INDUSTRIAL LAW

BY

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PREFACE

SINCE the First Edition of this book appeared eighteen years ago, Industrial Law as a subject of study has attracted an ever-growing number of those seeking, or engaged in, careers outside the legal profession. The value of a working knowledge of the law surrounding the contract of employment and the increasing number of legislative enactments relative thereto, has been recognized not only by the various Commerce Degree Departments of the Universities, but by those occupying responsible positions in the administrative branches of industry and commerce. It has been a source of satisfaction to me to learn from many quarters that the previous editions of this book, by avoiding technicality and over-elaboration, and by having constant regard, not only for the requirements of the student but also for the practical needs of executives, have assisted in an understanding of the subject in these wider circles of those who seek this knowledge.

This edition includes such recent legislative changes as the Wages Councils Act, 1945. As the book will be published some months before the coming into operation of the new National Insurance scheme, it has been thought well to include both the existing law and the new provisions which will take its place next July. Enactments of a more temporary nature, such as the Reinstatement in Civil Employment Act and emergency measures like the Control of Engagement Order, are collected in the Appendix.

I gratefully acknowledge the always ready assistance of my wife in the preparation of the book for the press.

HARRY SAMUELS.

1 ESSEX COURT,
TEMPLE, E C 4.
December, 1947

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Distinction Between Apprenticeship and Service Contract. Where teaching is the primary object of the agreement, even if service is also to be given, it is an apprenticeship; where work is the primary object, though teaching is also to be provided, it is a service agreement. The payment of a premium is strong, but not decisive, evidence in establishing an agreement to be one of apprenticeship.[1]

The Indenture. No agreement will suffice to create an apprenticeship unless an indenture is executed.[2] The consent of the apprentice is a *sine qua non*: he must, therefore, be a party to the contract, whether solely or jointly with another. An indenture executed by the master and the father of the apprentice, but not by the apprentice himself, is not valid.[3] Thus, when an adult assented to be bound as apprentice, but did not execute the indenture which was executed by her father-in-law and the master, the indenture was held invalid.[4] A corporation may be a party.[5]

Failure to insert the full amount of the money paid or contracted for renders the indenture void. The consideration for a contemporaneous agreement, however, connected with the apprenticeship, e.g. an agreement to pay a certain sum for the apprentice's keep, need not appear in the indenture.[6] Money paid as premium cannot be recovered where an indenture is held void under this section.[7] A single stamp suffices on an indenture to two

[1] R *v* Ramham (1801), 1 East 531; R *v* Northowram (1846), 9 Q B 24
[2] R *v* Mawman, Burr S C. 200; R *v* Kingsweare, Burr. S C 839
[3] R *v* Aresby, 3 B and Ald 584
[4] R. *v*. Ripon (1890), 9 East 295
[5] Burnley Equitable Co-operative Society *v* Casson, [1891] 1 Q B 25
[6] Hawkins *v* Clutterbuck, 2 Car & K 811.
[7] Stokes *v* Twitchen (1818), 2 Moore 538

masters in two trades in which it is intended that the apprentice should serve consecutively,[1] and where an indenture which provides for service with a second master is assigned by the first to the second it is then stamped with the common assignment stamp only.[2]

The law gives special protection to an apprentice who is an infant (i.e. under 21), in that it will not enforce a contract against him which is not on the whole beneficial to him. Thus a contract which does not provide for either wages or maintenance or which imposes a penalty will be void, and so too a contract which provided that no wages should be paid during a strike, even though it gave the apprentice the right of working elsewhere in the meantime.[3] Similarly, a covenant binding for a period an infant apprentice not to accept employment except with the master's consent without a corresponding covenant by the master to provide employment was held to invalidate the apprenticeship deed. So too a clause in a deed exempting the employer from liability for negligence.[4] But an infant apprentice cannot dissolve the indenture.[5] He is entitled to do so on reaching 21, after giving reasonable notice.[6] Subject to this, contingent matters arising out of the apprenticeship are governed by the provisions of the indenture—otherwise by the common law or statute as set forth in the following paragraphs.

Misbehaviour of Apprentice. The master is entitled to complain to a magistrate (in Petty Sessions or the Police Court).[7] Although at common law no general right of dismissal in case of misconduct is given to the master,[8] yet, if the misbehaviour is such as to make

[1] R *v* Louth, 2 M & R 273
[2] Morris *v* Cox, 3 Scott (N R) 116
[3] Meakin *v* Morris, 12 Q B D 352; Corn *v* Matthews, [1893] 1 Q B 310
[4] De Francesco *v* Barnum (1889), 63 L T 428; Olsen *v.* Corry and Gravesend Aviation, Ltd (1936), 155 L T 512
[5] R *v* Wigston, 3 B & C 484
[6] Coghlan *v* Calaghan, 7 Ir C L R 291
[7] *Employers and Workmen Act*, 1875, Sect 6
[8] See, e g Sherman *v* Abele (1688), Vern 64, where a master, dismissing his apprentice for negligence and misdemeanours, had to refund part of premium Cf Waterman *v* Bryer (1922), 1 K B 490

teaching impossible or amounts to a refusal to be taught or causes actual injury to the master or if the apprentice is an habitual thief, the master is justified in determining the apprenticeship and need not return any part of the premium. Custom is relevant, e.g. by the custom of London, gaming is a sufficient misbehaviour to justify the dismissal of an apprentice. The principle underlying the common law rule is that the master's covenants in the ordinary indenture are independent of the performance by the apprentice of the apprentice's obligations,[1] so that where the apprentice has by his own wilful act prevented the master from teaching him, the master can set this up as a defence when sued upon his covenant to keep and teach, irrespective of the question whether the apprentice has performed his obligations or not.[2] And so a master in whose business precious articles have to be constantly lying about was held entitled to dismiss a dishonest apprentice.[3]

A master has a right to the earnings of an apprentice who runs away from him,[4] and if the apprentice has been enticed from him by another the latter is liable to the master for work and labour done.[5] The master is not bound to receive the apprentice back or to repay part of the premium,[6] but not so in the case of an apprentice who only absents himself a few days.[7]

Illness of Apprentice. The apprentice has a common law right to medical attendance during sickness. This is now subject to the provisions of the National Health Insurance Act, 1936, Schedule I, Part 1 (*a*), to the effect that an apprentice who receives a money payment from the master must be insured under the National Health Insurance Scheme. And persons employed under any

[1] Winstone *v.* Linn (1823), 1 B. & C. 450.
[2] Raymond *v.* Minton, L.R. 1 Ex. 244.
[3] Cox *v.* Mathew (1861), 2 F. & F. 397; Learoyd *v.* Brook, [1891] 1 Q.B. 431.
[4] Merlton *v.* Hornsby, 1 Ves. 48
[5] Lightly *v.* Clouston (1808), 9 R.R. 713.
[6] Cuff *v.* Brown (1818), 5 Price 297.
[7] Winstone *v.* Linn (1823), 1 B. & C. 460.

contract of apprenticeship will be "insured persons" when the National Insurance Act, 1946, comes into operation.[1]

Accidents to Apprentice. An apprentice is a "workman" within the meaning of the Workmen's Compensation Acts,[2] but an agreement entered into by an apprentice under that Act will not be enforced against him unless it is for his benefit.[3] And an apprentice will be an "insured person" when the Industrial Injuries Act, 1946, comes into operation.[4] Where the apprentice is permanently injured by the action of a third party causing loss of service, the master may sue the latter for the amount of the prospective damage.[5]

Permanent Illness of Apprentice. This will operate as a valid reason for terminating the apprenticeship.[6] It is also a good defence in an action by the master for breach of contract.

Death of Apprentice. This terminates the contract. In the absence of express provision the premium is not recoverable.

Dissolution of Partnership. Failing express provision, the apprentice cannot be forced to serve the remaining partners.[7]

Bankruptcy of Master. This operates as a complete discharge of the apprenticeship on either party giving written notice to the trustee. The latter has discretion, on the apprentice's application, to order the repayment of such part of the premium as is reasonable under all the circumstances and the transfer of the indenture to some other person.[8]

Death of Master. This terminates the apprenticeship

[1] *National Insurance Act*, 1946, Sect 75.
[2] *Workmen's Compensation Act*, 1925, Sect 3
[3] Stephens *v* Dudbridge Ironworks Co, [1904] 2 K B 225
[4] *Industrial Injuries Act*, 1946, Sched I, Part I (1)
[5] Hodsoll *v* Stallebrass (1841), 9 L J, Q B 132
[6] Boast *v* Forth, 19 L T 264
[7] Brook *v* Dawson, 20 L T 611, Couchman *v* Sillar (1870), 22 L T 480, Titmus *v* Rose & Watts (1940), 162 L T 304
[8] *Bankruptcy Act*, 1914, Sect 34

unless there is a custom to the contrary (or express provision has been made for its continuance with the master's executors).[1] No portion of the premium can be recovered failing express provision or unless the master is a member of a firm.[2] Where one of two partners dies, the apprentice becomes the apprentice of the other.[3]

Change of Place of Business. Unless otherwise expressly stated, there is an implied covenant that the apprentice shall be employed at the place where the master carries on business at the date of the indenture, and the apprentice will not be bound to allow himself to be transferred to a place of work situated elsewhere.[4]

Legal Remedies. In the absence of a local custom to the contrary, no action will lie against an apprentice on a covenant made by him as an infant. Such a custom to the contrary exists, e.g. in the City of London, where the covenants of an apprentice over 14 may be enforced against him. Further, where an apprentice agrees to do or refrain from doing something on the termination of the apprenticeship, he is bound thereby, e.g. where he undertakes not to start on his own account within a specified and reasonable distance from the master's place of business, even though he agreed thus when an infant.[5] On the other hand, a parent or friend who is a party to the agreement jointly with the apprentice is bound by all the covenants, even though the apprentice on coming of age should renounce or omit to ratify the agreement.

