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THE WORKMEN'S COMPENSATION SITUATION IN KENTUCKY.

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The compensation movement in Kentucky dates, as a matter of public concern, from the 1914 session of the General Assembly. During the preceding two or three years there had been some agitation of the question in certain quarters but no general interest had been aroused nor definite results accomplished.

By the opening of the 1914 session, however, the public demand for this much-needed industrial reform had so rapidly developed that four different compensation bills were then introduced. Each had been drafted more or less under the auspices of some particular organization prospectively affected by the enactment of such a law and consequently reflecting primarily the views of its sponsors. While all agreed that any such act must be elective in form to be valid under the present Constitution, there was a very wide divergence of opinion as to administrative details, particularly with reference to the method of insuring the liability of the employer.

As a result of this situation, a somewhat hastily revised act was finally passed, embodying chiefly the provisions of a State Fund bill along the general lines of the Ohio law but with the insurance feature changed from monopolistic to competitive, the employer being given the option of placing his insurance either with the State fund or with private stock companies or of carrying his own risk uninsured, upon sufficient proof of solvency.

This law became operative as to the organization of its administrative board and various preliminary matters in June, 1914; it was to have become fully operative, and effective as between employer

and employee, on January 1st, 1915. In view of the grave constitutional questions involved, Attorney General Garnett procured a test case to be brought to determine the validity of the act at the earliest possible moment and before those affected by it would be subjected to any greater expense or inconvenience in prospect of its becoming operative than might be unavoidable.

A proceeding for mandatory injunction having been instituted in the Franklin Circuit Court in the name of the Workmen's Compensation Board against the Kentucky State Journal, which had consented to act as the defendant in the test case, the Attorney General extended invitations to the bar of the state to participate in the litigation in order that all constitutional questions might be fully presented for both sides. In response to this invitation the State Federation of Labor directed its counsel to assist the Attorney General in the defense of the new law while five other attorneys joined in the attack on it, representing variously those employers who had opposed the state-fund provision, certain insurance agents who would be subjected to its competition in procuring business for their companies, and a number of damage-suit lawyers of Louisville and of Eastern Kentucky.

Extended oral arguments were heard in the Circuit Court and elaborate briefs filed. Before coming to the result of this proceeding in the Circuit Court, and later in the Court of Appeals, it will be necessary to set out, in some detail, what constitutional question were involved in the Kentucky case and also those which had been passed upon by the courts of last resort in the several other states where compensation acts had previously been construed.

Constitutional Questions Raised.

Taking collectively the several briefs filed by counsel attacking the Kentucky act, an astonishing number and variety of constitutional questions were presented, both State and Federal. While some of these were trivial or palpably unsound, it nevertheless developed that practically all of the substantial issues which had been raised in any of the preceding compensation cases in the other states, affecting constitutional provisions common to all, were presented and in addition final reliance was placed on Sections 54 and 241 of the Kentucky Con-

stitution, relating to legislative limitation of recoveries and to causes of action for death, because none of the states in which other elective acts had been upheld were restricted by similar sections.

At the time the Kentucky act was under consideration by our courts, previous compensation acts had been construed in other states as follows:

Ives vs. Sou. Buffalo Ry., 201 N. Y. 271, 94 N. E. 431, in which the original compulsory New York law was held invalid.

State ex rel vs. Clausen, 65 Wash, 156, 117 Pac. 1101, 37 L. R. R. n., 46, in which the compulsory act of Washington was upheld and the doctrine of the Ives case repudiated.

In re opinion of Justices, 209 Mass. 607, 96 N. E. 308, in which an elective act was upheld.

Borgnis vs. Falk, 147 Wis. 327, 133 N. W. 209, 37 L. R. A., n., 489, sustaining an elective act.

Cunningham vs. N. W. Improvement Co., 44 Mont. 180, 119 Pac. 554, holding unconstitutional a compulsory act.

The following cases, each upholding an elective act:

State vs. Creamer, 85 Ohio St. 349, 97 N. E. 602, 39 L. R. A., n., 694.

Sexton vs. Newark Dist. Tel., 84 N. J. L. 85, 86 Atl. 451.

Deibekis vs. Link Belt Co., 261 Ill. 454, 104 N. E. 211.

