and his actions, whether direct or indirect, were the actions of the employer had he been there.

Whether employees would be more or less careful were employer liability to become law had been debated in 1876. At that time, it had not been judged a vital issue. The witnesses at the hearings this time seemed

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[40] Sessional Papers, 1877, Vol. 10, p. 33.

[41] Ibid., p. 1.

[42] Ibid., p. 14.

much more concerned about it, especially the Trade Unions. The employers and owners, as for example Simpson, felt it was the employee's duty to complain to the owner about job conditions. Simpson also stated that if the complaint made was judged to be not valid, the employee should be fired.[43] Francis Pearce, a Mining Engineer from Yorkshire, feared that if an Act on liability were passed, it would "prevent provident habits amongst workmen."[44] MacDonald then asked whether such legislation would promote reckless activity and if so had all past legislation protecting the workman promoted and increased reckless activity. Pearce stated he had only been giving his opinion, not stating statistical facts.[45]

MacDonald had, early in the hearings, pointed out that the notion that the 1872 Mines Act gave provisions for the worker to complain about his supervisor was not correct. In fact, the provision (listed as the 30th General Rule) was only for reporting on the condition of the mine.[46] Another delusion was that workmen were to supervise each other. Pickard explained, "In fact, they have no privilege, or right, to say to a workman that he is doing wrong at all. The rules says that he cannot go out of his own working place."[47] There was a penalty if the employee left his workspot for any reason whatsoever, according to Pickard: a 40s fine or two months imprisonment.[48] There were other difficulties with fellow worker supervision.

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[43] Sessional Papers, 1877, Vol. 10, p. 28.

[44] Ibid., p. 47.

[45] Ibid., p. 47.

[46] Ibid., p. 4.

[47] Ibid., p. 9.

[48] Ibid., p. 12.

Henry Cook, Secretary for the Fife and Clackmannan Miners, stated that in mining work most miners worked alone, at great distances from each or at least too far away to actually supervise each other.[49] Cook also noted that the employee who did go to a fellow worker to ask him to put his pipe or who complained to the manager or owner was soon fired due to being too troublesome and meddling.[50] As a result, "where a man's living is at stake, it is difficult to speak out boldly."[51]

The legal question of wages contributing in part a payment for the risk of the job was debated mainly between the legal experts and the owners. Henry Briggs, a colliery owner from Normanton, compared the wages of the main seam miners, 6s 4d per day, with those of the laborers, 3s 6d per day.[52] He concluded the risk of the job explained the wage differential though he had to allow for the fact that the unpleasant nature of deep mining could also account for the wage disparity.[53] Railway owners and managers also held to the risk and wage formula. James Greerson of the Great Western Railway Company, stated that enginemen, who were the highest paid employees, dictated their pay due to the risk of the job.[54] Only one employer, George

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[49] Sessional Papers, 1877, Vol. 10, p. 17.

[50] Ibid., p. 18.

[51] Ibid., p. 9.

[52] Ibid., pp. 72-73.

[53] Ibid., p. 73.

[54] Ibid., p. 79.

Findlay, in speaking of enginemen, admitted to other considerations: "They are paid, no doubt, for their skill and knowledge in driving..."[55]

The legal testimonies of two Justices of Appeal, Sir George W. W. Bramwell and the Right Honorable Sir William Baliol Brett, demonstrate the range of legal disagreement on the risk and wage issue. Bramwell felt employees were rightly compensated if they worked in dangerous trades: the owner donated to an accident fund or he paid those employees a higher wage.[56] He further contended that there was no contract with the master to be indemnified.[57] The only contract between the two was a wage in consideration for work performed and in consideration for risk. Brett agreed that risk was a consideration but he qualified the scope of the word. "I do not think that negligence is a thing to be contemplated as the ordinary result of employment...However if the case be that of lifting exceedingly heavy weights which are liable to fall, notwithstanding care...that I would call a risk of the employment."[58] The difference between the two Justices' views is one of degrees yet important. Where Bramwell would rule any accident a risk of the job, Brett would allow that negligence was not taken on as part of employment. Brett's reasoning for not allowing negligence as a risk was that negligence was already a criminal liability. To separate one section of negligence and make these non-criminal was, in his view, an abuse of Common Law. In the final analysis, however, neither justice was willing to

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[55] Sessional Papers, 1877, Vol. 10, p. 76.

[56] Ibid., p. 63.

[57] Ibid., p. 61.

[58] Ibid., p. 122.

eliminate risk as a wage consideration. Their opinion matched those of the employers.

The Report issued by the Committee on June 25, 1877 was a consensus Report with no minority Reports given. In reaching their conclusions they relied on the Farwell decision regarding employees checking each other. The Report, quoting from that decision, read in part:

> ...where several persons are employed in the conduct of one common enterprise or undertaking, and the safety of each depends much upon the care and skill with which each other shall perform his appropriate duty, each is an observer of the conduct of the other, can give notice of any misconduct,...and leave the service if the common employer will not take precautions...[59]

In discussion of employer responsibility the Committee found:

> The true principle of law is that no man is responsible except for his own acts and defaults, and the rule relied upon is itself not a rule but an exception, which the Courts have explained and confined within proper limits.[60]

Therefore:

> No case is made out for any alteration in the law relating to the liability of employers to their workmen for injury in the course of their employment...[61]

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[59] Sessional Papers, 1877, Vol. 10, p. ii (Report).

[60] Ibid., p. iv (Report).

[61] Ibid., p. v (Report).

The Report allowed for alterations only in three specific cases. These were: where poor materials were provided, where negligence could be shown in the choice of persons to supply such materials, or where negligence was demonstrated in the selection of proper workmen.[62] The issues of Benefit Societies, consideration of risk in the wages paid, and agent responsibility were not mentioned in the Report.

The Report to the House of Commons relied on the notion of employees being able to check on each other, despite labor testimony to the contrary and complicated the question of who was employer, agent, or employee with the vague definition of the Farwell decision used as definition: "...several persons employed in...one common enterprise."[63] Therefore, all the original issues before the Committee since its inception in 1876 remained unresolved. "Common employment", employee-checking, agent responsibility, consideration of risk in wages, and Benefit Societies were still undefined, subject to personal bias and varied interpretations. The Committee did only come to one firm resolve: "common employment" should not be eliminated.[64] The unresolved areas surrounding employer liability were left to the House to decide on in 1880.

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[62] Sessional Papers, 1877, Vol. 10, p. v (Report).

[63] Ibid., p. ii (Report).

[64] Ibid., p. iii (Report).

CHAPTER 4 - 1880 EMPLOYERS' LIABILITY ACT

The significance and purpose of the Select Committee Hearings of 1876 and 1877 were demonstrated in 1879 when Disraeli's Government was presented with a bill proposed by Libral M.P.'s MacDonald and Burt. This bill gave right of action (right to sue) to an injured employee whether the accident resulted from defective machinery, supervisory error, the error of another employee, or any other reason except intentional self-injury. The bill thus put the employee on an equal footing with a stranger. A later bill written by the Government also gave right of action but only in the case where the injury was the result of supervisory negligence. Both bills, however, were dropped before they reached Second Reading.

On February 6, 1880, MacDonald, not giving up on the issue, despite the result of the Bills of 1879, proposed a replica of his earlier bill. It was read both a first and second time.[1] However, Disraeli called for a general election at this point. Liberal leader Gladstone was called to set up the new government and all pending legislation was halted. But, MacDonald, ever persistent, wasted no time in proposing a new bill when Parliament reconvened. This time, though, the Government also proposed legislation. On May 21, 1880, scarcely a month after the Liberals had come to power,[2] Joseph Chamberlain, Sir Henry James, John Dodson (all members of the Ministry), and Thomas Brassey brought into the House of Commons an

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1 Parliamentary Debates, Vol. 251 - 2/6/80 and 4/21/80.

2 They came to power on 4/29/80.

an Employer Liability Bill for a First Reading.[3] MacDonald's Bill, which was read the same day, would soon be dropped in favor of the Government proposal.

The Bill proposed by the Government was, as the 1879 proposals had been, a move by Government to permit an injured employee legal action. The provisions applied in the cases of defective works or machinery, negligent superintendence, or acts or omissions of fellow workers if they had been acting under the instructions of the employer or his supervisor.[4] The injured worker was to have the "same right of compensation and remedies against the employer as if he had not been a workman of the employer." The limit of recovery was set at L200 and the action to be within county jurisdiction. In this initial stage, the Bill appeared reasonable, straightforward, and in need of little improvement.

Dodson, who presented the Bill at Second Reading on June 3, 1880, gave a lengthy speech explaining the reasons for proposing such legislation. Two points of his speech were especially relevant. First, the employee was denied compensation on the grounds that he had the opportunity to know his fellow worker and of judging this worker capable or not. Secondly, by accepting employment, he accepted the risks incident upon such employment.[6] Thus two items widely debated in 1876 and 1877 were now acknowledged to be unreasonable. For in the words of Lord Deas, "If the maxim, Culpa tenet suos autores,[7] were held to be the general rule in

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3 Parliamentary Debates, Vol. 252 - 5/21/80.