Disputes between the master and apprentice (except those concerning money claims over £10) are settled by the magistrates (in Petty Sessions or the Police Court), who have, in addition to their powers as between employers and workmen, special power in the case of apprentices to rescind the agreement, to order whole or part repayment of the premium, or to order the apprentice to carry

[1] Cooper *v* Simmonds (1862), 5 L T. 712.
[2] Whincup *v*. Hughes (1871), L R., 6 C P. 78.
[3] R. *v*. St. Martin's, Exeter, 1 H & W. 69.
[4] Eaton *v*. Western (1882), 9 Q B D , 636 C A.
[5] Gadd *v*. Thompson, [1911] 1 K B 304

out his duties. In this last case, the apprentice has a month's grace, and is then, if he still defaults, liable to be imprisoned for not more than 14 days.[1]

In addition to the above principles governing apprenticeship as such, there are, of course, many provisions which apply to apprentices in other capacities, e.g. the rules of the common law regarding infants apply to *apprentices under 21, while apprentices are deemed to be "persons employed" within the meaning of the* Factories Act, 1937.

[1] *Employers and Workmen Act*, 1875, Sect 6 (see also later pp 221–222).

CHAPTER II

THE CONTRACT OF EMPLOYMENT

THE contract of employment has to be distinguished from certain other agreements to which it bears a resemblance *at certain points. Its difference from the contract of apprenticeship has already been explained. The point of* difference between an agency contract and an employment contract is that whereas in both there is a contract to do certain work, the employment contract in addition gives the employer generally a full right of control over the employee's movements during the performance of that work, and of regulating the manner in which the work should be done, e.g. determining the hours and place of work.[1] An independent contractor is in a somewhat similar position to an agent *vis-à-vis* an employee, an independent contractor being "one who undertakes to produce a firm result, but so that in the actual execution of the work he is not under the control of the person for whom he does it, and may use his own discretion in the things not specified beforehand." (Pollock, *Torts*, p. 80.)[2] Where A lends B an article or materials by means of which B can perform work on his own (B's) behalf and not subject to A's orders, the contract is one of bailment.[3] And, lastly, as compared with the relation created by a partnership agreement, it is laid down that the receipt by an employee of a share of the profits by way of remuneration shall not constitute a partnership between the employer and employee.[4] The simple test to be applied,

[1] R. *v.* Walker (1858), 27 L.J.M C. 207; R. *v.* Bowers (1866), 1 C C.R. 41.

[2] See e.g. Hardaker *v.* Idle, D.C., [1896] 1 Q B. 335; Walker *v.* Crabb (1916), 33 T.L.R. 119

[3] Venables *v.* Smith (1877), 2 Q B D 279; Gates *v.* Bill and Sons, [1902] 2 K.B. 38.

[4] Sect. 3, *Partnership Act*, 1890 As far as so-called co-partnership schemes are concerned, those in existence are so drawn up that there are few, if any, which invest the employee with the full rights and obligations of a partner in addition to those of an employee.

in judging whether it is the relationship of employer and employed that exists or some other relationship, is whether one of the parties is under the control and bound to obey the orders of the other; if so, there is the employment relationship.[1]

Capacity to Contract. An infant (i.e. a person under 21) is not bound by any contract of service unless it is, as a whole, for his benefit (see page 2). Thus, where a railway company contracted out of the Employers' Liability Act, 1880, in respect of an infant employee in return for his being entitled to benefits from their contributory benevolent fund or insurance society, it was held that the contract was binding on the infant.[2]

A contract containing restrictive terms which are reasonable (see page 21) will be held binding on infants, since "a contract which contains the only terms on which an infant can reasonably expect to get employment must be for his benefit."[3]

Corporations and Associations. The validity of any contract of employment to which a limited company is a party will depend upon the powers, express or implied, of the company. If the articles of association do not contain an express provision for the entering into such a contract by the company, the contract will only be valid if it can be regarded as necessary or ancillary to the company's objects. Where the contract is made by some person or persons on behalf of the company, it is necessary as an additional precaution to be satisfied that the company has authorized the person or persons to make the contract on its behalf.

With regard to unregistered and unincorporated associations, a contract of employment would normally be made not by all the members, but by a committee or by somebody acting on behalf of the members. The contract

[1] Hill *v* Beckett, [1915] 1 K B 578, at p. 582
[2] Clements *v* L N W R., [1894] 2 Q B 482
[3] Bromley *v* Smith, [1909] 2 K B 235

would be binding only upon those members who gave or acquiesced in the giving of the authority to enter into the contract so as to make them liable, and where the person purporting to enter into the contract on behalf of the members is acting in excess of his authority, he would alone be personally liable, on the general principle laid down[1] that no member of a society as such becomes liable to pay to the funds of the society or to anyone else any money beyond the subscriptions required by the rules of the club to be paid as long as he remains a member.

Written *v.* Oral Contracts. The contract of employment may be an *express* contract, in which case provision would naturally be made for (*a*) its duration, and (*b*) the remuneration payable. An express contract is not necessarily a written contract; it may be oral. Where the parties content themselves with an oral contract, each must be prepared for the contingency, in the event of a dispute giving rise to a legal process, of his version of the contract not being accepted by the deciding authority. In one class of cases, legal process is entirely excluded unless there is a written contract, viz., contracts that are "not to be performed within the space of one year from the making thereof,"[2] and evidence of an oral agreement is insufficient to maintain an action in such a case. The year runs from the date of the agreement.[3] If no definite period for its duration is specified in an agreement, the statute does not apply; on the other hand, if a period is specified which would carry the parties beyond the statutory period of one year, the statute applies even if the agreement contains the usual provision for termination before the expiry of the statutory period by notice on either side of a week or month or whatever the case may be.[4] To satisfy the statute and to be able to maintain an action it is not

[1] Wise *v* Perpetual Trustee Co., [1903] A C 139, and cf Harrington *v* Sendall, [1903] 1 Ch 921, and Stansfield *v* Ridout (1889), 5 T L R 606.
[2] Sect 4, *Statute of Frauds*, 1677.
[3] Cf. Vernon *v* Findlay (1937), 160 L T 130, Adams *v.* Union Cinemas, [1939] 3 All E R 587
[4] Hanau *v* Erlich, [1912] A C 39.

necessary to have a formal contract; a series of letters or even an entry in the minutes of a company meeting[1] will suffice, provided they contain the terms of the agreement and the signature of the party to be charged.

Temporary Restrictions on Freedom of Contract. There are at present in force certain emergency enactments: (*a*) as to the employers' duty to reinstate employees after War Service; (*b*) restricting rights to engage for or accept employment save through prescribed channels. As to these, see Appendix.

Stamps on Contracts. In the case of contracts of service of manual workers, there is an exemption from the requirement of a 6d. agreement stamp.[2]

Duration of the Contract. It often happens, in written as well as verbal contracts of service, that provision is not made for the termination of the contract. It is a common weakness of human nature that when two individuals, hitherto unknown to one another, are brought into contact with a view to making some mutual arrangement, they avoid discussing the possible severance of their connection. Where, as in such cases, it is not possible to ascertain what was in the minds of the parties in this respect when making their agreement, the particular circumstances have to be considered, and, in particular, such matters as the periods when wages are paid, and the custom prevailing in the particular kind of employment.

It used to be said, on the authority of Blackstone, that where no duration is stated, the contract is a yearly contract. It is doubtful, however, whether this rule is of any practical value at the present day as far as industrial practice is concerned. In such a case, the fact that wages are paid weekly or monthly would normally be sufficiently strong evidence to destroy the presumption of a yearly contract, and make it a weekly or monthly contract as the case may be;[3] a custom in the trade, once proved,

[1] Jones *v.* Victoria Graving Dock (1877), 2 Q.B.D. 314.
[2] *Stamp Act*, 1891, Sched. I.
[3] Levy *v.* Electrical Wonder Co. (1893), 9 T.L.R. 495; De Stempel *v.* Dunkels, [1938] 1 All E.R. 245.

would have an equal effect. To prove a custom, it must be general, of reasonable antiquity and conformity, and sufficiently notorious that people would make their contracts on the supposition that it exists.[1] Of course, where there is clear evidence of the duration of the contract otherwise, neither the interval at which wages are paid nor custom nor any other such extrinsic circumstances are admissible to disprove it.[2] And where the duration is not clearly expressed, but the salary is agreed at so much a year or per annum, it will be construed *prima facie* as a contract for a year certain.[3]

The contract of service can be determined

(*a*) By notice.

(*b*) Without notice in certain cases.

Determination by Notice. When the contract is clear as to the length of notice required on either side, no question arises. Thus, the common form of contract "for one year subject to one month's notice on either side" gives either party the right to terminate within the year by giving a month's notice.

Where the contract is silent or ambiguous as to the length of notice required, it will be implied that reasonable notice is necessary.[4] What is reasonable notice is a question of fact dependent upon the circumstances.

In deciding this question of fact, custom is relevant, subject to what has already been stated on the point (page 10). As illustrations of what have been found to be reasonable lengths of notice in various branches of work, the following may be quoted—

Newspaper editor, one year.[5]

[1] Foxall *v* International Land Credit Co (1867), 16 L.T. 637.

[2] Peters *v.* Staveley, (1866) 15 L T. 275, Davis *v.* Marshall (1861), 4 L.T. 216.

[3] *Buckingham v.* Surrey and Hants Canal Co *(1882), 46 L.T. 885;* Foxall *v* International Land Credit Co., *supra.*

[4] *Re* African Association, Ltd , and Allen, [1910] 1 K.B. 396.