Matheson vs. Minn. St. Ry., 126 Minn. 286, 148 N. W. 71.

Hawkins vs. Bleakly, (Iowa), 220 Fed. 378.

It is wholly impracticable, in an article of this character, to attempt to analyze all these cases. Comprising, as they do, a completely new chapter in our national jurisprudence they are necessarily closely related by reason of the fact that the courts of each succeeding state, when confronted with this question on which there existed no direct authority among their own decisions, very carefully considered and took into account the contemporary holdings of the other courts of last resort on the same subject. In each it appears that numerous and able counsel represented both sides, almost every conceivable issue was raised and the majority of these opinions are masterpieces of judicial reasoning and analysis.

Beyond the immediate scope of the question which these compensation cases directly involve, there is a deeper, and to the lay mind even more hopeful, significance in the way in which these courts

have dealt with these vast new industrial problems with a wide grasp of underlying principles and a progressive conception of the function of the judicial branch of our system of government.

Wherever compensation was sought to be introduced, it met an immediate opposition from certain representatives of the legal profession. Any change which contemplated the impairment of the long-established and, to them, highly profitable damage-suit system was legal heresy of the most insiduous sort. All of the earlier acts were consequently held unconstitutional on general principles in numerous curb-stone opinions.

Conscious of the utter impracticability of intelligently dealing with modern constructive legislation from any such standpoint, Chief Justice Winslow, of Wisconsin, took occasion in the epoch-making opinion of Borgnis vs. Falk, supra., to say:

"The political or philosophical aphorism of one generation is doubted by the next, and entirely discarded by the third. The race moves forward constantly and no Canute can stay its progress.

Constitutional commands and prohibitions, either distinctly laid down in express words or necessarily implied from general words, must be obeyed, and implicitly obeyed, so long as they remain unrepealed or unamended. Any other course on the part of either legislator or judge constitutes violation of his oath of office; but when there is no express command or prohibition, but only general language, or a general policy drawn from the four corners of the instrument, what shall be said about this? By what standard is this general language or general policy to be interpreted and applied to present-day peoples and conditions? When an eighteenth century constitution forms the charter of liberty of a twentieth century government, must its general provisions be construed and interpreted by an eighteenth century mind in the light of eighteenth century conditions and ideals? Clearly not. This were to command the race to halt in its progress, to stretch the state upon a veritable bed of procrustes."

both employers and employees to accept their provisions in lieu of their common-law remedies. The New York court, in the Ives case, supra, held such an act invalid as denying due process of law and therefore violative of both the State and Federal Constitutions. It was held, however, that the abolition of the employer's common-law defenses, the classification of industries and the granting of new rem-

edies to the employee were permissible and that the act in its purpose was not an undue exercise of the state's police power.

Shortly thereafter, the Washington court in State vs. Clausen, supra, upheld a compulsory act embodying the same features which the New York court had held fatal to their act. The Ives case was expressly repudiated and a diametrically opposite line of reasoning pursued.

The Montana court next construed a compulsory act in Cunningham vs. Northwestern, etc., Co., supra, and upheld it as against objections as to police power, class legislation, illegal taxation, denial of jury trial, due process of law (contrary to the New York court's conclusion) and delegation of judicial power, the latter a favourite contention of the opponents of compensation laws which has been decided adversely to them in every instance. The Montana act was nevertheless held unconstitutional, upon the sole ground that it denied the employer equal protection of law in that the compensation system was, as to him, exclusive and he could under no circumstances elect to defend at law, while the employee might, after receiving an injury, either elect to claim compensation or else reject it and bring an action at law for damages against the employer who had already been required to purchase compensation insurance in the state fund. The soundness of this latter holding has never been questioned in any subsequent decisions.

In the meantime, the first of the so-called "elective" acts reached the courts, in the case of Borgnis vs. Falk, from Wisconsin. There, as will hereafter more fully be discussed, the court upheld the act on the theory that, being in principle merely a contract between the employer and employee mutually to waive certain constitutional rights, no question of the deprivation of such rights arose.