4 Sessional Papers, Vol. 3, 1880 - Bill #118, p. 3.

5 Ibid.

6 Parliamentary Debates, Vol. 252 - 6/30/80, c. 1084.

7 Misconduct (negligence) binds (should bind) its own authors.

questions of liability for default or negligence, the law would be consistent and of easy application. But when that maxim is applied exceptionally to relieve a master from liability to his servants for the fault or negligence of a fellow-servant, it does not sufficiently justify this exception simply to say that a servant undertakes all the risks incident to his contract of service."[8] Dodson also emphasized that the purpose of the proposed Bill was to restrict the defense of "common employment" and to revert the legal understanding of this area to pre-1837 (Priestley decision) status.[9]

This legislation was not only a matter of a government bill being brought in to strengthen Gladstone though there were some who felt this issue to be important to his continued strength.[10] There were several concrete events as well that pushed the concept of Employer Liability to the front. An 1877 Royal Commission Report had shown that in 1875 a total of 4,385 accidents affecting either life or limb had occurred to rail servants. Of these, 514 injuries and 39 deaths had been due to negligence and beyond the control of the servants involved.[11] Also, an 1879 explosion at the Blantyre Colliery in Lancashire left 28 men dead.[12] In fact, a Mine Inspector's Report of that year showed 973 fatalities in all mining

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8 Parliamentary Debates, Vol. 255, c. 1964.

9 Parliamentary Debates, Vol. 252, c. 1087.

10 For example, John Gorst expressed his belief that this matter had been an election issue. (Parliamentary Debates, Vol. 252 - 6/30/80, c. 1144)

11 Parliamentary Debates, Vol. 255 - 8/24/80, c. 1965.

12 Sessional Papers, Vol. 15, 1880, p. 819.

accidents of Great Britain.[13] This came to an average of one person killed out of every 490 employed.[14]

Perhaps the biggest factor in bringing about this attempt at change was the fact that both Germany and France had laws governing employer liability. Reports made to the Commons showed that Germany protected all rail workers from negligent accidents or deaths unless they were found to be self-caused.[15] Also, German miners were protected from injuries resulting from supervisory orders. Their law meant that most German workers could bring suit against the employer and if, as in the case of miners, the worker was protected by a Friendly Society, the judge subtracted the amount of insurance provision from the damage award for which the employer was liable. The Report went on to state that, as a result of this law (passed in 1872), most owners in German businesses undertook to insure their workers.[16]

France had similar laws and at the time of the Report to the Commons had proposed an extremely simple clause:

> Whenever a man, hiring his labor to another man, is wounded or killed in his service, the employer shall be entirely responsible, unless he can prove that the accident is the result of the acts of the victim.[17]

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[13] Sessional Papers, Vol. 15, 1880, p. 208.

[14] Ibid., p. 209.

[15] Sessional Papers, Vol. 59, 1880 - Commercial Report #29.

[16] Ibid.

[17] Ibid.

This would be the entire French statute on employer liability. It would make the employer responsible for any injury on or about his workplace and put the onus of proof of innocence on the owner. The rationale of the French proposal, according to the Report, was that with machinery and steam entering the industries, the employee was no longer an individual craftsman but an automaton. Therefore, injuries could be caused by this machinery (interpreting machinery in the broadest sense possible) and since the owner had brought in these machines, he was responsible for the consequences.[18]

In his speech, Dodson acknowledged that the cost of this type of legislation might be increased litigation. However, he felt that in the long run litigation would decrease, that the capitialist would not run from Great Britain, and that British industries would not suffer in foreign trade because most of Europe already had this type of law and were, therefore, already paying for it in higher prices. His final point was a reminder to the House that many workers were at present receiving compensation from their employers and that the significance of this law would be to give the employees a legal claim in addition to their current dependence on their employers' bounty.

The June 3 debate prior to Second Reading centered not on the Bill itself but on technical matters designed, it would seem, to halt or at least slow the progress of the Bill. One such argument was that a Select Committee should be appointed to examine the question of employer liability. Noting that two previous Select Committees had examined this issue (1876

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[18] Sessional Papers, Vol. 59, 1880 - Commercial Report #29.

and 1877), Attorney General Sir Henry James asserted there was no need for such an investigation as all questions had been answered in 1877.[19] Other members opposed the reading of the Bill until it had been amended by the Cabinet. The reason for this is less obvious. A Second Reading of a Bill was in essence an affirmation of the principle of the Bill. This is what the Government sought and what the Opposition Conservatives did not wish to give them. In the end, the Bill was read for the second time, was passed 261 to 132 by a division vote, and committed for consideration in committee. Sir Henry Jackson's warning that this Bill would "produce an economical revolution, of which the House did not appreciate the effect or the danger"[20] echoed in the House chamber after the Reading.

The committee consideration* took place in June 4, 1880, and the Bill was then scheduled for full House debate in July. The "re-committed debate" began on July 2 and brought out three points of view, each represented by an M.P.: MacDonald wanted the Bill to cover all injuries and felt that abolishment of the "common employment" defense was the only means to make the employer completely liable.[21] Arthur Balfour represented the view of those who sought to diminish employer liability to only those accidents in which the employer was directly involved.[22] Sir Henry Jackson concurred

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[19] Parliamentary Debates, Vol. 252, c. 1129.

[20] Ibid., c. 1136.

[21] Parliamentary Debates, Vol. 253, c. 1414.

[22] Ibid., c. 1405-1406.

* Committee consideration here meant a "committee" of the whole House.

with Balfour when he called the present law one of "natural justice."[23] However, if there was to be a liability law, he insisted a limit be placed on monetary awards and wished to provide for contracting-out of the law if both employer and employee entered into an insurance agreement.[24] In fact, the Attorney General had previously intimated that contracting-out would be legal.[25]

The "re-committed" debate, in addition to the three above-mentioned views, brought out numerous objections to the Bill. John Knowles saw no point to a bill which covered only 5% of all accidents while creating unneeded tension between employer and employee.[26] He felt the liability would also depreciate the value of coal and iron properties in Great Britain and thus be unjust to the investors in those industries.[27] Even one of the authors of the Bill, Chamberlain, acknowledged that in such industries as mining and railways, the high number of accidents could potentially cripple these industries with indemnity payments.[28] At the center of these objections was the fear (recognized by the Government) of increased litigation and the ensuing effect of it.

However, as Leonard Courtney pointed out, the real issue before the House of Commons was "not the denial of liability on the part of the

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[23] Parliamentary Debates, Vol. 253, c. 1409.

[24] Ibid., c. 1411.

[25] Parliamentary Debates, Vol. 252, c. 1129.

[26] Parliamentary Debates, Vol. 253, c. 1759.

[27] Ibid.

[28] Ibid., c. 1766.

employer, but the limitation of his responsibility and how that limitation was to be practically applied."[29] This is the really crucial element of the 1880 debates. Because of those reasons enumerated above, because of the growing population of workers in high risk jobs, because of the growth of trade unionism; for these and other reasons, employer liability was here and it was now to be a fact. With this fact the House of Commons and all of Great Britain had to deal.

The question of social responsibility was at stake. As Thomas Burt insisted:

> It is surely just as fair that the employer should be liable for such lax discipline as that which allowed men to go into dangerous mines with matches as that the workmen, generally, who have committed no fault should suffer injury without the chance of recovering compensation.[30]

The fear of litigation notwithstanding, this issue of responsibility was at stake. Government employees and their coverage are good examples of this growing liability.

As things stood before the passage of this Bill and even afterwards, Government workers had no right to sue for liability. The reason for this was that in order to sue, such a worker would have to sue the Crown. However, a legal maxim of ancient precedent stated that no subject could proceed against the Crown.[31] The day would come though when this maxim was

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[29] Parliamentary Debates, Vol. 252, c. 1141.

[30] Parliamentary Debates, Vol. 255, c. 247.

[31] Parliamentary Debates, Vol. 253 - Question on 6/18/80, c. 295.

swept aside. It was not done in revolt but in the expansion of social liability. The 1880 Act was only the first attempt at stretching the limits.

The Third Reading of the Bill took place on August 18, 1880. The major change agreed to in the course of the debate was in the limit on compensation allowable. It was no longer to be L200 but rather a sum equivalent to "the estimated three year earnings of a person in the same grade, in similar employment and of the same district."[32] The Bill also added a definition of the concept of a supervisor: one whose duty lay in carrying out the employer's orders and who did not normally engage in manual labor.[33]

The Debate at Third Reading did mention Government employees' coverage under the act: John Gorst asked whether the Government was above the law in not being liable for compensation.[34] While this may not have been a stalling tactic to defeat the Bill,[35] Gorst had no position to argue from as this issue had been debated and defeated in Committee debate. Henry Broadhurst best expressed the feelings of the House when he said that though the Bill was not perfect, it was a great improvement over what then existed and should be accepted at this time with the realization that further improvements could always be made.[36]

While the House of Commons had not debated to any length the concepts of risk and fellow-worker care, the House of Lords seemed only too

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[32] Sessional Papers, Vol. 3, 1880 - Bill #311, p. 2.

[33] Ibid., p. 4.

[34] Parliamentary Debates, Vol. 255, c. 1478.

[35] As Charles Bradlaugh asserted (Parliamentary Debates, Vol. 255, c. 1482).