[5] Grundy *v.* Sun Printing and Publishing Association (1916), 33 T.L.R. 77.

Commercial travellers[1] and superior clerks,[2] three months.

Shop manager at £250 per annum,[3] one month.

Engineering salesman, three months.[4]

Theatrical manager, six months.[5]

Unless otherwise expressly agreed, or unless a custom can be proved, the notice is applicable equally to the employer and the employee, and it can be given at any time, so as not necessarily to expire at the end of the week or month[6] and it can be given verbally. Even though the contract requires written notice, it can be terminated by word of mouth by mutual agreement.[7]

Determination Without Notice in Certain Cases. The contract may be determined without notice in the following cases: (1) Incompetence, (2) Permanent Incapacity, (3) Disobedience or Neglect, (4) Misconduct.

1. INCOMPETENCE. The public profession of an act is an undertaking to the world that the person making it has the requisite ability and skill.[8] If the incompetence of the employee to perform the work he undertook to do upon engagement can therefore be established, dismissal without notice will be justified. While the reasons for such dismissal must be *bona fide*, they need not be disclosed if the employer has the right to dismiss at his discretion,[9] and where the dissatisfaction itself was quite *bona fide*, but the firm were unable to state the reasons, they were held entitled to dismiss.[10]

2. PERMANENT INCAPACITY. The question how far the

[1] Grundow *v.* Master & Co. (1885), 1 T.L.R. 205.

[2] Levy *v.* Electrical Wonder Co. (1893), 9 T L R 495; and *Re* Oriental Bank Corporation, McDowall's Case (1886), 32 C.D 366

[3] Byrne *v* Schott (1883), Cab and El 17, N.P.

[4] Fisher *v* Dick & Co., [1938] 4 All E.R. 467.

[5] Adams *v.* Union Cinemas, [1939], 3 All E.R. 136.

[6] Ryan *v.* Jenkinson (1855), 25 L.J Q.B 11.

[7] Latchford Premises Cinema, Ltd. *v.* Ennion & Paterson, [1931] 2 Ch. 409.

[8] Harmer *v.* Cornelius (1858), 5 C.B.N.S. 236; Searle *v.* Ridley (1873), 28 L.T. 411.

[9] *Ex parte* Teather (1850), 1 L.M. & P. 7.

[10] Diggle *v.* Ogston Motor Co. (1915), 112 L T. 1029.

illness of the employee justifies dismissal without notice has to be considered here. It is quite clear in the first place that the employer has no less a right to dismiss an employee during a period of illness by giving the proper notice than he has when the employee is at work. And the employee has a similar right.

Wages During Illness. It was held in many cases that an employee is entitled to his wages during illness provided that the contract of service remains and the employee is ready and willing to perform his duties except for the incapacity caused by his illness.[1] This principle is now, however, doubted, and it appears that the terms of the contract must be the deciding factor in each case. If there is no express term agreed, the whole facts must be looked to, to determine what was the implied term.[2] An agreement to pay wages during "sickness" covers absence due to accident.[3] Even if the illness is caused by the employee's own misconduct, the employee will be entitled to his wages if the misconduct occurred before he entered upon the contract and he did not know then that he would contract the illness.[4] These rules are, however, of effect only if the contract itself does not provide otherwise.

Where it was a term of the employee's engagement that he should join the company's contributory sick fund, by the rules of which he would be entitled to sick pay if wages were not payable, and having been on sick pay for seven months, the employee was then given notice, his claim for wages for the seven months was disallowed.[5]

Illness Justifying Dismissal. The test to be applied when considering the question whether illness justifies dismissal is: Is the illness such as to put an end in a

[1] Cuckson *v* Stones (1858), 28 L J, Q B 25, Warren *v* Whittingham (1902), 18 T L R. 508, Marrison *v* Bell, [1939] 1 All E R 745

[2] O'Grady *v* Sopel, [1940], 2 K B 469

[3] Maloney *v* St Helens Industrial Co-operative Society, Ltd, [1933] 1 K B 293.

[4] R *v* Raschen (1878), 38 L T 38.

[5] Niblett *v* Midland Railway (1907), 96 L T 462

business sense to the business engagement and to frustrate the object of that engagement? Where a works manager on a five years' agreement had a breakdown after three years, and was ready to return to work five months afterwards, but in the meantime the company notified him that he was dismissed, the Court answered the test question here in the negative, and gave judgment for the employee.[1] On the other hand, the question was answered in favour of the employers where a leading lady in an opera company was unable to appear for a month, and a substitute had to be found, the Court holding that her failure "went so much to the root of the consideration as to discharge the defendants."[2]

3. DISOBEDIENCE OR NEGLECT. Whether disobedience in an employee justifies a dismissal without notice depends upon whether the order disobeyed was one which the employer was entitled to give under the terms of the engagement.[3]

The question as to what degree of rudeness or insolence justifies a dismissal is one of fact to be determined in each case according to the particular circumstances. Thus it has been held that a single instance of insolence in the case of a servant in such a position as a newspaper dramatic critic would not justify dismissal.[4] The general canon which the Court attempts to apply in each case is whether the insolence was of such a kind as to be incompatible with the continuance of the relation of master and servant, but as has been pointed out, "rudeness (or insolence) is an uncertain term, and persons may differ as to what is rudeness."[5]

Although as a normal rule[6] neglect must be habitual neglect to justify dismissal without notice, yet a simple

[1] Storey *v.* Fulham Steel Works Co (1907), 24 T L R 89
[2] Poussard *v.* Spiers & Pond (1876), 1 Q.B D 410.
[3] Price *v.* Monat (1862), 11 C.B. 508; Turner *v.* Mason (1845), 14 M. & W. 112
[4] Edwards *v* Levy (1860), 2 F. & F. 94.
[5] Smith *v.* Allen (1862), 3 F. & F. 157 N.P.
[6] See Jupiter General Insurance Co., Ltd. *v.* Shroff (Ardeshir Bomanje), [1937] 3 All E.R. 67.

act of forgetfulness may in certain circumstances amount to that requisite degree of negligence.[1] An instance where a single act of forgetfulness might be clearly a ground for dismissal without notice would be that of a railway signalman who omits to put the signal at "danger."

Absence from work without due cause is only an instance of neglect. The proper course in such cases is either dismissal or a claim for damages without rescinding the contract. Where a firm had suspended for a day an employee engaged on a fortnightly agreement who had absented himself without cause for a day, it was held that the firm had not a right to suspend him and prevent him from earning wages.[2]

3. MISCONDUCT. What degree of misconduct justifies dismissal without notice is a question of fact. The test is "Does the misconduct interfere with the business of the employer or with the ability of the employee to perform his duties under his service contract?"[3] Instances where the question has been answered in the affirmative are that of the manager of a limited company accepting commission on the insurance of the company's premises which it was part of his duties to arrange,[4] and that of a merchant's clerk speculating in "differences" on the Stock Exchange.[5] Misconduct outside the service may or may not justify dismissal under this test according to the circumstances. It is not enough for an employer to believe that the misconduct has occurred; it must be capable of proof.[6] But misconduct discovered after the dismissal will justify the dismissal, although the original grounds were not proved.[7] This decision should be compared with

[1] See Baster *v* The London and County Printing Works, [1899] 1 Q B 901

[2] Hanley *v* Pease and Partners Ltd, [1915] 1 K B 698

[3] Clouston *v* Corry, [1906] A C 122, Hands *v* Simpson, Fawcett & Co, Ltd (1928), 44 T L R 295

[4] Swale *v* Ipswich Tannery (1906), 11 Com Cas 88

[5] Pearce *v* Foster (1886), 17 Q B D 536, Tomlinson *v* L M S Rly. Co, [1944] 1 All E R 537

[6] Parsons *v* L C C (1893), 9 T L R 619

[7] Boston Deep Sea Fishing Co *v* Ansell (1885), 38 Ch D 339.

another,[1] where it was held that in dismissal under such circumstances, any portion of salary which had accrued due before the discovery of the misconduct justifying the dismissal must be paid to the dismissed employee.

Where an employee is properly dismissed without notice, he cannot recover *pro rata* for the period during which he has worked subsequently to the date when his wages last fell due.[2] But, where such dismissal has taken place without proper cause, the damages need not be limited to the amount of wages that would have been payable in lieu of proper notice,[3] although where the agreement provides that the employer could dismiss by giving two months' notice or two months' salary in lieu of notice, it was held that the dismissed employee was not entitled to more than two months' salary merely because the dismissal was wrongful.[4] If the dismissed employee could have obtained employment of an exactly similar kind which any reasonable man would have accepted, only nominal damages will be awarded,[5] and damages cannot in any case include any amount by way of compensation for the employee's injured feelings or for loss arising from the fact that the dismissal makes it harder for him to obtain fresh employment.[6] But no deduction from the damages may be made in respect of income tax for which the employee would have otherwise been liable.[7]

Where it is the employee who improperly terminates the contract without notice the employer has a right to damages,[8] and the employee is not entitled to any wages

[1] Healey *v.* Société Anonyme Française Rubastic, [1917] 1 K.B. 946.
[2] Ridgeway *v.* Hungerford Market Co. (1838), 4 L.J., K.B. 157; Turner *v.* Robinson (1833), 2 N. & M. 829.
[3] Alan *v.* Jones (1890), 25 Q.B.D. 107.
[4] Baker *v.* Darkera Ashanti Mining Corporation (1904), 20 T.L.R. 37; Austwick *v.* Midland Railway (1909), 25 T.L.R. 728.
[5] 1 Cab. and E., 281; Brace *v.* Calder, [1895] 2 Q.B. 253. The plaintiff can be ordered to give particulars of his employments since dismissal, cf. Monk *v.* Redwing Aircraft Co., [1942] 1 K.B. 182.
[6] Addis *v.* Gramophone Co., [1909] A.C. 488.
[7] Fairholme *v.* Firth & Brown, Ltd. (1933), 149 L.T. 332.
[8] Hittman *v.* Boulnois, 2 Car. & P. 510; Bowes *v.* Press, [1894] 1 Q.B. 202.

pro rata for the time worked since the date when wages were last due. Thus, where a painter, engaged by the week from a Saturday and at one week's notice, left on a Friday without notice, he was disallowed any portion of wages for the five days of the broken week,[1] while, on the other hand, where the agreement provided for 14 days' notice on either side and wages to be paid fortnightly but for these to be ascertained daily according to the work performed, and the employee having worked four days in a certain fortnight refused to continue, he was held entitled to wages for the four days because they were earned daily.[2]

Suspensions and "Short Time." If the contract contemplated the incidence of "short time" and suspensions, the procedure must be in accordance with the contract, e.g. if the agreement on this point was solely by reference to the custom of the industry or to the shop rules, and that custom or those rules were to the effect that there should be no notice of termination on either side, then the employee can be "stood off" or put on shorter hours without notice. If, however, when the agreement was made, these contingencies were not in view, the usual notice of termination would be required, failing waiver on the part of the employee.