Profiting by the experience of these states, practically all subsequent laws have either been enacted in the elective form or else constitutional amendments have been procured under which a compulsory act's validity is assured so far as the State Constitutions are concerned. At the date of the Kentucky court's decision, no elective act had ever been held invalid. The Texas court has since held, in the case of Middleton vs. Texas Light & Power Co., 178 S. W. 956, that their act is unconstitutional because of its being directly compulsory

as to the employee, who was deprived of all remedy at law in the event of a refusal to accept the compensation provisions. This will be recognized as the practical converse of the situation which rendered the Montana law invalid.

Class Legislation and Undue Exercise of the Police Power.

It has uniformly been claimed that these acts are an unwarranted exercise of the police power of the state and are also objectionable as being class legislation. The police power contention is usually predicated upon the idea that a given act is either directly, or in legal effect, compulsory upon one or both parties, while the claim as to class legislation arises from the fact that these laws do not attempt to deal with personal-injury litigation generally, but only as to master-and-servant cases and, in most of the earlier acts, as to these in but a limited number of industries in which not less than a given minimum of persons are employed.

In view of the fact that every court has uniformly held adversely to both of these contentions, regardless of their disposition of the cases upon other grounds, no discussion is here necessary of the numerous holdings of the state courts on the subject. The only compensation act which has yet been passed upon by the United States Supreme Court is that of Jeffrey Mfg. Co. vs. Blagg, 235 U. S. 571, 59 L. Ed., decided January 5th, 1915, and directly involved the matter of class legislation. This case arose under the original Ohio act, which was elective in form and had previously been upheld by the state court. That law applied only to employers of five or more persons, employers of less than five being arbitrarily omitted from its provisions although conducting exactly the same character of business and subject previously to the same legal liability. This would seem to constitute as nearly an instance of class legislation as will be found in any of these laws.

The Supreme Court, however, in an exceedingly clear opinion by Justice Day, held the law constitutional upon the issue of class legislation. Although that was the only point directly before the court, the following dicta from the opinion—if it be dicta—is nevertheless strongly indicative of what may be expected to be the Supreme Court's position as to claims based on the assumption that the abrogation of

the employer's common-law defenses renders a so-called "elective" act practically compulsory it being said:

"No employer is obliged to go into this plan. He may stay out of it altogether if he will. This is not a statute which simply declares that the defense of contributory negligence shall be available to employers having less than five workmen, and unavailable to employers with five or more in their service. The provision is part of a general plan to raise funds to pay death and injury losses by assessing those establishments which employ five or more persons and which voluntarily take advantage of the law. Those remaining out who might come in because of the number employed are deprived of certain defenses which the law might abolish as to all of it was seen fit to do so."

It will be observed that the Supreme Court's reasoning is almost exactly similar to that of our Kentucky court in Security Mutual Ins. Co. vs. Prewitt, 119 Ky. 321, in which it is held that inducing a non-resident insurance company to waive its constitutional right of resort to the Federal courts in certain cases by threat of forfeiture of its license to do business does not constitute legal compulsion.

Due Process and Equal Protection of Law.

More successful attack has been made on compensation laws along these lines, especially as to the compulsory acts.

It remains, however, that the reasoning of the New York court in Ives vs. Sou. Buffalo Ry. Co., the leading case in point, is directly contrary to that of the Supreme Court in Noble State Bank vs. Haskell, 219 U. S. 104, a compulsory bank guarantee case in which the state statute compelled the contribution by all banks to a state fund to be used in paying the depositors of such of those banks as might become insolvent. It was held, in substance, that even this arbitrary taking of the property of one bank to pay the losses of a competitor for which it was in nowise responsible was not a taking of property without due process of law nor an abuse of the police power. Manifestly no compensation law can go any further than this in the way of disregarding what has previously been regarded as the "due process" restriction of the Constitution. It may here be noted that the Kentucky court had previously, but by a closely divided court, reached

a similar conclusion in McGlone vs. Womack, 139 Ky. 274, upholding the so-called "dog-tax law" which imposed an arbitrary assessment on all owners of dogs to raise a fund for the re-imbursement of such owners of sheep as might suffer loss through the depredations of dogs.

In view of the holding in Noble State Bank vs. Haskell, it seems highly probable that even the directly compulsory compensation acts will be upheld as to due process when they reach the Supreme Court, and certain that the elective acts will be so construed, under the statement in Jeffrey Mfg. Co. vs. Blagg, that the abrogation of the common-law defenses does not render them compulsory.