[36] Parliamentary Debates, Vol. 255, c. 1488.

willing to do so. Lord Chancellor Selbourne attacked the concept of wages being a consideration of risk as being invalid. The wage was subject to the supply and demand of the workforce and that of the commodity being manufactured. There was no premium for risk, he contended.[37] That there was a contract between master and servant which included this risk was in his eyes also incorrect.[38] The common law acknowledged that a master could now be liable for his own negligence, yet no contract provided for that. The risk of injury from a fellow-worker was likewise invalid then; for if the master was liable without contract for his own negligence, no contract was needed to make actions of his agents his liability.[39]

The House of Lords recognized the limitations of the Bill. It was experimental: increased litigation, growing disharmony between employer and employee, and rises in prices of goods were but three of the potential effects of the Bill. Yet, it had to be tried and it had to be tried for a sufficient length of time so that all the implications of liability could be fully judged. Thus, the attempt by the Earl of Beaconsfield (Benjamin Disraeli) to amend the Bill and limit its duration to two years was overruled by the Commons when the Bill was returned to that House for consideration of the Lords' Amendments.[40]

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[37] Parliamentary Debates, Vol. 255, c. 1964.

[38] Ibid., c. 1963.

[39] Ibid., c. 1963.

[40] Parliamentary Debates, Vol. 256, c. 55; c. 1109.

When Royal Assent to the Bill was given on September 7, 1880,[41] all sides seemed reconciled to the concept. The Times while predicting that the new liabilities would be considered in the wages, admitted that the Act would "entail on the employer no further liability than that which he has always been morally, although not legally, subject to..."[42] Had Great Britain accepted this truly? The basic fact was that in the realm of negligence, an exception to the rule had been applied toward employees. This Act was to correct that exception and revive the maxim "Qui facit per alium facit per se." There was now legal action maintainable and the case was closed.

Not exactly. Henry Broadhurst had spoken of this Act as being more of a beginning, a means, rather than an end in itself.[43] Indeed there were several loose ends. The Act covered only a few classes of workers: Railway workers, labourers, miners, journeymen, and craftsmen. It did not include domestic servants, menial servants, seamen, or servants of the Crown.[44] Seamen were covered under other acts and it has been explained above why Government workers were not included. As to the servant class, only a very general guess can be made: they were perhaps not strong enough politically to push for coverage and since servants were generally regarded

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41 Parliamentary Debates, Vol. 256, c. 1334.

42 London Times leader: 5/26/80, p. 11, c. 4.

43 Parliamentary Debates, Vol. 255, c. 1488.

44 This is according to the 1875 Employers and Workmens Act, Part III, s. 10 found in Sessional Papers, Vol. 2, 1875 and quoted from during debates (Parliamentary Debates, Vol. 255, c. 1968).

as part of the family they worked for, to cover them would involve too much government interference.

Also, the problems inherent in "common employment" had not been resolved. This Act carried liability to the employer only for those acts which he himself caused and those of the agents he had assigned authority to. There was no solution made of the "fellow-worker check up" problem which had been debated in 1876 and 1877. Furthermore, by not defining "common employment" in the Act, Parliament served only to cloud its definition and unintentionally expand it. The vital issue at the center of employer liability, the initial reason into the inquiries, had been passed over.

Another problem resulted from the language of the Act. There was no provision which made liability mandatory on the employer. Therefore, there was no legal reason preventing the employer from "contracting-out" of the law. Contracting-out would merely involve a simple agreement between employer and employee whereby the latter waived his right to court action. As The Times wrote, "...it will be the first thought of every large... employer of labour to go to his solicitor and to instruct him to prepare..." such a form.[45] A case arose in 1882 over this problem.

In Griffiths vs. Earl of Dudley,[46] the facts were as follows. The employer, Lord Dudley, had continued a matching fund system for employees after passage of the 1880 Act. A condition of employment was agreement to contribute to the fund. Griffiths, who had agreed to contribute, was killed

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[45] London Times leader: 8/4/80, p. 11, c. 3.

[46] Law Times, Vol. 47 - 1882 Queen's Bench pp. 10-19.

due to supervisory negligence. The accident falling under the 1880 Act, his widow was awarded L150 in a lower Court. On appeal to the Queen's Bench, Justices Field and Cave ruled that the condition of employment was legal and reasonable and not contrary to the object and intent of the 1880 Act. Therefore, as the deceased would have been barred from action against the employer, so must his widow due to the nature of the contract which Griffiths agreed to when hired.[47]

A final problem to which this Act had not been directed lay in the realm of sub-contracting. Apparently, the practice of an employer to sub-contract some of his work to another company was becoming more and more common. The sub-contractor was often a man of small financial means who would not be likely to be able to provide compensation to his employees.[48] So, should the main employer be held responsible and, if so, on what legel justification? On the other hand, why should a certain class of workers run the risk of not being covered while they worked alongside workers who were covered. This problem was to grow in the years between 1880 and 1897 until in that year it would be addressed.

These lingering difficulties should not mask the implications of the 1880 Act. This was for Great Britain a definite step down the road of Workmen's Compensation. The Act did more than give legal right to sue. Implicit in the language was the realization that an employer did owe a certain responsibility to his employees. There was now a dual role in employee-employer relations. The first was that a certain wage was to be

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47 Law Times, Vol. 47 - 1882 Queen's Bench pp. 11-12.

48 Parliamentary Debates, Vol. 255, c. 1495.

earned for performance of a duty. This had been, previous to 1880, the only relationship between master and servant.

Now, there was a new role which was almost an extension of the first: if the employee, in performance of a duty assigned to him, was injured, the employer was to acknowledge his role in the incident and compensate accordingly. That the Act was restricted in certain ways did not lessen the responsibility or obviate its significance. The employer was no longer immune. Just as an employee might have to forego wages if a job was performed poorly, so too now, the employer would suffer a monetary loss if his instructions or materials were inferior. Although this Act had not been the first self-questioning that Great Britain had done in regard to liability, this Act was the first concrete evidence that the questioning had begun to be answered.

CHAPTER 5 - 1897 WORKMEN'S COMPENSATION ACT

The years between the 1880 Act and 1897 Workmen's Compensation Act saw a steady flow of claims brought to the courts. While the three year period of 1881 through 1883 brought 443 cases, claiming L73,337 and being awarded L18,124,[1] a later three year span (1888 through 1890) showed 507 cases brought asking for L80,880 and awarded L24,319.[2] The average award in those two periods went from L40.91 to L48.[3] The final three years before the 1897 Act (1894-1896) showed: 702 cases, claiming L100,177 and awarded L32,761 for an average award of L47.[4] The average awards are too close perhaps to be of real significance. However, the increase in the number of cases is important. The first two three-year spans showed an increase in caseloads of 13%. Between the years 1888-1890 and 1894-1896, the increase was 28%. The 1880 Act had, it would seem, increased litigation in this area. This is especially important in view of the fact that The Times in November of 1881 had reported a total case load of 13 claims since the 1880 Act had gone into effect in January of that year![5]

Unless the British Government wished for continually growing numbers of suits, compensation would have to be settled out of court in a manner so that the need for court would be superfluous. One method, of course,

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1 Sessional Papers, 1884, Vol. 63 - Report #63.

2 Sessional Papers, 1892, Vol. 72 - Report #357.

3 Ibid., both Reports #63 and #357.

4 Sessional Papers, 1895, Vol. 81 - Report #301.
Ibid., 1897, Vol. 73 - Report #352.

5 London Times - 11/25/81 - p. 9, c. 5.

since the Griffith decision, would simply be to encourage contracting-out. However, the mood of the people of Great Britain had changed over the years and they had come to see compensation as a right. No longer would Parliament debate whether or not an employer should be liable. As Leonard Courtney had pointed out in 1880, the question at hand was the regulation of compensatory laws. Precisely because the 1880 Act did not recognize this claim to compensation as a matter of course, the law would be altered.

In the 1893-1894 Parliamentary session, the Liberal Government had attempted to pass such legislation. The Bill, taking up where the 1880 Act had left off, would have covered all grades of workers and would have abolished the concept of "common employment." However, when the Bill had gone to the House of Lords, an amendment had been added which allowed for contracting-out. The Commons being unable to override this Amendment, on February 20, 1894, Prime Minister Gladstone moved to discharge the Bill, a step that in effect killed it.[6] Curiously, the Conservative Opposition, while disparaging the Liberal Government for this move, did nothing to try and amend the Amendment or to try and override the discharge vote which was carried 225 to 6.[7]

After that fiasco, no further move was made by the Government until 1897 when a Liberal-Conservative-led House of Commons once again began debating a Liability Bill. The first question to deal with is whether this Bill was in accord with current conservative principles. Bearing in mind that the 1880 Act had been passed under a Liberal government and that the

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6 Parliamentary Debate, 1894, Vol. 21, c. 851-899.

7 Ibid., c. 899.

1893-94 attempt had also been a Liberal government Bill, the immediate answer would appear to be no. However, the 1880 Act had been brought about due to the persistence of Alexander MacDonald, a Liberal of working class origin. Another M.P., Thomas Burt, also from the working class, had played a role in the 1893-94 Bill. Albeit the M.P.'s of working class origin were few in number (in 1885, 11 such M.P.'s sat[8]), but right up through the 1897 debates two powerful figures sat in Parliament: Burt and Henry Broadhurst. This does not mean that these two men could carry Parliament but rather that their influence was such that they would certainly promote a Compensation Bill.

Significant in promoting interest in the subject were not only these two men but also concern with the issues already mentioned: increased litigation, the shadow of the 1893-94 Bill, and widespread acknowledgement that a remedy was needed. In addition, several problems of the 1880 Act needed to be dealt with. "Common employment", contracting-out, which industries to make liable for work-related injuries, and prevention of accidents were but a few. Therefore, though at first glance, this Bill would seem anything but germaine to a Coalition Government, it was in fact a natural occurence. That the Conservatives happened to be in partial power was not an especially alarming phenomenum. For by this time, unlike past years, they would no longer appear to be the last people on earth to propose such legislation. If anything, the fact that Salisbury's Cabinet proposed it can be accredited to the general acceptance of the principle of liability by Liberals and Conservatives alike.