Other Circumstances Determining the Contract. In addition to the termination of the contract by notice or summary dismissal, there are other circumstances which also have the effect of terminating the contract. Thus the contract is dissolved by the death of either employer or employee, the contract of service being of the kind to which personal considerations are fundamental.[3]

The voluntary winding-up of a company does not operate as a discharge of its employees, because there is no change in the personality of the employer.[4] But where

[1] Saunders *v* Whittle (1876), 33 L T 816
[2] Parkin *v* S Hetton Coal Co (1907), 98 L T 162
[3] Farrow *v* Wilson (1869), L R , 4 C P 774
[4] Midland Counties District Bank *v* Attwood, [1905] 1 Ch 357

there is a compulsory winding-up, the opposite is the case. And it follows from this that if the employee of a company which is compulsorily wound up works on and the company is taken over and he is discharged, he cannot recover damages for wrongful dismissal,[1] even though he should be employed by the liquidator in analogous work, with a view to the company's reconstruction.[2]

Where the contract is determined by reason of the winding-up, the employee has a right in damages. Thus, in the case of the liquidation by order of a company whose articles provided for a certain sum to be paid to the manager in the event of his dismissal, the manager was held entitled to that sum;[3] and, similarly, in the case of voluntary winding-up and even though the employee assented to or approved the winding-up proceedings.[4] A person engaged on a commission basis simply for a period of three years can claim for the rest of the period,[5] but where the engagement is on a fixed salary plus commission basis, it does not seem that the loss of commission will be taken into account.[6]

In the event of bankruptcy of the employer, or, where the employer is a limited company, of a winding-up of the company, the following must be paid in priority to all other debts: the wages or salary of a clerk or servant up to £50 in respect of work during the four months before the date of the receiving order, and the wages of a labourer or workman up to £25 in respect of work during the two months before the date of the order.[7]

Duty of an Employee to Obey. It is the duty of the employee to obey all orders which the employer can properly give under the terms of the contract of service. The employer is entitled to give orders not only as to the

[1] Reid *v.* Explosives Co. (1887), 19 Q.B.D. 264.
[2] *Re* Oriental Bank Corporation (1886), 32 Ch.D. 366.
[3] *Re* London and Scottish Bank (1870), 9 Eq. 149.
[4] *Re* Imperial Wine Co., 14 Eq. 417; Fowler *v.* Commercial Timber Co., Ltd., [1930] 2 K.B.
[5] *Re* Patent Floor Cloth Co. (1872), 41 L.J. Ch. 476.
[6] *Re* English and Scottish Marine Insurance Co. (1870), 5 Ch. 737.
[7] Sect. 33 *Bankruptcy Act*, 1914; Sect. 264 *Companies Act*, 1929.

nature of the work to be done, but as to the manner of its performance. An order which involves immediately threatening danger by violence or disease to the person of the employee is, however, not lawful.[1] Any dispute as to whether an order is one which must be obeyed or otherwise, is a question of fact.

Extent of Employer's Duty to Provide Work. What is the extent of the obligation of the employer to provide the employee with work? In industry we can leave out of account for the most part the class of cases where it will be inferred that the employee entered into the contract because of certain advantages inseparable from the actual performance of the work as well as for the sake of the stipulated remuneration, as e.g. certain theatrical contracts which carry with them a publicity value for the actors sufficient to operate as a material inducement to enter into the contracts.

The material distinction, apart from that drawn above, is whether the earning of the remuneration depends upon the provision of work or not. Thus, a firm of shirt manufacturers engaged a man as agent, canvasser, and traveller for five years on a commission basis. Two years later, in consequence of the outbreak of fire, the firm closed down. They were held bound to provide work for the rest of the period.[2] Where, on the other hand, a firm of cotton merchants engaged a representative salesman at a yearly salary, and failed to provide him with work, it was held that they were not bound to provide work.[3] There is no implied term in a contract so wide as to prevent the employer using the services of an efficiency expert to "time study" and suggest savings, even though this prevents the employees concentrating on their work.[4]

[1] Bouzourou *v.* Ottoman Bank, [1930] A.C. 271.

[2] Turner *v.* Goldsmith, [1891] 1 Q.B. 544; Collier *v.* Sunday Referee Publishing Co., [1940] 2 K.B. 647; Titmus *v.* Rose & Watts, [1940] 1 All E.R. 599.

[3] Turner *v* Sawdon, [1901] 2 K.B. 653.

[4] Davies *v.* Richard Johnson & Nephew, Ltd (1934), 51 T.L.R. 115

Giving a "Character." An employee cannot sue his employer for refusing to give him a character,[1] but if the employer does give a character, he must not state anything but what *bona fide* he believes to be true. A character thus given is "privileged;"[2] in other words, the employer giving it is protected in any defamation proceedings, even though the character is, in fact, a false one. But the privilege is a qualified privilege, that is to say, if the employee proves that there was malice underlying the action of the employer, the privilege disappears, and the employer will be liable in damages. The privilege is also limited in the sense that the character is not privileged from production, but is privileged only in an action for defamation.[3] If the employer, having given a good character, afterwards finds that it was undeserved and informs the new employer, this communication is also privileged.[4] Where an employer volunteers to give a character without being asked, stronger evidence will be required of his *bona fides* than where he gives a character on request.[5] A character which belonged to the employee before his entering the employer's service may be endorsed by the employer with a statement to the effect that the employee was unsatisfactory when in his service,[6] but any malicious defacement of such a document by an employer will render him liable to pay substantial damages.[7]

In addition, an employer who knowingly gives a false character may be sued by the new employer, although he may not have intended to injure the latter;[8] and the giving of a false character is an indictable offence under the Servants' Characters Act, 1792,[9] even though it is given orally.[10]

[1] Carol *v.* Bird (1801), 3 Esp. 201.
[2] Fountain *v.* Boode (1842), 3 Q.B. 5; Jones *v.* Thomas (1885), 53 L.T. 678.
[3] Webber *v.* East (1880), 5 Ex. D. 108.
[4] Gardner *v.* Slade (1849), 13 Q.B. 796.
[5] Pattison *v.* Jones (1828), 8 B. & C. 586.
[6] Taylor *v.* Rowan (1834), 7 Car. & B. 70.
[7] Wennhak *v.* Morgan (1888), 20 Q.B.D. 635.
[8] Foster *v.* Charles (1830), 7 Bing. 105.
[9] 32 *Geo. III, Ch.* 56.
[10] R. *v.* Costello, [1910] K.B. 28.

Restraint of Trade. An agreement in restraint of trade is an agreement "whereby the individual liberty of action is interfered with and controlled." Examples are often found in employment contracts in clauses wherein the employee agrees that on the termination of his employment he will not carry on the same business within a certain radius.[1] To be valid, such an agreement must not impose a wider restraint than is really necessary for the protection of the party imposing the restraint. It must also be supported by a legal consideration of value, although when there is such consideration the Court will not inquire as to its adequacy.[2] The *onus probandi* in general rests on the party seeking to avoid the agreement; if he is of sufficient age for business capacity, he must show that the covenant goes beyond what is reasonably necessary.[3]

Whether a restriction of this kind is reasonably necessary is a question of law for the judge, not of fact for the jury.[4] By protection of an employer in this connection is meant protection of his trade secrets and of his business connection.[5]

It follows that where a covenant appears to be framed with the object of preventing *all* competition by the late employee quite irrespective of the amount of risk to the employer's business secrets or connection, it will be held invalid. In deciding the issue, the Court will bear in mind the distinction between objective knowledge on the one hand, like trade secrets and names of customers, which are the employer's property and as to which there is no rule of public policy preventing a restriction of their transfer against the employer's will, and, on the other, subjective qualities like a man's aptitudes, skill and ability, and general knowledge of the trade, which are

[1] Nordenfelt *v* Maxim Nordenfelt Guns and Ammunition Co., [1894] A C 535
[2] Gravely *v* Barnard (1874), 18 L R Eq 518
[3] Haynes *v* Dorman, [1899] 2 Ch. 13
[4] Dowden & Pook, Ltd., *v* Pook, [1904] 1 K B 45
[5] Dewes *v* Fitch, [1920] 2 Ch 159

the employee's own property, and which no rule of public interest compels the employee to leave dormant or sterile.[1] Again, while a person will be prevented from using knowledge dishonestly and surreptitiously obtained while in the employment of another, no obligation is implied in an employment contract not to use knowledge honestly acquired.[2] And, while an employee may not, as long as his employment lasts, solicit orders from his employer's customers, he may do so after he leaves the employment.[3]

In the following cases, the agreement was upheld as reasonable—

A manager to a firm of manufacturers of brewing materials agrees not to carry on that business for five years in any part of the world.[4]

A clerk and foreman to a firm of straw merchants agrees not to carry on that business in the United Kingdom, France, Belgium, Holland, and Canada—these being countries with which the employers traded—for a period of 12 months.[5]

A travelling salesman to a London oil firm agrees that he will not carry on that business for a year within 8 miles of the General Post Office.[6]

In the following cases the Courts ruled that the agreement was void—

A cutter to a firm of tailors at Weybridge agrees not to enter into any arrangement interfering with his employer's business at Weybridge, London, or any of their addresses in future for five years.[7]

A manager to a firm of aerated water manufacturers carrying on a trade mainly in the South of England, but having a few customers elsewhere in the United Kingdom

[1] Morris & Co. *v.* Saxelby, [1916] A.C. 688; Triplex Safety Glass Co. *v.* Scorah, [1938] 1 Ch. 211; Worsley & Co. *v.* Cooper, [1939] 1 All E.R. 290

[2] United Indigo Chemical Co., Ltd. *v.* Robinson (1931), 49 R.P.C. 178.