Delegation of Judicial Power: Questions Peculiar to the Kentucky Constitution.

But three of the numerous points raised in the Kentucky case proved to be of any consequence and two of these were decided favorably to the act. They were with reference to the delegation of judicial power to the Board, and to the restrictions of Sections 54 and 241 of the Constitution, previously mentioned.

The question of delegation of judicial power involves Sections 109, 135 and 250, which provide respectively that judicial power shall be vested in the Senate and in courts "established by this Constitution," that "No courts, save those provided for in this Constitution, shall be established," and for the enactment of laws providing for settlement of differences by arbitration, "the arbitrators to be appointed by the parties who may choose that summary mode of adjustment."

The Workmen's Compensation Board provided for the administration of the 1914 act, took the position that, conceding for the sake of argument that the extent of their authority was sufficient to amount to a delegation of judicial power, they might nevertheless properly be invested with such powers by virtue of the authorization by Section 250, of the creation of Boards for the summary settlement of difficulties between such persons as might "choose that summary mode of adjustment." Here again, it will be observed, the whole question is whether the act is elective. If a litigant were compelled to submit his controversy to the adjudication of the Board a grave question

would arise which does not obtain where a voluntary choice has been exercised between submitting to the jurisdiction of the Board or to the courts.

The leading Kentucky case on delegation of judicial power, that of Pratt vs. Breckenridge, 112 Ky. 1, is readily distinguished upon this ground, it being there expressly stated (28), that "There is no provision by which the parties can escape a trial before the Commissioners, etc."

Since the election to accept the provisions of a compensation act must be made before injury is sustained, it has been suggested that this advance agreement not to resort to the courts is void because contrary to public policy, as declared in the cases of Ison vs. Wright, 21 R. 1368, 55 S. W. 202, and Gaither vs. Dougherty, 18 R. 709, 38 S. W. 2. This overlooks the fact that "public policy" is not defined by the Constitution and, therefore, may be altered as to a given question by act of the Legislature. While, prior to the enactment of a compensation law authorizing waivers in advance of injury, such an agreement would presumably have been void as against the public policy of the state, this does not affect the power of the Legislature subsequently to remove this difficulty by express authorization.

A disposition of this interesting question of how far judicial power may actually be delegated under Section 250 of the Constitution was found unnecessary, however, by reason of the fact that all the other states had the same or equivalent provisions to our Sections 109 and 135, and that their courts had all held that the administrative powers vested in their compensation Boards, which were substantially similar to those conferred by the Kentucky act, did not constitute such delegation nor vest in these Boards the functions of courts.

The question arising under Section 251, which is an enactment of the so-called "Lord Campbell's Act," vesting in the personal representative a cause of action for wrongful death, was whether the employee in his lifetime could bind his representative as well as himself by an acceptance of the provisions of a compensation law. A very frequent oversight in considering this question is the failure to discriminate between the extent of the requirements of Section 241 of the Constitution, alone, and those of Section 6 of the Statutes which was subsequently enacted thereunder.

While the Legislature may not, of course, disregard the constitutional provision they are not similarly restricted, in enacting a compensation law, by any inconsistent provisions of previous statutes.

While Section 6 of the Statutes vests in the personal representative a cause of action for wrongful death, for the benefit of certain named beneficiaries, all that Section 241 of the Constitution requires is that

"The General Assembly may provide **how the recovery shall go and to whom belong;** and **until such provision is made** the same shall form a part of the estate of the deceased person."

The Legislature may, therefore, at any time take advantage of the constitutional permission differently to "provide how the recovery shall go and to whom belong," from what is now provided under Section 6 of the Statutes.

The cases of Berg vs. Berg's Admr., 105 Ky. 80, and Sturges vs. Sturges' Admr., 126 Ky. 80, 12 L. R. A., N., 1014, illustrate respectively the status of causes of action accruing under the constitutional provision before and after the enactment of Section 6.