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8 Sidney and Beatrice Webb, op. cit., p. 680.

Early in 1897, a Bill was introduced to amend the 1800 Act. Authors of the Bill were Burt, John Burns, Arthur O'Connor, David Randell, Charles Fenwick and Sir Charles Dilke.[9] This Bill and three similar Bills introduced between January and May of 1897 did not get past First Reading. What they did do though was to force the Government's hand who, though they accepted the principle of liability, were perhaps not so ready to practice it. In any case on May 3, Home Secretary Sir Matthew Ridley asked the House of Commons for "leave to introduce the Bill."[10]

Several points of Ridley's speech are worth noting. He readily acknowledged that past debate and problems were now forcing the Government to make a move.[11] However, the proposed "...scheme of general compensation, under proper safeguards and necessary limitations...does not explicitly or directly deal at all with the Act of 1880."[12] In other words, the Government was not going to get embroiled (as perhaps the previous Government had) in a debate over the 1880 Act. Did this signify a departure from the intent of 1880? Ridley's own words best describe exactly what the Bill would do:

> When a person on his own responsibility and for his own profit, sets in motion agencies which create risks for others, he ought to be civilly responsible for the consequences of what he does.[13]

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9 Parliamentary Debates, 1897, Vol. 45, c. 301.

10 Parliamentary Debates, 1897, Vol. 48, c. 1421.

11 Ibid., c. 1421.

12 Ibid., c. 1426.

13 Ibid., c. 1427.

In expanding on his explanation of what the Bill proposed to do, Ridley explained that only the five most dangerous trades would be covered. These were mining, quarrying, engineering, railway work, and factory work.[14] Furthermore, the cost of the proposed Bill was to be born entirely by those trades. The reasoning behind this, according to Ridley, was that this was not a scheme of general insurance but rather a statute forcing the employer to become his own insurer.[15] A final point was that this Government Bill would no longer allow contributory negligence to be regarded as a defense against compensation.[16]

Alexander Ure, in giving his approval of the Bill, laid out three items that were needed for a good liability bill: it had to minimize the risks of accidents to workmen; it had to minimize the hardships if an accident did occur; finally it had to minimize the friction between employer and employee.[17] The Bill would accomplish the first point in part because criminal litigation was still available to the employee under the 1880 Act. Hardship was lessened because a larger number of workers were absolutely covered and the compensation was increased. Lastly, friction was lessened because litigation with its attendant risks and uncertainties was no longer the only method of recovery. Additional factors of importance were brought out first by Arthur Forwood, who pointed out that an estimated 1% of total

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[14] Parliamentary Debates, Vol. 48, c. 1421.

[15] Ibid., c. 1430-1431.

[16] Ibid., c. 1433.

[17] Ibid., c. 1475.

wages paid would go towards covering injuries, a sum which in his opinion "would not be an onerous charge on the industries of the country."[18] Joseph Chamberlain, who had co-authored the Bill, explained that the abolishment of contributory negligence as an excuse to avoid paying compensation had been done with the goal of minimizing litigation and restoring a healthier labor-management atmosphere.[19] At the heart of the proposed Bill was the "principle of relieving the workman while not punishing the employer."[20]

However, even though all this discussion was taking place before the contents of the Bill were even known, there were those in the Commons who didn't hesitate to voice their disapproval of it. Herbert Asquith, leading Member of the Opposition, objected to the fact that seamen and farm laborers were excluded from the Bill.[21] He also took issue with the fact that the Bill did not abolish "common employment" and that accident prevention was not specifically dealt with in the Bill.[22] Sir Charles Dilke objected to the fact that the Government would be regulating plant conditions and that an insurance company would be paying the compensation. He preferred these two matters be under trade jurisdiction and therefore be a trade responsibility.[23]

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[18] Parliamentary Debates, Vol. 48, c. 1475.

[19] Ibid., c. 1466.

[20] Ibid., c. 1472.

[21] Ibid., c. 1436.

[22] Ibid., c. 1436.

[23] Ibid., c. 1452.

Perhaps some of the strongest opposition to the Bill came from Geoffrey Drage of Derby. He pointed out that similar legislation in Germany had served only to increase the carelessness of the employees while the price for the coverage was paid by the workers themrelves in lower wages. Employers, because of the cost of insurance, were less willing to contribute to charitie while the expense of such charities were rising. The small employer was being squeezed due to these costs and ill-feeling was on the rise among employers and employees. Finally, the act of labeling a man a "workman" was preventing his chances of advancement from such a position into a supervisory one. These, he emphasized, were the results of similar laws in Germany and would be the result in Great Britain were such a Bill to become law.[24]

The provisions of the Bill itself (the first Bill as presented for First Reading) were remarkably "modern" and fairly reasonable and most importantly, diverged sharply from the principle of the 1880 Act.[25] Coverage was for any injury or death except for those in which incapacitation was less than two weeks in duration. Those covered were, as mentioned above, railway, factory, mine, quarry, and engineering (construction) workers, either employed in private or Governmental jobs. Death compensation was to be based on three years wages, neither below L150 nor above L300. Injury compensation was 50% of the weekly wage, not to exceed L1. Contracting-out was allowable if the scheme was equal to or better than the provisions of the Bill, provided the scheme was already in existence. Any

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[24] Parliamentary Debates, Vol. 48, c. 1456 (this includes all data presented in this paragraph).

[25] Sessional Papers, 1897, Vol. 7 - Bill #213 (this includes all data presented in this paragraph).

new scheme had to be certified and if the certification was ever revoked, the employee was automatically covered under the provisions of the Bill. Claim settlements were to be decided either by an Employer/Employee Committee or by arbitration, such arbitrator selected by the Committee or in absence of a Committee, the County Court Judge would act as arbitrator or the Lord Chancellor could elect to have the local judge appoint an arbitrator.

Two trades were not covered. One, the shipping trades (i.e., seamen) were already covered under existing legislation.[26] Agricultural laborers were also not covered. The basic reason for this omission, according to Chamberlain, was that the laborers had made no demands for compensation coverage.[27] Other factors could possibly have been that these laborers were less in touch with politics, had no strong trade unions to support them, and worked by and large on smaller family-type farms. However, the laborers would give voice to their demands in the not too distant future.

Debate continued after the presentation of the Bill on May 3, 1897. There was concern over what percentage of workers would be covered. According to Ridley, of Great Britain's total worker population of 13 million, only 6 million of these worked in the industries covered in the Bill.[28] This proportion did not change during the many debates and hearings in the following months. Despite Asquith's displeasure with this fact (which he

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[26] Parliamentary Debates, Vol. 48, c. 1466.

[27] Ibid., c. 1466.

[28] Parliamentary Debates, Vol. 49, c. 697.

spoke of in July [29]), the reasoning of the Government on this issue cannot be dismissed. The more dangerous trades were to be covered: those where accidents and fatalities had become almost regular occurrences. Furthermore, this Bill was viewed by the Government as not so much a hard and fast principle but as an experiment and as a means of opening the way towards total liability. Salisbury's Cabinet realized that to try to extend this novel idea to all trades would only result in failure of the Bill because there was still enough Conservative ill-feeling towards it and the Liberal party would be of little help. The Government, therefore, compromised on this issue of coverage, sensing perhaps that broader coverage would come about although not at this pcint. In this sense, no amount of complaints from Asquith and other Liberals can deny the fact that the Government moved wisely.

The question of insurance was also an emotional item. Some, such as Sir Edward Hill, felt that insurance should be made compulsory for all employers regarding their workers.[30] This would resolve the question of liability and that of litigation by removing the coverage to an outside agency. This was a fairly shocking proposition in 1897 because it would change what had begun as Preventive Legislation into Compensative Legislation. Even more shocking and with a distinct 20th Century ring was a proposal by Llewellyn Atherley-Jones, that in cases where the employer was insolvent and unable to pay the liability, it should be the Government's

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[29] Parliamentary Debates, Vol. 51, c. 205.

[30] Parliamentary Debates, Vol. 49, c. 675.

responsibility to secure the workman's compensation.[31] While neither of these gentlemen's proposals were accepted, their ideas, like the debate as to which workers were covered, were not forgotten and would be brought up in 1906.

The importance of the Bill's contents were not forgotten in this Second Reading debate. As Robert Ashcroft pointed out, this Bill would terminate several common defenses used by employers when confronted with injury claims.[32] Among these the most common excuse was that of defective notice. Notification was regulated under the 1880 Act by means of a certain set of words being needed to notify of injury. Failure to use this formula resulted in non-suit being found in court. When the 1897 Act removed the Court as the focus of determining liability and made certain industries always liable, this exact language was no longer immediately necessary to warrant notice. If the employee left his employer a short note saying he'd been injured he would later be allowed to fill out the correct form for injuries.

Other excuses which were no longer feasable under the 1897 Act were those such as the employee knowing of the defect beforehand and not reporting it, injury due to a fellow workman, injury caused by supervisory orders being disregarded, injuries being less severe than represented, and the excuse that the machinery causing the injury was not defective as claimed. The Bill eliminated these excuses because blanket-coverage for work-related injuries was the purpose of the 1897 Act.

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[31] Parliamentary Debates, Vol. 49, c. 675.

[32] Ibid., c. 677 (all subsequent information in this paragraph included).