[3] Wessex Dairies *v.* Smith, [1935] 2 K.B. 80.

[4] White, Tompkins and Courage *v.* Wilkins, 23 T.L.R. 469.

[5] Underwood *v.* Barker, [1899] 1 Ch. 300.

[6] Middleton *v.* Brown (1878), 47 L.J. Ch. 411.

[7] Beetham *v.* Fraser (1904), 21 T.L.R. 8.

and abroad, agrees that he will not for five years carry on that business in any part of the world. *Held* that the area was wider than necessary to protect the company's business.[1]

A traveller to a firm of brewers agrees "not to solicit orders for Burton ale for two years." *Held* void because unlimited as to area [2]

A traveller to a firm of builders' merchants carrying on business at two centres agrees not to carry on the same trade within 30 miles of either. These circles overlapped. *Held* that the language of the agreements could not be construed as constituting two separate areas, and that the area was not severable and was too wide.[3]

Where a covenant in restraint of trade goes beyond what the law would regard as valid, it is possible under certain circumstances to effect a severance, i.e. to obtain sanction for as much of the restriction as the law would consider a necessary protection without having the entire covenant pronounced void. Severance is permissible where the covenant is not really a single covenant, but is, in effect, a combination of several distinct covenants, and the severance can be carried out without the addition or alteration of a word. In other words, a contract can be severed if the severed parts are independent of one another, and can be severed without the severed part affecting the meaning of the part remaining; whether they are independent in this sense or not depends upon the language of the document.[4]

Nor will a covenant be considered wholly void because it is wide enough to cover possible cases which would be unreasonable, but which are not within the contemplation of the parties, provided the covenant is so worded as to be divisible.[5] This principle will be enforced against an infant as well; the void stipulations if severable will

[1] Dowden and Pook, Ltd *v* Pook, [1904] 1 K B 45
[2] Allsopp *v* Wheatcroft (1872), L R, 15 Eq 59
[3] Hooper *v* Willis (1906), 94 L T 624
[4] Attwood *v* Lamont, [1920] 3 K B 571
[5] Haynes *v* Dorman, [1899] 2 Ch 13

be disregarded, and the contract will be binding if it is for his benefit.[1] But a contract must not be drawn up in vague terms with a view to obtaining the advantages of a severance if the occasion arises; thus a covenant to restrain "so far as the law allows" was held void.[2]

A covenant not to "set up or become interested in" a business is distinguished from a covenant not to "be engaged" or "be concerned" in the business. Thus, where an employee made a covenant in the former terms and entered into a similar business merely as a shop assistant at a fixed weekly wage and otherwise without any interest in it, it was held that the covenant was not broken,[3] but a covenant in the latter terms excludes the covenantor from entering the prohibited business as a servant.[4] And a covenant "not to interfere with, prejudice, or in any manner affect" a certain business was held not to have been broken by the employee setting up a rival business, so long as he did not solicit the other's customers.[5]

A covenant in restraint of trade is binding on the employee in his relations not only with his late employer, but with anyone else who takes over the business from his late employer. It forms part of the goodwill of the business and passes to the purchaser of that goodwill and of the beneficial interest, who thereupon has a right of action in the event of breach.[6]

An employer who wrongfully dismissed an employee cannot then claim the benefit of a restrictive covenant against the latter, if the latter engages in business in an area prohibited by such covenant. The dismissal is a repudiation of the whole contract, and the restrictive covenant comes to an end with the contract itself.[7]

Employees' Inventions. It does not follow that because

[1] Bromley *v* Smith, [1909] 2 K.B 235
[2] Davies *v.* Davies (1887), 36 Ch.D 359
[3] Gopher Diamond Co *v.* Wood, [1902] 1 Ch. 950.
[4] Cade *v.* Calfe (1906), 22 T.L R. 243
[5] Reeve *v.* Marsh (1906), 23 T.L.R. 24.
[6] Jacoby *v* Whitmore (1883), 49 L T. 335.
[7] General Billposting Co. *v* Atkinson, [1909] A C 118.

an employee has made an invention in his employer's time or by using the employer's materials the invention is the employer's property, so as to prevent the employee taking out a patent for his own benefit. The question whether such patent rightfully belongs to the employer depends on whether the employee has, in taking out such a patent in his own name, been guilty of a breach of that good faith which should be implied as an obligation under his employment contract.[1]

But the Courts will uphold a contract freely entered into by the employee under which any invention conceived by him in the course of the employment shall be the property of the employer.[2]

Contracts by Employees. An employer is liable on any contract made by his employee acting under his authority.

Such an authority may be an express authority. It does not matter if the employee is himself under a disability (e.g. if he is under age); the authority will bind the employer. On the other hand, an employee cannot make a contract on behalf of a company which is not yet formed, even though the company comes into existence before the time for performance of the contract and ratifies it.

The authority, if not express, may be implied. An implied authority arises (*a*) where the employer has by his conduct made it appear that he has authorized the employee to make the contract and has not revoked it; (*b*) where the making of the contract naturally falls within the employee's duties, having regard to the employee's position and the nature of the contract. As to (*b*) an employee who holds the post of manager of a business has, unless the contrary be shown, authority to do everything necessary to the conduct of that business.[3] And provided that the contract is one which it falls within the employee's

[1] Worthington Pumping Engine Co *v* Moore (1902), 19 T.L.R 84, Triplex Safety Glass Co *v* Scorah, [1938] 1 Ch 211

[2] Edisonia, Ltd *v* Forte (1908), 25 R.P.C 456, Reid & Sigrist, Ltd *v* Moss (1932), 49 R P C 461

[3] Fern *v* Harrison (1790), 3 Term Rep 757, and cf Cox *v* Midland Railway (1849), 3 Ex 268, Walker *v* G W.R (1867), 2 Ex 228

duties to make, the employer will still be liable even though the employee made it with fraudulent intent and with the object of depriving his employer of the benefit of it.

It follows from the above that the employee will be liable on a contract he makes on behalf of his employer if he makes it without the authority of the latter, express or implied. This liability is not altered, even though the employee was misled into thinking he had such authority,[1] but it disappears if it is shown that the other party knew that the employee had not the authority or that the employer disclaimed such authority. The employee is also liable if he does not disclose to the other party that he is contracting on his employer's behalf.[2] Again, a trade custom may impose liability on the employee, and in the following three special cases the employee is liable, viz. (*a*) on a deed executed by the employee in his own name,[3] (*b*) on a bill of exchange signed by the employee in his own name, unless it is clear on the face of the instrument that he signs merely on his employer's behalf,[4] and (*c*) on any contract signed by the employee of a limited company and omitting from the name of the company the word "limited" or otherwise failing to give the company's name correctly.[5]

Torts by Employees. The general rule is that the employee is liable for torts committed by him, and the employer is jointly liable for any such tort if committed by the employee while acting with the authority of his employer express or implied.

As regards express authorizations, it is not necessary that the act complained of should have been so authorized —it is sufficient if it follows as a natural and probable

[1] Collen *v.* Wright (1857), 8 E. and B. 647; Starkey *v* Bank of England, [1903] A C. 114.
[2] Saxon *v.* Blake (1861), 29 Beav 438.
[3] Chapman *v.* Smith, [1907] 2 Ch 97
[4] Sect 26, *Bills of Exchange Act*, 1882; Elliott *v.* Bax-Ironsides, [1925] 2 K B 301.
[5] Sect. 93, *Companies Act*, 1929.

consequence of an act so authorized, e.g. where a workman was instructed by his employer to lay down rubbish on a road, but by gravitation this slid on to private land, the employer was held liable.[1]

Where an implied authority is alleged, the main question that arises for consideration is very similar to that which arises in cases of compensation for accidents, viz. was the act complained of one that was done by the employee strictly in the course of his employment? If so, the employer's authority will be implied, and the liability in tort will attach to the employer. The application of this principle is illustrated in the following instances[2]—

A coachman without his employer's knowledge takes out a cart loaned to his employer. The cart is damaged in a collision through the negligence of the coachman. *Held*, employer not liable [3]

A wine merchant sent his clerk and vanman to deliver wine. The latter, instead of returning at once after delivering the wine, made a deviation for their own purposes and during this deviation an accident occurred. *Held*, employer not liable.[4]

A brewer's vanman without his employer's authority took out the van for his own purposes, but on returning called to collect some empty barrels belonging to his employer, and then an accident occurred by which a person was injured *Held*, employer not liable, because the main purpose of the journey was not in the course of the employment [5]