As to waiver, our Court of Appeals held, in Lou. Ry. Co. vs. Raymond's Admr., 135 Ky. 738, that a settlement and release of all liability executed by an injured person also barred an action by his personal representative following his death. This, it will be noted, was a case of waiver **after** injury and the accrual of a personal cause of action. A case of waiver, in advance of injury, both of one's personal cause of actions and also of the personal representative's prospective cause of action for death was directly before the United States Supreme Court, in Northern Pacific Ry. vs. Adams Admr., 192 U. S. 440. There a passenger had accepted a railway pass containing the stipulation that the carrier would not be "liable for any injury" to the passenger using same. The transaction, and subsequent death of the passenger by the company's negligence, occurred in the state of Idaho, where the "Lord Campbell's Act" was in effect.

In a suit by the beneficiary under the state law, the decedent's attempted waiver of their prospective cause of action was set up but this defense was disregarded by both the District and Circuit Court of Appeals, in 95 Fed. 938 and 116 Fed. 324. These opinions adopt

exactly the same line of reasoning pursued by the opponents of the Kentucky compensation act, to the effect that while one may waive his own causes of action which may accrue in his lifetime, he may not waive the prospective cause of action which will vest in his representative in the event of his death.

The Supreme Court, however, after a full discussion of the question, upheld the waiver and denied recovery to the beneficiaries, it being said

"They claim under him and they can recover only in case he could have recovered damages had he not been killed, but only injured."

Section 54; Limitation of Recoveries.

This section will, in the last analysis, fix the real test of constitutionality of a compensation law in Kentucky under the present Constitution. It is conceded on both sides that it will effectually bar an act which is directly compulsory as to the employee, so as to take away his right of action at law arbitrarily.

Where the law is so drawn as to be, in form, elective as to the employee the question then becomes one of whether the employee's agreement to accept its provisions and waive his rights to an unlimited recovery at law is legally voluntary or involuntary. If it is involuntary, then Section 54 will become material.

A rather unusual situation was presented under the 1914 act in that, while the fourteen or fifteen elective acts then in effect in other states had not reduced the employee's pre-existing causs of action at law, in the event of his refusal to accept compensation, the Kentucky act, by Section 32, to some extent did reduce such causes of action by increasing the employer's defenses in such cases. This extension of defenses against a rejecting employee did not by any means abolish the employee's entire cause of action, as was attempted in Texas, but simply reduced it from what it had been under the rules of practice in the State courts to that existing in the Federal Court. See, as to the latter, B. & O. vs. Baugh, 149 U. S. 387, 37 L. Ed. 781.

Why the draftsmen of the Kentucky act thought this necessary is not clear in view of the uniform experience under all the other elective acts which, though leaving the rejecting employee with his

pre-existing causes of action unimpaired, had nevertheless procured a practically unanimous acceptance by the employees. In Massachusetts, for example, where the largest unmber of employees ever covered by an elective act were located, the rejecting employees were less than one-tenth of one per cent, out of over 650,000.

While none of the other states in which elective acts had been upheld had a constitutional provision against legislative limitation of recoveries, all had the usual constitutional guarantees of the right of resort to the courts and of trial by jury—rights which it would seem may not be arbitrarily taken away from the employee any more than those accruing under Section 54. The contention was made in all these cases that the act was compulsory as to the employee, usually on the ground that the employee would be practically coerced into an acceptance by the prospect of discharge by an accepting employer or the inability to secure re-employment except under the terms of the act. All of the elective-act cases, which are previously cited, fully consider this situation and uniformly conclude that these acts are not compulsory. All of them hold, also, that the abrogation of the employer's common-law defenses does not render the act compulsory as to him.

Disposition of the Kentucky Case.

The Circuit Court having upheld the act, an appeal was immediately taken and two days were assigned for oral argument in the Court of Appeals, a very unusual occurrence. Following the hearing and submission on briefs, two of the Justicse declined to proceed further with the case, they being financially interested in certain enterprises which it developed would be affected by the act. It being necessary for the Governor to appoint two special Justices to succeed them, an effort was made to procure the appointment of some of the former Justices, then members of the bar of the state. This was acceded to in part, in the appointment of Judge John M. Lassing, but the other appointee, Judge J. L. Dorsey, was without such experience.