As the Bill moved through Committee hearings, two major items of debate arose. The first of these was the all-too familiar question of contracting-out. The Bill had allowed for contracting-out if the scheme was equal to or better than the Bill's provisions. Now several amendments were added. The first was to clarify the conditions of contracting-out, making it illegal for the employer to guarantee employment only if the employee would contract out of the terms of the Bill.[33] A second change provided that any contracts existing at the commencement of the Act were automatically invalid. Provisions were made to clarify the revocation of the certificate of any Friendly Society or other outside benefit agent. Revocation was immediate if the provisions were being violated by the employer or if the provisions were not being administered equitably.[34] Two final provisions were that any contracting-out could only be done through the Registrar of Friendly Societies who would oversee certification (each certification to be for a 5-year period[35]) and that if the funds for a scheme were insufficient, the employer would be liable for the difference.[36]

The second item was subcontracting. Subcontracting was becoming more and more noticeable and the test of what was a valid sub-contract was perhaps best expressed by Ruegg: "If the person entering into such contracts retains the rights of employer over the men engaged in carrying out the work,

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[33] Sessional Papers, 1897, Vol. 7 - Bill #287 §1(4).

[34] Ibid.

[35] Sessional Papers, 1897, Vol. 7 - Bill #312 §3(1).

[36] Ibid., 3(3).

he must retain as well the responsibilities of employer."[37] In the Committee hearings of 1897, the Bill was amended to make the employer the liable party whether to direct employees or subcontracted ones, providing that the work being done was in direct relation to the operations.[38] Recourse for the employer regarding the subcontracted employees was by court action against the employer of those employees.[39] Injury in subcontracting work indirectly related to the operations was to be the responsibility of the subcontracting employer.[40] However, a later amendment during the Committee debates removed this distinction between direct and indirect work, making the main employer liable for all injuries with recourse against the subcontracting employer in court.[41]

These changes, along with an amendment disallowing compensation in the case of willful negligence on the part of the injured worker and another amendment changing the weekly compensation from 50% of the weekly earnings to 50% of the average weekly earnings of the past twelve months or average earnings in the period employed if less than twelve months,[42] brought the Bill into the House to Third Reading on July 15. The main points of disagreement now lay in two areas: the Bill was seen as the

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[37] Ruegg, op. cit., p. 76.

[38] Sessional Papers, Vol. 7 - Bill #287 §2.

[39] Ibid.

[40] Ibid.

[41] Sessional Papers, Vol. 7 - Bill #312 §4.

[42] Ibid., First Schedule, (1) b.

beginning of Socialism and it was judged by some to be an interference with freedom of contract, imposing a legal obligation where no moral one existed.[43]

On the issue of Socialism, Broadhurst remarked: "[We] cannot resist the tendency of the day, which [is] to make the State satisfy the just claims that the poor [have] upon the State..."[44] In other words, State responsibility was to become a fact of British life. Whether one chose to call it Socialism or not did not change the fact that state intervention had become necessary. The "tendency of the day" would in short become the certainty of the day. Broadhurst saw this as a natural progression.

The objections regarding freedom of contract and legal obligation were best rejected by Chamberlain when he said:

> When you enter upon a business you must consider this compensation is as much a trade charge as is now the provision which you are called upon to make for the repair of machinery. You at present have to put aside every year a certain sum for the repair of the inert machinery, which is a factor in your business. Now, the human element in the business has to be considered, and in the case of accident what reparation you can make must be made as a charge upon the business.[45]

What Chamberlain pointed out was that all contractual freedoms entailed obligations of some sort and that in the case of injury, the employer

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[43] Parliamentary Debates, Vol. 51, c. 253.

[44] Ibid., c. 231.

[45] Ibid., c. 211.

could not escape the burden of liability any more than he could avoid liability for mechanical repairs.

The Bill moved quickly after Third Reading, through the House of Lords, to Royal Assent on August 6, 1897. Its limitations were many and would become magnified in years to come. The 60% of workers not covered would grow louder in their demands for coverage. The expense of the Bill on the trades involved would continue to pose problems. The nagging question of Government responsibility was tied in to both these problems: how liable should the Government be in cases of insolvency or in cases not covered? Obviously, the final line had not been reached.

However, two important steps were taken in 1897. In the first place, the old problem of "common employment" was resolved. It was not so much abandoned as ignored, for this Act provided for "compensation for all accidents and without inquisition...and [did] not raise the question of common employment at all."[46] Those industries covered under the Act (mining, quarrying, engineering, and railways) no longer had the "common employment doctrine" to twist to their respective interpretations. In effect, that 1838 case of Priestley v. Fowler had been legislatively overruled.

The second important achievement was that this Act abandoned the principle of a quasi-criminal penalty for damages, as demonstrated in law suits and substituted the principle that a man who is injured in an industrial employment has a civil right to compensation as a part of the proceeds of that employment. This would not immediately or completely eliminate

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[46] London Times, Leader; 5/4/97, p. 9, c. 3.

employer/employee friction but by removing "personalities" from the action, it would help foster a realization on both sides of the need for safety and for accountability.

As to whether this Act and its meaning were the correct method of changing the existing situation is very controversial. Looked at from a modern stance, it is only natural to question whether a legal responsibility existed or if even a moral one did. However, in assessing the 1897 Act, consideration must be given to the conditions of the day: a growing industrial class and with it a huge growth in work-related injuries; the potential for injury increasing as fast as the litigation resulting from the 1880 Employers' Liability Act; and the continual debates over "common employment", job safety, subcontracting, and contracting-out. These were the vital issues of 1897 and resoution of them lay at the heart of the 1897 Act. What occurred in 1897, what had begun to occur in 1880, and even in 1838, was a perception on the part of all parties to the issue that employer liability, in light of the current industrial growth, was a fact. The 1897 Act reaffirmed that fact and changed the issue of liability from a court procedure to, in effect, an insurance provision. In so doing, the Act laid out a ground work for social insurance and social responsibility.

CHAPTER 6 - 1900 EXTENSION ACT

With the understanding (albeit implicit) that the 1897 Workmen's Compensation Act was experimental, the leave to amend that Act at some future point was understood by most M.P.'s and probably by the population at large. Therefore, when in 1900, a private bill (as opposed to a government bill) to amend it was introduced, there was little opposition from any side in either House. The Bill proposed to include farm laborers under the existing Act, an idea which had been mentioned in 1897 though not thought wise at the time. What then was the incentive, now, in 1900?

Perhaps the greatest incentive was the insurance rates. Since 1897, these had steadily fallen as more and more industries insured their workers. Therefore, the tremendous cost of the 1897 Act, which had at one point seemed a valid argument against compensation coverage, was no longer relevant. Other lesser reasons (lesser in scope though greater in implication) were that many farm laborers were leaving the farms and moving into the industries included under the 1897 Act, perhaps in part because these did have coverage, that recent bye-elections had demonstrated the laborers' dissatisfaction with the current Act,[1] and the fact that extension or not, an employer was still personally liable for any direct negligence under Common Law.

There were, of course, problems with extending the Act. Opponents to farm laborer coverage observed that this area of labor had few accidents and that the majority of farmers, being men of modest means, could hardly

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[1] Parliamentary Debates, 1900, Vol. 80, c. 1419.

afford the burden of even one accident-liability claim. Although there was in 1900 no agricultural depression as there had been in 1897, now as then, agriculture itself was felt to be too unstable an industry to disturb with such a Bill. But underlying these objections was the basic and persisting uncertainty as to how the 1897 Act worked and what it was costing to both master and servant. There had not been enough time to observe long-range effects of the Act. Without this analysis it was deemed by some unwise to pursue further in the direction taken by the Workmen's Compensation Act of 1897. For example, the Earl of Wemyss in the House of Lords objected to the Bill as "sentimental, liberty-interference."[2] He told the House that if he had to insure his laborers, the cost would be deducted from their wages.[3]

Such objections notwithstanding, a Bill was presented in February of 1900. Three political parties were represented in the authorship: Conservative (Edward Goulding, William Carlile, and Charles Giles); Unionist (Lord Willoughby de Eresby); and Liberal-Unionist (Sir Cameron Gull).[4] The Bill was simple and straightforward: the 1897 Act was to be extended to apply to "all employment on or in or about agricultural work, and a laborer in such employment would be deemed to be a 'workman' within the meaning" of the 1897 Act.[5] A debate on the Second Reading of the Bill was scheduled for March 21, 1900.

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2 Parliamentary Debates, Vol. 86, c. 38.

3 Ibid., c. 38.

4 Parliamentary Debates, Vol. 78, c. 412.

5 Sessional Papers, 1900, Vol. 5 - Bill #14, §1.

The "debate" could not have been more amicable. Goulding pointed out that as things stood, the 1880 Act was of no value to a farm laborer: they had no lawyers to consult, no financial means available to take action, and even if action was taken, damage awards went to pay for the litigation.[6] Home Secretary Sir Matthew Ridley assured Government support of the Bill, asking for only a few minor changes in the wording such as the definition of a laborer.[7] The Government's willingness to change the law was reminiscent of the last discussion in 1897 when the Government acknowledged the eventality of change. In 1900, it meant that this Bill, though introduced by back-benchers and concerning a very emotional topic, would have no trouble in being enacted.