An omnibus conductor, finding the driver late in returning from his lunch, drove the omnibus and caused injury. *Held*, employers not liable.[6]

[1] Gregory *v* Piper (1829), 9 B and C. 591

[2] See also the following more recent cases—

Britt *v* Galmoye and Nevill (1928), 44 T L R 294, Aitchison *v* Page Motors, Ltd (1935), 154 L T 128, Davies *v* M W Shanly (Park Chairs No 1), Ltd (1936), 81 Sol Jo 59

[3] Sanderson *v* Collins, [1904] 1 K B 628

[4] Storey *v* Ashton (1869), 4 Q B 476

[5] Payner *v* Mitchell (1877), 2 Q B 354

[6] Beard and L G O Co, [1900] 2 Q B 530

An omnibus driver allowed a friend to drive the omnibus, and injury resulted. *Held* employers liable.[1]

A carter saw a boy touching a bag on the cart, and, thinking he was about to steal, struck him. The boy fell and was injured. *Held*, employer liable.[2]

A tram conductor saw a small boy having a free ride on the back of the tram and beat him so severely that the boy fell and broke his arm. *Held*, employers not liable.[3]

A clerk, having washed his hands in the office lavatory, leaves the tap running, and injury is caused. *Held*, employers responsible.[4]

A firm's manager instructed one of the firm's drivers to drive him without telling him he was travelling on his personal business. An injury was caused, due to the driver. *Held* employer liable (because the manager's order was equivalent to that of the firm as far as the driver was concerned).[5]

A company secretary obtained money by forging share certificates of the company. In answer to a plaintiff's contention against the company that the secretary had authority to issue share certificates, *held*, employer not liable.[6]

An omnibus driver tried to block the way of a rival omnibus which was overtaking his own omnibus, and in doing so overturned the rival omnibus. Although it was proved that he had instructions from his employer not to race with or obstruct rival omnibuses, *held*, employer liable.[7]

Where an employee is allowed by his employer to work temporarily under the control of some other person or body not responsible to the employer, the employer will

[1] Ricketts *v.* Thos. Tilling, Ltd., [1915] 1 K.B. 644.
[2] Poland *v.* John Parr and Sons, [1927] 1 K.B. 237.
[3] Radley *v.* L.C.C. (1913), 109 L.T. 162.
[4] Ruddiman *v.* Smith (1889), 60 L.T. 708
[5] Irvin *v.* Waterloo Taxi-cab Co., Ltd., [1912] 3 K.B. 588; Canadian Pacific Rly. *v.* Lockhart, [1942] A.C. 591.
[6] Ruben *v.* Great Fingall Consolidation Co., [1906] A.C. 439.
[7] Limpus *v.* L.G.O.C. (1862), 32 L.T. Ex. 34; cf. Laycock *v.* Grayson (1939), 55 T.L.R. 698; Uxbridge Permanent Building Society *v.* Pickford, [1939] 2 K.B. 248.

not be liable for the employee's torts committed during such period—the employer's place being taken by that person or body, for the latter has the temporary control and direction of the employee's work.[1] For one kind of case where this principle has commonly to be applied, see pages 210–3.

Liabilities of Third Parties. Any wrongful act by a third party which causes an employer to lose the services of his employee gives, in general, a right of action to the employer. The two main exceptions are (*a*) the Common Law rule which precludes damages being awarded if the injury to the employee is fatal[2] (which rule is, however, subject to the Fatal Accidents Act, 1846, and the Law Reform (Miscellaneous Provisions) Act, 1934), (*b*) acts done in furtherance of a trade dispute (as to which, see pages 142, 156).

The wrongful act may be personal injury to the employee resulting in the physical incapacitation of the latter or interference with the contract of service resulting in the employee leaving his employment. It is important to remember that the rule in question relates only to injury arising from a recognized tort (e.g. assault;[3] running down,[4] giving dangerous drug[5]). Where the injury is not a tort, but only a breach of contract, different considerations arise, and the employer will only have a right of action if he was party to the contract, i.e. an action for damages in contract. Thus, where an employee was injured because the railway company in whose train he was travelling failed to carry out its duty of carrying him safely, the employer not being party to the contract was held to have no right of action;[6] but where an employee was injured through the negligence of a railway

[1] Britt *v* Galmoye and Nevill (1928), 44 T.L.R. 294. Donovan *v.* Laing, [1893] 1 Q.B. 629.
[2] Osborn *v* Gillett (1873), 8 Ex. 88. Clark *v* L.G.O.C., [1906] 2 K.B. 648.
[3] Gilbert *v* Schwenk (1845), 14 M. and W. 488.
[4] Martinez *v* Garber (1841), 3 M. and G. 88.
[5] Appleby *v* Franklin (1886), 17 Q.B.D. 93.
[6] Alton *v* Midland Railway (1865), 19 C.B. (N.S.) 213.

company, whose train collided with the train in which the employee was travelling, the employer was held to have a right of action against that company.[1]

With regard to unjustified interference by a third party with the contract of service, it is well to distinguish three classes of case—

1. Where the interference amounts to the procurement of a breach of contract.

2. Where the interference does not amount to the procurement of a breach of contract.

3. Where the interference is by several persons in combination.

With regard to (3), the reader is referred to pages 155-158. As to (1), any person who induces an employee to break his contract with his employer or an employer to break his contract with his employee commits an actionable wrong.[2] And it is equally actionable if a third party, even without having induced the breach, continues to employ a person after learning that he has broken his contract of service.[3]

With regard to (2), such cases arise when a third party induces an employer or employee to terminate or not to enter into a service contract. The test whether this is an actionable wrong in a given case or not is whether or not wrongful means were employed. A wrongful motive is not in itself a sufficient ground of action; in other words, in these cases a wrongful motive will not change an otherwise lawful act into an unlawful one.[4] Thus, a distinction is drawn between a warning and a threat. Where trade union officials advised the manager of an iron company to discharge certain shipwrights, it was held that the trade union officials had not committed

[1] Berringer *v* G.E. Railway (1879), 48 L.J.C.P. 400.

[2] Lumley *v.* Gye (1853), 2 E. and B 216; Read *v.* Friendly Society of Operative Stonemasons, [1903] 2 K.B. 703; Industrial Plastics *v.* Ferguson, [1938] 4 All E.R. 504.

[3] Blake *v.* Lanyon (1795), 6 T.R. 221; De Francesco *v.* Barnum (1890), 63 L.T. 514; Fred Wilkins & Bros. Ltd. *v.* Weaver, [1915] 2 Ch 234.

[4] Allen *v.* Flood, [1898] A.C. 118.

any actionable wrong, in the absence of evidence of breach of contract or of the exercise of unlawful means like intimidation, coercion, or conspiracy; it is not necessarily coercion if an employer faced with two alternatives chooses that which is more beneficial to himself.[1] But where A, a wholesale butcher, lost one of his customers because union officials had threatened the latter that they would call out all his assistants if he bought meat from A, it was held that A had a good ground of action because of the intimidation;[2] and where officials of a union induced employers to discharge a non-unionist employee after 24 years' service, it was held that there was coercion and that the officials were liable.[3]

Interference with a contract of employment may be justifiable, and in that case there is a good defence to an action. One ground of justification is provided by statute, viz. the Trade Disputes Act, 1906 (see page 157). Other grounds of justification are: That the interference is done in the legitimate protection of trade interests,[4] or that the contract is inconsistent with a prior contract still subsisting.[5]

Moral grounds may also provide a justification,[6] but justification is not afforded by the belief that the plaintiff would be ultimately benefited by the interference[7] or the desire that a person should pay his debts.[8]

Employees' Belongings. There is no common law obligation, apart from contract, upon an employer to take reasonable steps to protect his employees' belongings from theft.[9]

[1] Allen *v.* Flood, (1898) A.C. 118, and cf. Santen *v.* Busnach (1913), 29 T.L.R. 214; Hutley and Simmons, [1898] 1 Q.B. 181; Hodges *v.* Webb, [1920] 2 Ch. 70.
[2] Quinn *v.* Leathem, [1901] A.C. 495.
[3] Valentine *v.* Hyde, [1919] 2 Ch. 129.
[4] Davies *v.* Thomas, [1920] 2 Ch. 189.
[5] Smithies *v.* National Association of Operative Plasterers, [1909] 1 K.B. 337.
[6] Brimelow *v.* Casson, [1924] 1 Ch. 302.
[7] S. Wales Miners' Federation *v.* Glamorgan Coal Co., [1905] A.C. 239; Camden Nominees *v.* Forcey, [1940] Ch. 352.
[8] Conway *v.* Wade, [1909] A.C. 516.
[9] Deyong *v.* Shenburn, [1946] 1 All E.R. 226.

Where, however, whether by express provision in the contract or under some statutory provision, e.g. under the Factories Act (see p. 72), the employer is bound to provide adequate accommodation for the employees' clothing, it appears clear that he would be liable if loss or damage arose through his failure to take reasonable care thereof.

CHAPTER III

STATUTE LAW CONCERNING WAGES

THE questions how much salary or wages an employer is to pay his employee, and how the salary or wage is to be paid are, in general, matters to be settled by agreement between the parties. They are among the provisions which go to make up the contract of service, and, in case of dispute, are capable of being proved in the same manner as other provisions of such contracts dealt with in the preceding chapter.

The present chapter is concerned with showing how this common law freedom of contract has been restricted in certain instances by statutes.

AMOUNT OF WAGES

Wages are regulated by statute in certain specified industries; of these the largest class are those in which Wages Councils (formerly called Trade Boards) have been established under the Trade Boards Act, 1909, as amended by the Trade Boards Act, 1918, and the Wages Councils Act, 1945.