After extended consideration, the law was finally held unconstitutional by a divided Court, four Justices concurring in the majority opinion while three joined in a vigorous dissent. These are reported as Kentucky State Journal vs. Workmen's Compensation Board, 161

Ky. 562, 170 S. W. 1166, the majority opinion being written by Special Justice Dorsey, and the dissent by Judge Miller, the present Chief Justice. Petitions for a re-hearing and also for a modification and extension of the opinion were thereupon filed.

The petition for re-hearing was overruled, but the opinion was radically modified and extended, in 162 Ky. 387, 172 S. W. 674. On this account it is unnecessary to review the first opinion, except in the matter of the compulsion of the employee's acceptance of the act, as to which of the two opinions are substantially reconcilable.

In both it is held that the employee is not prevented, by Section 54 of the Constitution, from voluntarily contracting to limit his recovery, it being said in the second opinion,

"Any employee coming within the provisions of the act may voluntarily agree to accept its provisions fixing and limiting his recovery in case of injury."

With reference to Section 241, it is also held in the next paragraph that a similar waiver of the representative's cause of action for death is permissible. The basis of the court's holding the 1914 act invalid was, as the writer understands the opinion, that the reduction of the employee's cause of action at law, which a refusal to accept the compensation act would entail, constituted legal compulsion and therefore rendered involuntary his waiver of rights to an unlimited recovery under Section 54. Had the Kentucky law conformed to the other elective acts in this particular, and not so reduced the rejecting employee's previous cause of action, it could, presumably, have been upheld as to the employee.

As to the employer, it was finally held in the second opinion that the abrogation of his common-law defenses did not constitute legal compulsion and that such provision for affecting his acceptance of the act is "not objectionable," this conclusion being in line with all the state and Federal authorities, as previously indicated.

The other important features of the final opinion are that, while not holding the act invalid on account of delegation of judicial power, it was indicated that a more liberal system of appeals to the courts should be provided, which is fully in line with the policy of the later compensation acts, and also that the employee's agreement to accept

the provisions of the act should be effected by "some affirmative act" on his part.

This departure from the generally-provided method of implied acceptance by failure affirmatively to reject, provided under practically all of the other elective acts, was doubtless prompted by the presence of our Section 54, which is not found in any of their Constitutions and the feeling that every employee who surrenders prospective rights thereunder should do so expressly and individually. The practical objection to an adoption of this somewhat technical construction is that those desiring to foster damage-suit litigation will probably attempt to take advantage of the possibilities afforded for attacking the contract to pay or accept compensation, by the usual allegations of fraud or mistake in its execution. Such practices would seem practically impossible under the "implied election" system of the other acts, since the reports of those states contain no cases, so far as the writer has been able to ascertain, in which they have been attempted.

The New Jersey court, in Sexton vs. Newark District Tel., 84 N. J. L. 85, 86 Atl. 451, very fully discusses the theory and propriety of the implied acceptance of a compensation act and is typical of the generally accepted views of the courts on the subject.

Prospective Legislation.

It is regarded as highly probable that the Legislature which has just convened, will enact another compensation law. Disappointment at the previous act's proving invalid was general among both employers and employees, and public sentiment is unmistakably in favor of the compensation system. Both the Democratic and Republican platforms in the 1915 state elections contained planks strongly, and unequivocally, advocating the enactment of such a law, of a type that will be "alike just to the employer and employee," to quote from the former.

On account of these conditions it is not anticipated that the opponents of compensation will attempt any very serious campaign against it before the Legislature, in the open. The most probable controversy, if any should arise, will probably be as to the particular type of act to be adopted, both with reference to administrative fea-

tures and also as to the extent and effect of local Constitutional limitations.

The really serious consideration, however, is the cost of administration and how and by whom it is to be borne. There is a very general—and, unfortunately, justifiable—prejudice in this state at the present time against the further creation of public offices to be filled by political appointees at the taxpayers' expense. Kentucky's experience with boards and administrative commissions has, in some instances, been so unsatisfactory and the efficiency of their incumbents and extent of services rendered been so low in proportion to the cost to the state that there is now a demand for the reduction, rather than further multiplication, of such "jobs."