The remainder of the Second Reading debate revolved around self-congratulations and the problem of litigation. Sir Samuel Hoare expressed amazement at the success of the 1897 Act: "We had no idea that the liability incurred would be anything like so small as experience" has shown it.[8] Sir James Joicey, while not so full of praises, did acknowledge that "...the common sense of employers and workmen has made up to a large extent for the deficiencies of the Act itself.[9] John Lawson of York effused that since the Act had proven to be a great success, it was not only right to cover farm laborers, adding that this would encourage farmers to insure as it had caused other trades to do over the past two years.[10]

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6 Parliamentary Debates, Vol. 80, c. 1405.

7 Ibid., c. 1413.

8 Ibid., c. 1418.

9 Ibid., c. 1417.

10 Ibid., c. 1409 (1897 Act actually went into effect in 1898).

Litigation had increased according to Arthur Jeffreys.[11] One had only to look in The Times for evidence. Although his position is not clear, the assumption is that as far as he was concerned, that increase was enough to judge the 1897 Act a mistake. Herbert Asquith, sounding still upset over the failure of his Bill in 1893, was quick to state that the real cause of nine-tenths of the litigation was "the manner in which the Act was drawn" whereby a series of "artificial distinctions" between the various categories of the working classes had established "illogical compartments which [had] taxed all the resources of Her Majesty's judges to interpret."[12] Another explanation for the high rate of litigation, given by James Kenyon of Lancashire, was the tendency of the insurance companies to contest all claims in order to avoid paying.

Neither congratulations nor the subject of litigation and its problems was enough to bring on long, heated debates (such as some of those in 1897) and the Bill was sent to a Committee to be amended. Magnifying the growing importance of Compensation and Trade-Unionism, the merits of the Bill would not be debated by a Committee of the whole House but by a Standing Committee on Trade. The first amendment was to more clearly define agriculture to include "horticulture, forestry,...husbandry" of any sort and include livestock, poultry, or bee breeding, and the growth of any fruit and vegetable.[13] The second amendment defined a "workman" in agriculture as being "any laborer in agriculture."[14]

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[11] Parliamentary Debates, Vol. 80, c. 1423.

[12] Ibid., c. 1424.

[13] Sessional Papers, Vol. 5 - Bill #165.

[14] Ibid.

When the Bill came back to the Commons in June for consideration, the major point of debate arose over the language in § 1 which provided coverage for any laborer employed by a farmer who "habitually" hired one or more workmen. What did "habitually" signify? Walter Long, President of the Board of Agriculture, insisted the application of the Bill be limited in this way for otherwise "the result will be to cast responsibility upon a large number of very small people who may have to compensate" men in the same financial status as themselves.[15] Without the word "habitually," he warned, the Government would not back the Bill. This did not define "habitually," of course. Nor did John Lawson when he explained that as most small concerns had little machinery and employed laborers infrequently, the risk of injury was extremely low.[16] What Long and Lawson did so was to end discussion of the concept of "habitually" until a future House of Lords debate attempted to define it.

On Consideration, the Bill was adjusted to provide for subcontracting work in the pattern of the 1897 Act. The exception here was that if the subcontracting employer provided and used machinery for the job, he alone would be liable for the injuries to the subcontracted employee.[17] A second amendment provided coverage of the Act to those laborers who occasionally engaged in non-farm types of work for the farmer.[18] These were small changes, expansions and clarifications of the original Bill and the fairly

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[15] Parliamentary Debates, Vol. 84, c. 530.

[16] Ibid., c. 532.

[17] Sessional Papers, Vol. 5 - Bill #165, §1(2).

[18] Ibid., 1(3).

positive sentiment marked by these changes carried the Bill through Third Reading and into the House of Lords on July 5.

As in the Commons, the mood of the Lords was fairly positive. Viscount Cross, Lord Privy Seal, noted three positive effects of the 1897 Act: though its interpretation was often being tested in court, the principle behind it was well understood; apprehensions in regard to both employer and employee had proved unfounded; and the proof that the Act was working lay in the fact that the insurance companies had lowered their rates.[19] It was here in Second Reading debate, that the term "habitually" was clarified. Former Attorney General Lord Alverstone compared "habitually employs" to a habitual drunkard: one who is not always drunk but whose habit is to drink. Similarly the farmer did not always employ laborers but his habit was to do so.[20]

One notable amendment proposed in the House of Lords and subsequently adopted by the Commons concerned clarification of "machinery." In §1(2) a provision was made that when a subcontractor used his own machinery for a job, such as threshing or plowing, any resulting injuries to subcontracted employees were to be his liability. Fearing "machinery" would be misinterpreted, the Lords approved an amendment which added the words "driven by mechanical power" to "machinery."[21] The significance of this move was to place immediate liability on the employer for injuries from horses and other

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[19] Parliamentary Debates, Vol. 85, c. 571-573.

[20] Ibid., c. 764.

[21] Ibid., c. 767.

non-mechanical farm implements with recourse against the subcontractor in court (as the 1897 Act had provided) while making an exception for those injuries sustained by a subcontracted employee from machines the subcontractor furnished. The reasoning behind this is not clear from the debates. However, as farm machinery could perhaps cause more serious and costly injuries, the Amendment may have been an attempt to alleviate costly liability and litigation costs for the employer. A subsequent Standing Committee amendment to include horses with "machines driven by mechanical power" was defeated.[22] This one case then was to be the only exception to employer liability in this area.

The Bill came back to the House of Commons on July 17 and the Lords' amendment was agreed to. Royal assent was given July 30. This very simple extension of the 1897 Act, a back-bencher Bill under Lord Salisbury's Government thus slipped into law. A further 1,700,000 workers in Great Britain now became eligible for compensation benefits. The ease with which this Bill passed was possibly due to Britain's on-going involvement in South Africa in the Boer War. Yet the passage of this Act was accompanied by dissenting voices, and as in 1897, prophecies of doom.

The reason for the grumbling did not lie in the area of employer liability but rather in an increasing fear on the part of many Government and private individuals that the extension of the 1897 Act was bringing ever closer the dangerous specter of Socialism. The Earl of Wemyss in fact projected this occurence when he noted that after farm laborers the next

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[22] Parliamentary Debates, Vol. 85, c. 1431.

group to be covered would be domestic servants.[23] Not even Viscount Cross' glib reply to this indictment ("sufficient for the day is the evil thereof"[24]) was enough to still the questioning that had now begun. Broadhurst had explained during the Third Reading debates his feeling that Parliament would in the near future have to consider a plan that involved state contribution to compensation. His reasoning was almost noble and altruistic: "We should all take a share in bearing the burden of those undertakings which are necessary to the maintenance of the nation and of the Empire."[25]

Indeed a profound change was in the process of occuring. The 1897 Act in itself had been almost revolutionary. It had allowed for compensation in certain industries as a natural right. Now that right had been extended almost effortlessly to a major group of workers. Even as Broadhurst and others worked on the 1900 Act, they were beginning to marshall their resources towards those alterations which would be the focus of the 1906 Act. At the core of these was Government responsibility or as Wemyss saw it, Socialism.

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[23] Parliamentary Debates, Vol. 86, c. 39.

[24] Ibid., c. 39.

[25] Parliamentary Debates, Vol. 84, c. 1213-1214.

CHAPTER 7 - 1906 WORKMEN'S COMPENSATION ACT

Problems other than coverage of farm laborers had grown during the period between 1897 and 1906. The dilemma of how to enforce payment of compensation was demonstrated in a 1900 case, Bailey v. Plant.[1] Bailey had been awarded a weekly payment of 2s 6d as the result of an arbitration hearing in 1899. One year later the defendant, Plant, was 18 weeks in arrears on those payments. Bailey called for a judgement summons (a procedure of the 1869 Debtor's Act, Section 5) to determine if the defendant could pay and if not, to ask that he be committed to Debtor's Prison. The local judge of Crewe County ruled that the defendant did have the financial means to make good the debt owed, thereby nullifying a prison sentence. However, the judge could not force the defendant to pay under the provisions of the 1897 Act.

Other "loopholes" of the Act were a ruling in 1904 that deduction from wages to cover premiums was allowable under the Truck Act of 1896 and a 1906 ruling by a judge in Southwark County that compensation could be reduced when an employee was deemed suitable for work (despite the fact that the reduction was used to force the employee back to work).[2] The central debate, then, on the 1897 Act was how widely did its enforcement depend on Court interpretation and was this creating a signficant disparity between legislative intention and administrative execution. This issue was

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1 Law Times, Vol. 83, p. 459.

2 Parliamentary Debate, 1906, Vol. 162, c. 1048; Vol. 152, c. 1076-1081; Vol. 161, c. 728.

not tempered by the fact that since 1897 more and more industries had begun to insure themselves voluntarily.

Another concern in 1906 was the growing demand for government control of compensation through regulation of the insurance companies. Henry Broadhurst's prediction of 1897[3] that the Government would become the ultimate social overseer was not a concept well-regarded by the Liberal Government of 1906 or even by many Opposition members.[4] The complications and responsibilities of such an undertaking were not to be a part of this 1906 legislation. For, though consensus may have admitted the fact that compulsory insurance and government regulation thereof were soon to be reality, this Government was prepared only to protect more workers, protect them more effectively, and tie up the loose ends of the 1880, 1897, and 1900 Acts.

This sentiment was neatly expressed in a 1904 Departmental Committee Report on Workmen's Compensation:[5]

> The questions for the future must be...what amendments are required in the law providing for that relief as regards the general method and detailed means of affording it, whether any and what changes are required in the extent or limits of that relief, or in the security for its provisions and maintenance, and whether similar privileges should be extended to classes of work people not now within the law.[6]

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3 Parliamentary Debates, Vol. 51 - 1897, c. 231.