The trades in which Wages Councils have been established are the following—

Aerated waters
Baking
Boot and floor polish
Boot and shoe repairing
Brush and broom
Button making
Chain
Coffin furniture and cerement making
Corset
Cotton waste reclamation
Cutlery
Dressmaking and light clothing
Drift nets mending
Flax and hemp
Fur
Furniture manufacture
Fustian cutting
General waste materials reclamation
Grocery and provisions
Hair, bass, and fibre
Hat, cap, and millinery
Hollow-ware
Jute
Keg and drum
Lace finishing
Laundry
Linen and cotton handkerchief and household goods and linen piece goods
Made-up textiles
Milk distributive
Ostrich and fancy feather and artificial flower
Paper bag

Paper box
Perambulator and invalid carriage
Pin, hook and eye and snap fastener
Ready-made and wholesale bespoke tailoring
Rope, twine, and net
Rubber manufacture
Rubber reclamation
Sack and bag
Shirtmaking
Stamped or pressed metal wares
Sugar confectionery and food preserving
Tailoring, retail bespoke
Tin box
Tobacco
Toy
Wholesale mantle and costume

WAGES COUNCILS

Wages Council Orders. The Minister of Labour and National Service may make an order establishing a wages council (a "wages council order") (*a*) if he is of opinion that no adequate machinery exists in a trade for the regulation of wages or (*b*) in pursuance of a wages council recommendation.

Wages Council Recommendations. An application for the establishment of a wages council may be made to the Minister in a trade by a joint industrial council, conciliation board, or similar body, or jointly by an organization of workers and an organization of employers which are wage negotiating bodies.

The Minister must refer the application to a Commission of Inquiry if satisfied that there are sufficient grounds for reference and after considering the written observations of workers and employees' organizations whose members might be affected or joint bodies of such workers' and employers' organizations.[1]

The Minister may also on his own initiative refer the question of establishing a wages council to a Commission of Inquiry.

A Commission of Inquiry is appointed by the Minister. It consists of one or two representatives of employers, the same number representing workers, and one to three independent persons of whom one is appointed by the Minister to be chairman. The Commission may make a recommendation to establish a wages council.[2]

[1] *Wages Councils Act*, 1945, Sects. 1 2.
[2] *Ibid.*, 2nd Sched.

The Minister may accept or reject a wages council recommendation. Before making a Wages Council Order he must publish notice of his intention and allow 40 days for objections to be lodged. After consideration of the objections, he may make the Order as drafted or modify it or publish an amended draft or refer the matter to a Commission of Inquiry.[1]

A similar procedure governs an order by the Minister to abolish or to vary the scope of a Wages Council.[2]

Constitution of Wages Councils. A Wages Council is appointed by the Minister. It consists of employers and workers' representatives in that trade in equal numbers and one to three independent persons of whom one is appointed by the Minister to be Chairman.[3]

The Minister may also establish a central co-ordinating committee in relation to two or more Wages Councils. The composition of such a Committee follows the same lines as that of a Wages Council.[4]

Functions of Wages Councils. A wages council has power to submit to the Minister "wages regulation proposals"—i.e. for fixing the remuneration to be paid, either generally or for any particular work, to all or any of the workers in the trade, including holiday money, and for requiring all or any such workers to be allowed holidays.

Wages regulation proposals for requiring workers to be allowed a holiday may not be made unless both holiday remuneration and remuneration other than holiday remuneration have been or are being fixed by the Wages Council and must provide for the duration of the holiday being related to the duration of the period employed.

Before submitting wages regulation proposals, a council must publish notice of the proposals, and consider written representations.

The Minister must either make a Wages Regulation

[1] *Wages Councils Act*, 1945, Sect. 5.
[2] *Ibid.*, Sect. 6
[3] *Ibid.*, 1st Sched
[4] *Ibid.*, Sect 8

Order giving effect to the porposals or refer them back to the Wages Council for reconsideration and resubmission.[1]

Rates fixed by a Wages Regulation Order are the statutory minimum that may be paid. Terms of service contracts providing for the payment of less rates take effect as if they were replaced by the statutory minimum rates, and similarly, conditions as to payment of holiday pay are replaced by the conditions set out in the Order. Failure to comply renders an employer liable for each offence to a fine, maximum £20.

The minimum rates must be paid clear of all deductions other than deductions for Income Tax and National Insurance; statutorily authorized deductions to a superannuation scheme; deductions, at the written request of the worker, for a superannuation scheme or thrift scheme or any purpose in which the employer has no beneficial financial interest; or deductions authorized by the Truck Act, 1896, for fines, damaged work, or working materials.[2] Wages regulations orders may authorize specified benefits provided in pursuance of the terms of employment to be reckoned as payment of wages and defining the value at which any such benefits are to be reckoned.[3] A wages council may grant permits authorizing lower rates in the case of workers physically incapable of earning the statutory minimum rates.[4]

Records and Notices. The employer must keep records to show whether the Act is being complied with and the records shall be retained by the employer for three years. The employer must post notices prescribed. An employer failing to comply with any of these requirements is liable on summary conviction to a fine not exceeding twenty pounds.[5]

Where a minimum piece-work rate is laid down by the Wages Council, the employer cannot avoid paying this

[1] *Wages Councils Act*, 1945, Sect 10.
[2] See page 44
[3] *Ibid*, Sect 13
[4] *Ibid*, Sect. 12.
[5] *Ibid*, Sect 15

by not supplying sufficient work to enable a worker to earn it.[1]

An employer may not receive any payment by way of premium in respect of an apprentice to whom a minimum rate fixed by the Wages Council applies (except payments made under an apprenticeship agreement not later than four weeks after the commencement of employment). Penalty, fine £20.

Other Industries. There are other Wages Boards set up under enactments relating to particular trades. Such are the Road Haulage Wages Board (set up under the Road Haulage Wages Act) and the Wages Boards for various branches of the catering trade (set up under the Catering Wages Act).

TRADE UNION AGREEMENTS

In districts where there are "recognized terms and conditions" an employer is bound to pay wages and abide by other conditions of service which are not less favourable to the worker than the "recognized terms and conditions."

This obligation arises from the Conditions of Employment and National Arbitration Order, 1940, which provides that, where, in any trade or industry in any district, there are in force terms and conditions of employment which have been settled by machinery of negotiation or arbitration, to which the parties are organizations of employers and trade unions representative respectively of substantial proportions of the employers and workers engaged in that trade or industry in that district, all employers in that trade or industry in that district must observe the recognized terms and conditions or such terms and conditions of employment as are not less favourable than the recognized terms and conditions.[2]

As this is an overriding obligation, any condition in a

[1] Nathan *v* Gulkoff & Levy, Ltd., [1933] Ch 809, 149 L T 424.

[2] Conditions of Employment and National Arbitration Order, para 5 (1), S R. & O , 1940, No 1305

private contract of service which is repugnant or inconsistent thereto must be regarded as invalid.

MANNER OF PAYING WAGES

Coming to the question "how wages are to be paid," we find that the employer's freedom to choose different ways of remunerating the employee is restricted by the statutes relating to truck which, unlike the Wages Councils Act, 1945, do not single out individual industries for their operation, but cover industry generally.

Truck legislation covering industry in general comprises in all four statutes, viz. the three Truck Acts of 1831, 1887, and 1896 respectively, and the Shop Clubs Act, 1902.[1]

The Truck Acts of 1831 and 1887 deal with the question of payment of wages otherwise than in money, the Truck Act, 1896, with fines, and deductions for bad work or for supply of working materials, the Shop Clubs Act with compulsory membership of works' societies.

Any service contract providing for the payment of any part of the wages otherwise than in the current coin of the realm is illegal, and, similarly, any contract containing a stipulation as to the place or manner in which any part of the wages is to be spent.[2] All wages must be paid in coin, and the employee has the right to recover the amount of wages not so paid.[3] The employer cannot dismiss the employee for not spending these wages in some agreed way. An employee cannot be sued for payment for goods bought at any shop in which his employer has an interest.[4]

These are general provisions, the exceptions to which will appear later.

[1] The *Hosiery Manufacture (Wages) Act*, 1874, also relates to truck. It applies to the hosiery manufacturing trade and prohibits deductions, contracts to stop wages, and contracts for frame rents and charges, and imposes penalties for such contracts, for deductions (other than deductions for bad or disputed workmanship), and for improper use of frames by employees.

[2] *Truck Act*, 1896, Sects. 1, 2.

[3] *Ibid.*, Sects. 3, 4.

[4] *Truck Amendment Act*, 1887, Sect. 5.