It is also true that the extent and variety of matters of administrative detail which necessarily arise under a compensation law, particularly one including the "State Fund" insurance feature, renders such a department directly susceptible to abuse in the matter of political patronage. High-water mark along this line has been reached in New York, where an enormous annual administrative expense seems to have been augmented after each succeeding election. The recent special message of Governor Whitman, of that state, to its Legislature, calling attention to this situation, discloses indeed a remarkable state of facts.

On the other hand, it has been found in some states where the acts have been administered along strict business lines that the cost, while substantial, is nevertheless by no means equal to the corresponding saving to the state treasury in the reduction of court expenses which such acts accomplish. This refers to the direct saving to the state, in costs of a character which cannot be imposed on either litigant.

A study of the several acts and of the annual reports of the boards administering them seems to indicate that, where the methods of procuring employee sand assistants to the Boards are equally favorable to efficiency, that the relative cost of administration depends most largely on the extent to which the acts are of a supervisory rather than directly intermediary character. Under the former system, the administrative features of the act are made as automatic of operation between the employer and employee as is consistent with a

sufficient oversight by officials to insure fair and accurate observance of the act's provisions. It has been demonstrated that in the great majority of cases the employer and employee can readily agree on the extent and period of disability and the wage on which the percentage of weekly benefits is to be computed; payments in such cases are made and accepted without controversy and the Board's representatives are kept sufficiently advised, by a system of reports, receipts, etc., filed with them, to see that the law is being properly administered. Official intervention takes place only in those cases where some real necessity for it arises.

The foregoing system requires a comparatively small force of employees and assistants, consisting largely of the clerical and stenographic assistants to the Board and Medical Director, at the head office of the department. As opposed to this type of act, there are others which provide for the direct intervention by the board and its representatives in practically every case, whether there is any sort of need for such intervention or not. To further complicate matters, payments of compensation are not permitted to be made directly by the employer or his insurer to the injured employee but must he handled through the department. Besides greatly enlarging the necessary office force, this system makes possible the appointment of numerous inspectors, adjusters and other varieties of office-holders who would be unnecessary under the first-mentioned type of act.

Under conditions now existing in Kentucky it is generally conceded that any compensation law which may be enacted will have to be of such character as will reduce the administrative cost to the lowest possible minimum consistent with efficiency. While in all other states the administrative cost is borne entirely, or in great part, by the state, it is now proposed, in a bill which has just been submitted to the Kentucky Legislature, to provide for the payment of these expenses by the employers who operate under the act. This arrangement, in order to avoid unduly increasing the total cost of compensation, would necessitate very careful restrictions as to appointments and salaries and, since private individuals and not the state will be paying them, would seem to justify eliminating as fully as may be possible the patronage feature.

A constitutional amendment has also been introduced under which it is proposed to make possible the enactment of a compulsory com-

pensation law in lieu of the elective type of act which is permissible under the present Constitution. If an elective act were passed at the present session, it would have been in effect approximately two years before a compulsory law could be enacted to take its place, should the constitutional amendment also be adopted. This was what took place in Ohio and, after the public had become familiar with the workings of their original elective law as a substitute for damage-suit litigation, the majority in favor of making the system compulsory was overwhelming. From present indications, it appears highly probable that the General Assembly now in session will place Kentucky in line with the thirty-three other states, comprising over 80 per cent of our population, in which compensation laws are now in force.

THE PHILIPPINE ISLANDS

By N. Devera.

(Ed. Note.—Mr. Devera is a student of law in Kentucky State University and his home is in the Philippines.)

The Philippine Islands is an archipelago east of Asia with an area of one hundred and twenty-seven thousand and eight hundred and fifty-three square miles. The islands are mostly of volcanic origin with the interior lined with mountain ranges. The mountains are covered with forests of many varieties of hardwoods, suitable for interior woodworking, furniture, shipbuilding, etc., and other trees affording dyewoods, gums, resins and flowers used in the manufacture of perfumery. Between the mountain chains are luxuriant plains and wide fertile valleys. There are rivers, very few navigable, feeding from mountain ranges. The coast lines are very irregular, thus forming many small but safe natural harbors. The climate is a continual summer. The rainy season begins about the middle of May and lasts for more than six months. Many parts of the archipelago are subject to terrific hurricanes.

These islands, first known as "Western Islands," were discovered by Magellan in his famous voyage around the world on May 17, 1521.