4 Parliamentary Debates, Vol. 166, c. 333.

5 Sessional Papers, 1904, Vol. 88 - Department of the Home Office

6 Ibid., p. 12.

This Committee had found no actual increase in litigation from 1897 to 1904 and no marked effect of the Act on safety. But it did find both the 1897 and 1900 Acts to have benefitted workers generally.[7] However, expressing the caution of the day and forewarning of the 1906 Liberal Government's caution, it did not, in 1904, make any recommendations to extend the Act but expressed only the suggestion that enforcement by made more efficient.[8]

When the Bill of 1906 was introduced, it was termed a Consolidation Bill. Herbert Gladstone, Home Secretary, explained that "the time has arrived for a wide extension of the Act of 1897 to every class of labour, and in the Bill a new principle is adopted which differentiates it from the 1897 Act."[9] This new principle was to include all workers unless expressly mentioned rather than, as in 1897, to exclude all workers except those named. Its title then was from the very first at least slightly misleading: it did consolidate those 7.5 million workers of the two previous Acts, but it also drew in almost every other worker in Great Britain. A more correct term might have been an "incorporation" Bill.

Among those included were seamen when not at sea.[10] The Merchant Act of 1867 covered men at sea, under the liability of the captain. However, in port, these seamen were for technically legal reasons no longer under the direct supervision of the captain. Previous attempts to allow

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7 Sessional Papers, 1904, Vol. 88 - Department of the Home Office, p. 36-37.

8 Ibid., p. 111.

9 Parliamentary Debates, Vol. 154, c. 887.

10 Ibid., c. 888.

for their coverage (1893, 1897) had failed. Now, however, under the Consolidation Bill of 1906, they were to have as much coverage as any other worker. Small employees of either industry or service trades would also be liable for injuries, if they employed five or more workers. Also included were agricultural employers of more than one habitual worker.[11] Domestic servants, shop assistants, and "out-workers" (people who worked in their homes doing things such as spinning) were excluded from the Bill as originally presented.[12] Perhaps the most novel concept of the Bill was coverage for workers who contracted industry-related diseases.[13] The diseases covered were lead, mercury, phosphorous, and arsenic poisoning, anthrax and ankylostomiasis.[14] This last was commonly known as "miner's anemia" caused by subterranean work and certain parasites found underground. Anthrax was a disease of cattle which attacked workers who handled wool, hair, bristles, hides or skins of livestock.

There were two other new items in the Bill. The first was that weekly compensation would be based on the average wage earned in the two weeks prior to injury or if the worker had been employed for less than two weeks, the weekly figure would be determined based on the average wage for work "in the same trade, in the same employment, and in the same district."[15] The

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[11] Parliamentary Debates, Vol. 154, c. 887.

[12] Parliamentary Debates, Vol. 154, c. 918, c. 927.

[13] Ibid., c. 890.

[14] Sessional Papers, 1906, Vol. 5, p. 28.

[15] Parliamentary Debates, Vol. 154, c. 892.

second item was that a "medical referee," a doctor appointed by the local court's registrar, could be requested by either employer or employee to grant a final medical judgement as to the nature and severity of the injury in question. Such referee was to be paid by the party requesting him and could also be used to review the status of an injury once payments had begun.[16]

Though there was strong debate for compulsory insurance and even government-supported insurance, the Government was not at this time prepared to accept the concept. John Wilson's comment that "the support of an injured workman should be a lien on the funds of the nation"[17] was apparently not persuasive. Neither was William MacArthur's Second Reading Amendment seeking "such recognition and guarantee of insurance as to prevent the defeat of legal expectation..." of compensation settlement.[18] As Gladstone noted, "The workmen, having been given the right to compensation by the Statute, shall as far as possible be guaranteed that compensation..."[19] In other words, the statute was enough in and of itself and did not need to be complicated by Government intervention any more than absolutely necessary.

There was one objection, however, which could not be so easily cast aside. The Bill provided for coverage for all but a few employment

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[16] Parliamentary Debates, Vol. 154, c. 894.

[17] Parliamentary Debates, Vol. 155, c. 563.

[18] Ibid., c. 530.

[19] Ibid., c. 542.

positions. Included in the Bill were even Government workers, who had previously not been allowed compensation in the past. The reasoning behind this dated back to the 1880 Act which allowed for rights of action. The Government had then declared that no suit could be made against the Crown and, therefore, Government employees were not eligible under the provisions of the 1880 Act. Now this present Bill would give them coverage on a civil rather than criminal basis. But some groups were still not covered; domestic servants, soldiers, and out-workers in particular. These exclusions served only to encourage these forms of work, particularly out-working, as ways to avoid liability.

The Bill did pass the Second Reading stage on a voice vote on April 10, 1906 and went to Committee hearings. The greatest amount of debate centered on when coverage should begin. In 1897, the provision was for coverage after the first two weeks of injury. In Committee, amendments were introduced to change this to seven days and then to three days. The major question was what would be the additional cost of such moves. Figures for the major industries showed that changing the qualification period from 14 to 7 days would result in a 44% increase in premium payments for the collieries, 25% for ironstone industries, 47% for engineering (construction) firms, 40% for shipbuilding, and 28% for textile mills.[20] A reduction from 14 days to 3 days would result in a 33% increase in premiums for the textile industries, the only industry of the above-named which had been surveyed for that particular change.[21] The three-day wait period was

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[20] Parliamentary Debates, Vol. 163, c. 870.

[21] Ibid.

adopted in Committee by a vote of 30 to 21 and with a few other changes, the Bill came before the Commons for consideration.

It took from November 29 to December 6 to iron out the Amendments proposed in Committee and to allay the lingering doubts of some M.P.'s. Foremost in the debates was the issue of compulsory and/or Government-guaranteed insurance. Thomas Cochrane and Aretas Akers-Douglas moved for an amendment for safeguarding the issue of insurance policies granted to small employers by approving or disapproving the insurance agencies.[22] In the discussion which followed the seconding of the Amendment, Gladstone, questioning whether the Amendment was proposing a State guarantee of solvency of insurance companies, objected to this type of action as interference with a company's methods of conducting business.[23] The Government, he stated, was not prepared to make such a move although it would work with the Postmaster-General on having certain facilities available for advisement to insurance companies. Sydney Buxton, Postmaster-General, explained that if the Government put itself into an agency position, approving or disapproving insurance companies, then should an approved company fail to make good on compensation claims, the State could be held liable to fulfill the company's obligations. The wiser approach, he felt, would be for the Government, through the Post Office, to act solely as an information center with no legal liability attached.[24] The Amendment was withdrawn at this

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[22] Parliamentary Debates, Vol. 166, c. 326.

[23] Parliamentary Debates, Vol. 166, c. 330.

[24] Ibid., c. 334.

point with the understanding that its substance would continue to be studied by the Government.[25]

The previously-approved three-day waiting period before becoming eligible for compensation was amended to seven days with the additional provision that benefits for injuries resulting in more than 14 days of lost employment would include a retroactive payment for the first seven days of injury.[26] Another amendment was approved that provided for compensation coverage for domestic servants.[27] Finally, an attempt to abolish the "double-litigation" rights of an employee, whereby compensation could be collected while suing for criminal damages, was not successful.[28] Parliament, while recognizing the advantages to the civil settlement of the Bill, was not prepared to abridge Common Law rights in return for such benefits.

The Bill moved to Third Reading stage. It was to cover an additional 6,000,000 workers, bringing the total number of workers covered to about 13 million.[29] As the 1897 Act had provided, contracting-out was allowed if the benefits matched the Bill's provisions and sub-contracting was still governed by the same rules of the previous Act. As mentioned above, certain work-related diseases were now eligible for compensation. One change, made perhaps to accommodate Cochrane's earlier Amendment, was that where

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[25] Parliamentary Debates, Vol. 166, c. 337.

[26] Ibid., c. 353.

[27] Ibid., c. 1059.

[28] Ibid., c. 839.

[29] Parliamentary Debates, Vol. 167, c. 697.

the employer went bankrupt and compensation was due, the employ (s) involved would be vested with the rights of the employer, as regarded proceeds from the bankruptcy.[30]

The weekly benefit, based on the previous two weeks of work, was set at 50% of that average weekly wage. The benefit could be decreased if the worker was employed at another job during the period of injury.[31] Also a provision was made whereby benefits which could last for six months or more could be settled by a lump sum figure, such sum arrived at either at arbitration or in the form of an immediate life annuity equal to 75% of the annual wage as determined by the National Debt Commissioners.[32]

The House of Lords debated the Bill on December 14 and 18, following Second Reading. On December 19, a Report of their Amendments was issued and the Bill was read a third time and taken to the Commons. The amendments were insignificant as far as changing the ideology of the Bill and were quickly dealt with in the Commons. On December 21, Royal Assent was given to the 1906 Workmen's Compensation Act.

There were issues left pending with the passage of this Act. Casual, part-time workers were not covered. Out workers were also excluded. There was some dispute whether the list of dangerous diseases covered all industrial-related diseases. However, these problems diminish in the face of what the 1906 Act did accomplish. The concept of Workmen's Compensation

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[30] Sessional Papers, 1906, Vol. 5 - Bill #366, p. 6.

[31] Ibid., p. 20.

[32] Sessional Papers, 1906, Vol. 5 - Bill #366, p. 22.

had been vastly broadened. Thirteen million workers were covered; all large industries were included; domestic servants, once considered a private enterprise, now had legally available benefits; and a totally new dimension, that of industrial disease, had been recognized as "work-related injury."

What this Act provided for was incorporation of injuries of all sorts under the law. The tentativeness and experimentation of the 1897 and 1900 Acts had been eliminated. The definition of "worker" was no longer available to only a few industries, thereby erasing the continual debate of who was covered and who was not. The problems that remained were technical in nature. There was no longer any dispute as to the right of a worker to receive compensation nor any question as to whether the employer should be liable for the injuries. In effect, the Act was important not only for what it accomplished in 1906, but also for what it would signify in the future. Though the State was not yet to become the insurer, it was not placed in the role of overseer. The State had implicitly become the protector of the majority of the workers by acknowledging their rights to compensation. The concept of State Insurance was thus only a matter of time, and coverage of casual, day-laborers and out-workers would soon follow.

What the 1906 Act demonstrated was elasticity. By redefining "worker" to include all workers, those not specifically mentioned could easily be included at a later date. The concept of "injury" had been expanded to include disease and those diseases not specifically mentioned (or perhaps even thought of) would be easy to incorporate. The maturing stage of Employer Liability had been reached after almost seventy years of hard work. The strictures of the Priestley v. Fowler decision had once and for all been set aside.

CHAPTER 8 - CONCLUSION

After July 1, 1907, all employers of persons who came under the definition given in the 1906 Statute of "workman" were liable to such workmen for any injury, fatality, or disease occuring during the course of employment. The definition of "workman" was wide and included labourers, servants, miners, engineers, and many others. The compensation was fixed in amount but awardable regardless of the type of injury except in the case of willful self-injury. A long road had been travelled on from the first Act in 1880 which had given employees a right to sue for compensation to the present Act which gave employees a right to collect compensation.

Of course, the situation did not remain static after 1906. Social reform, as heady perhaps as spring fever, was in the air, influencing Great Britain towards more and more changes. Women's Suffrage, Irish Nationalism and Labor Rebellion were but three of a series of kaleidoscopic movements that symbolized a general rebellion against the times. But one of the more important events as it relates to this paper was the advent of National Insurance in 1911.

The plan had been discussed in 1909 and a general framework had been established in that year.[1] Its goal was to provide for insurance against sickness and disability for workers between the ages of sixteen and seventy whose incomes were L160 or less and for manual laborers regardless of income. It was a three-party contributory scheme with employer, employee, and the

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[1] Data for this Act is from Havighhurst, Britain in Transition (Chicago, 1979), p. 104.

Government each subsidizing the plan. Under this Act, practically the whole of the wage force was insured, some fourteen million workers. The Act also included unemployment benefits for some of the workers, again on a contributory basis. This meant that the worker would now be covered not only for work-related injuries but also for illness. He no longer had to worry that his family would go without food should he fall sick.

The second important change after 1906 was the adjustments made to the Workmen's Compensation Law. In 1925, a Consolidation Act combined the benefits of 1906 and 1923 (another Consolidation Act), reduced the benefit-waiting period from seven to three days, and incorporated all previous legislation under one Act.[2] From all outward appearances, compensation was a fixture. There had been little partisan debate in 1906 and in 1925 there was even less debate. This is not an extremely surprising finding. The people of Great Britain had come to appreciate Workmen's Compensation, and for an M.P. to haggle about it in London could quite possibly have meant the end of his political career.

Looking back at early court suits, hearings, and debates there exists a logical pattern in the acceptance of compensation. The manner in which the principle of compensation came to be accepted had been slow and deliberate, conservative (even in 1897) and precise. To understand this, a review of Compensatory laws is needed. Where exactly the whole question began is, of course, difficult to pin-point. Certainly though, a change was forecast in 1838 in the Priestley decision. Realistically, the case had little within it to merit great attention for it was but a very simple,

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[2] Except for the 1880 Act, discussed supra.

cut-and-dried, tort decision. What did make it important was its substance. It brought to light a very puzzling question: if an employer was responsible for the actions of his employee towards a stranger, why should he not also be responsible when that "stranger" was one of his own workers? Even then the dilemma might have been ignored were it not for subsequent judicial pronouncements which embellished the concept of non-liability to such an extent as to protect an employer from every having to answer for the injury of his employee.

These cases then set-up and encouraged the questioning of employer liability. When a Select Committee began hearings and debates over the issue, one fact became clear: though there were many who saw no cause for an employer to be held liable, there were others who refused to let the matter rest. Men like Robert Lowe and Alexander MacDonald were not willing to accept the maxim No wrong arises to one consenting (Volenti non fit Injuria). If nothing else, they wanted to probe the reasoning behind the maxim and they wanted an explanation for the dichotomy between liability towards strangers and non-liability towards employees.

Though the 1876-1877 hearings led to no concrete recommendations, the questions left unanswered were enough to bring about attempted legislation in each year after the hearings until the Liberal Government in 1880 was compelled to take up the issue in earnest. The central theme of 1880 was that those who favored liability in actuality advocated the right of the employee to sue his employer for injuries received. Common Law did include this right already where the employer was directly involved (i.e., criminal negligence). In 1880, the forces behind workers' rights wanted rights of action where the employer had delegated his duty. In essence,

this had been the dispute in Priestley. In legal terms, the demand was for responsibility in cases of indirect criminal negligence.

The passage of the 1880 Act, while bringing relief to many workers also brought problems to both sides of the issue. By making liability a criminal responsibility, litigation was needed to get claim settlements. The increase in litigation and with it delays in settlement, court expenses, large legal fees, and growing animosity between employer and employee combined to force a change in policy. This change was brought about through the 1897 Workmen's Compensation Act. Its most important function was to sever the relationship between liability and criminal negligence. When liability moved into the civil area of law, putting the onus on the employer to pay compensation unless he could prove self-injury, the problems inherent in litigation were substantially diminished.

There was still a problem with compensation. The 1897 Act covered only five classes of workers: miners, quarriers, engineers, railway workers, and factory workers. They comprised less than 50% of the total British workforce, leaving those not included still dependant upon the 1880 Act. It was only natural, therefore, that in 1900, the Act should be extended to include another large group of workers: farm laborers. What was even more fascinating about the 1900 Act was that it was a private members' Bill. The fact that a private members' bill dealing with such a controversial subject could get enacted i to law demonstrates the changing attitude towards compensation. The focus was nc longer on civil negligence itself, but on who could be covered under such negligence. It was no longer the "right to compensation" which formed the debate but rather onto whom the right should be accorded.

Despite the great changes made between 1880 and 1900, a problem still existed. The 1897 and 1900 Acts covered only those workers specifically named. What was now needed was an Act to cover all workers except those specifically named. This was the basis for the 1906 Workmen's Compensation Act. In the words of the Act it was:

> An Act to consolidate and amend the Law with respect to Compensation to Workmen for Irjuries suffered in the course of their Employment.[3]

This was exactly what it did. It combined the benefits of 1897 and 1900, added other groups of workers such as seamen, Government workers, and domestic servants, provided clear language for contracting-out and sub-contracting, and added a group of diseases to be considered as work-related injuries. This most important Act incorporated existing laws and added timely changes. Subsequently, in 1923 and 1925, Acts would be passed which further consolidated the laws and set up certain standards for making claims. But it was in 1906 that the Government first took the step to gather together all the factors of compensation and put them under one Act.

There was one Act that was not included, however. The 1880 Act remained outside of the meaning of Workmen's Compensation. It was different from the subsequent Acts though it was because of its enactment that the other Acts were made possible. However, it could not be incorporated because it operated upon a different principle. It gave workers the right to sue their employers, to instigate criminal litigation. From 1897 on, the dominant philosophy was that workers had a right to collect

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3 Statutes of the Realm - 6 Edward 7, Cap. 58.

compensation. The two concepts could not, therefore, be reconciled and the 1880 Act stands alone, an anomoly to some perhaps. If it is an anomoly, it is a very vital one, for it paved the way for future compensation as a worker's right when it made compensation a subject of legal suit.

If the Act of 1880 stands outside of the compensation issue, then certainly the whole concept of "common employment" does also. This subject, so heavily debated in 1876-1877, 1880, and even in 1897 was never resolved. Its premise, that two people who work together (physically together, on the same job site, for the same employer and many other definitions) are responsible for each other's actions, was never fully approved or disapproved. It was simply ignored. When compensation became a civil right, the question of "common employment" no longer had to be dealt with. It was simply shunted aside and forgotten because its premise no longer had to be considered.

Other issues such as wages being a consideration for the risk of the job and liability creating carelessness in the workers were also dropped by 1906. There was no clear resolution on them, no study was ever shown to prove that workers would be more careless (or were more careless) if they could collect liability, and there was never a true consensus on the question of the determination of wages in relation to risks.

What was dealt with, carefully and completely, was employer liability. The development of a legal and moral responsibility on the part of the employer towards his employees was fascinating in the changing principles involved. From non-liability to a right to legal action took forty-two years (1838-1880). Another seventeen years were needed to change that legal, criminal action into a civil doctrine, turning a right to sue into

a right to collect. A further nine years widened the definition of "worker," and expanded the meaning of "injury" to include certain diseases. Workmen's Compensation, as it grew and expanded became more and more accepted as a basic right and not just a privilege. It grew best because it grew slowly, because of the hard work of certain outstanding M.P.'s, and because in all the debates and discussions, no one ever quite lost sight of its true purpose: the protection of the "human element."

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