There must be a contract of service, express or implied.[1] Where such a contract is in writing, however, evidence will be admitted of any collateral verbal arrangement. Thus, where an employee entered into a written agreement on engagement laying down a fixed rate of wages, and it was at the same time agreed orally that he should be given a certain quantity of cider each day in part payment of wages, proof of the verbal arrangement was admitted and an offence against the Acts found.[2] Nor is it necessary to prove that the actual payment in goods is the result of the contract or understanding; the mere payment is enough, even if the employee had the option of receiving cash or goods.[3]

The class of employees to whom the Acts apply are all persons engaged in manual labour under a service contract (other than domestic or menial servants).[4] The test is: Is the manual labour the real and substantial part of the employment, or is it merely accessory and incidental to the real employment?[5] But it must be in substance an agreement for personal service. A person who contracted to do a certain quantity of work which he could not perform without employing others was held to be outside the Acts.[6] Thus, women clippers, who were employed by a lace factory to work at home, and were entitled to give the work out for others to do or to return it undone, being responsible for its non-return and being paid weekly, were held to be outside the Acts on the ground that the employers did not have the right to require their personal work.[7] On the other hand, in the case of a man employed by a coal and iron company, whose personal labour and skill was of the essence of the contract, although part of his work was piece-work which he could

[1] Kemp *v* Lewis, [1914] 3 K B 543
[2] Jones *v* Wasley (1902), 18 T L R 418
[3] Wilson *v* Cookson (1863), 13 C B, N S 496
[4] *Truck Amendment Act* 1887, Sect 2
[5] Bound *v* Lawrence, [1892] 1 Q B 226
[6] Weaver *v* Floyd, 21 L.J. Q B 151
[7] Squire *v* Midland Lace Co, [1905] 2 K.B 448.

do at home or get others to do for him, the Acts were held to apply.[1]

The following persons have been held to be within the Acts—

A foreman or ganger working with his own hands, but superintending others and paid by commission.[2]

A foreman engaged in manual labour, but engaging and paying his own assistants.[3]

A seamstress working a sewing-machine and ironing materials.[4]

A "butty miner."[5]

An overlooker of looms spending half of his time in overlooking and half in manual labour.[6]

A motor-omnibus driver, who has to do necessary repairs to his vehicle when he is out with the vehicle.[7]

The Acts do not apply to the following—

A goods train guard, whose main duty is to look after his train, but who occasionally has to assist in loading and unloading.[8]

A man who contracts to sink a mine shaft at a fixed price per fathom.[9]

A tram-car driver.[10]

An omnibus conductor.[11]

The application of the general principle is apparent from particular instances. An employer may not contract to give, or give, beer or clothes or anything except cash in payment of wages, nor may he, instead of cash, supply a ticket enabling the employee to obtain goods at a shop,[12]

[1] Pillar *v* Llynvi Coal Co. (1869), 4 C P 752
[2] Whitely *v.* Armitage (1864), 13 W R 144
[3] Grainger *v.* Aynsley (1880), 6 Q.B D 182
[4] Maynard *v.* Peter Robinson Ltd. (1903), 89 L.T. 138.
[5] Brown *v* Butterley Coal Co (1885), 2 T.L.R 159.
[6] Leech *v.* Gartside & Co. (1885), 1 T.L.R. 391.
[7] Smith *v.* Associated Omnibus Co., [1907] 1 K.B. 916.
[8] Hunt *v.* Great Northern Railway, [1891] 1 Q.B 601.
[9] Marrow *v.* Flimby & Broughton Moor Coal and Fire Brick Co Ltd, [1898] 2 Q.B. 588.
[10] Cook *v* North Met. Tramways Co. (1887), 18 Q.B.D. 683.
[11] Morgan *v.* L.G.O C. (1883), 13 Q.B.D. 832.
[12] Athersmith *v.* Drury (1858), 7 W.R. 14.

even though the employer has no interest in the shop.[1] And an offence is committed when the employee voluntarily receives goods at a shop belonging to his employer, the price for which is deducted from his next week's wages.[2] An employer may, of course, give a present to an employee, provided it is in reality something over and above the agreed wages, but if such presents became so habitual that the employee came to regard it as a right, the question of their legality would immediately arise. In any co-partnership scheme, therefore, where the employee is given shares as a bonus it is essential under the law as it stands that they should be entirely independent of the agreed wages, and until such time as the legislature should expressly except such schemes from the operation of the Truck Acts, firms must make it one of the provisions of their scheme that the employee cannot claim any share as of right. Where a firm agreed with its workers that their wages of 22s. a week were to be paid 20s. in cash, and 2s. in shares of the company, the agreement was held to be void.[3] Nor where shares are agreed to be paid for by deductions is the agreement to pay for the shares severable from the illegal agreement as to the deductions so as to give the employer a claim for the amount of instalments unpaid.[4]

It is an offence under the provisions stated above to deduct from wages the amount of damages awarded the employer on account of the employee's breach of contract. Thus, where a miner wrongly absented himself from work and was ordered by the magistrates to pay the employers 30s. by way of damages by instalments, and the first instalment was deducted from his wages, the deduction was held illegal.[5]

The payment in cash must not be a colourable one,

[1] Finlayson *v.* Braidbar Quarry Co., 36 Jur. 647.
[2] Fisher *v.* Jones (1863), 13 C.B., N.S. 496.
[3] Glasgow *v.* Independent Printing Co., [1901] 2 I.R. 278
[4] Kenyon *v.* Darwen Cotton Manufacturing Co., Ltd., [1936] 2 K.B. 193.
[5] Williams *v.* North Navigation Collieries, [1906] A.C. 136.

but real. Where a journeyman brickmaker was supplied with beer value 3s. 10d. on credit at an inn belonging to his employer, and the employer handed the workman 4s., who handed it straight back and received 2d. change, and at the end of the week 4s. was stopped out of the wages, this was considered to be an evasion of the Acts, and the employer was convicted.[1] So also an agreement whereby the employee receives his wages in two envelopes, one the net wages, the other the amount deducted the latter of which is thereupon handed back to the employer.[2] The Acts are very specific on the point of evasions. "Any agreement, understanding, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect '. . . shall be and be deemed a contract'."[3]

A subsequent payment in cash, even if voluntary, does not purge a prior illegal payment.[4]

Payment in cash includes payment in bank notes or Treasury notes. Payment by cheque or order payable to the bearer on demand, and drawn upon a bank within 15 miles of the place where the cheque or order is to be paid, is also allowable if the employee in question consents.[5]

The penalties for contravening the Acts are, for the first offence, a sum not exceeding £10, for the second, £10-£20, for the third, a fine bringing the total fines to a sum not exceeding £100. An offence occurring within 10 days of a first offence is to be treated as a first offence; an offence occurring within 10 days of a second offence is to be treated as a second offence; and an offence occurring more than two years after a preceding offence is to be treated as a first offence. Further offences may be prosecuted under the Summary Jurisdiction Acts, the maximum fine being that prescribed for a second offence

[1] Gould *v.* Haynes (1889), 54 J P. 405
[2] Kenyon *v.* Darwen Cotton Manufacturing Co., Ltd. (*supra*).
[3] *Truck Act*, 1831, Sect. 25
[4] Fisher *v.* Jones (1863), 13 C B , N.S 501.
[5] *Truck Act*, 1831, Sect. 8.

(£10–£20).[1] A partner is not liable for the offence of his partner, but the partnership property is liable.[2] The employee can recover amounts illegally deducted for as far back as 20 years.[3] This rule is now subject to the provisions of the Truck Act, 1940 (see p. 48).

Exceptions. The exceptions from the provisions of the Truck Acts as above explained can be divided into five classes, each of which is subject to special rules[4]—

1. Deductions for goods to be used by the employee in his work.
2. Deductions for bad or negligent work.
3. Deductions for fines.
4. Deductions for medicine, medical attendance, fuel, provender for a beast of burden used in the employment, rent of a house let by the employer, food cooked and eaten on the employer's premises.
5. Deductions authorized by the employee.

1. These deductions are in respect of articles or materials of any sort used as a means to work, including tools, machines, working space, light, or heat, whether supplied by the employer or otherwise. These deductions can be made only if (*a*) there is an express written agreement by the employee that he will pay for such materials *or* a notice containing the terms of the contract is posted up so that all may be aware of it, and (*b*) the sum charged for such things as materials or tools does not exceed the actual or estimated cost to the employer, and the sum charged for the use of machinery, light, heat, and the like is fair and reasonable.[5]

While what is fair and reasonable is a matter which would have to be decided by the Court in the ultimate resort, the standard is quite definitely fixed by the statute as regards things which are purchasable outright, and it is clear from this standard that the employer is excluded

[1] *Ibid*, Sects. 9 and 10; *Truck Amendment Act*, 1887, Sect. 13.
[2] *Truck Act*, 1831, Sect. 13.
[3] Pratt *v.* Cook & Sons, Ltd., [1940] A.C. 437.
[4] See page 36 as to deductions in Wages Council trades.
[5] *Truck Act*, 1896, Sect. 3.

from making any profit whatever. If he obtained discount through purchasing in bulk, he must pass this on to the employees he supplies, e.g. he would not be entitled to pay any profit or retained discounts into a fund for the benefit of the employees generally.

2. A deduction for bad and negligent work or for injury to the materials or other property of the employer may be made only if (*a*) there is an express written agreement by the employee to such deductions being made on this account *or* a notice containing the terms of the contract is posted up, so that all may be aware of it, and (*b*) the deduction does not exceed the actual or estimated damage to the employer, and (*c*) the deduction is in respect of the default of the employee to be charged or of someone for whose work that employee has undertaken responsibility, and (*d*) the deduction is fair and reasonable, having regard to all the circumstances.[1] (But the Truck Act prohibition would not in any case apply where deduction for bad work is a factor agreed upon in the *calculation* of the wages: it applies only to deductions for bad work from *ascertained* wages.)[2]

It would appear that the rules at Common Law excluding damages for remoteness would apply here, and that the amount of damages that are deductible are limited to those which are the natural consequences of the default in question. And bearing in mind that the deduction must be fair and reasonable having regard to all the circumstances of the case, an employer is apparently given no power by this section to make deductions for a damage which the exercise of reasonable care and skill on the part of the employee could not have avoided.

3. A fine may be imposed upon an employee or deducted from his wages only if (*a*) there is an express written agreement to such fines by the employee, specifying the basis of calculating the fines, and the occasions justifying their being inflicted, and (*b*) the fine is in respect

[1] *Ibid*, Sect 2
[2] Sagar *v* Ridehalgh & Son Ltd, [1931] 1 Ch 310

of an act which is likely to cause damage or hindrance to the employer's business, and (*c*) the amount of the fine is fair and reasonable, having regard to the circumstances.[1]

While the deductions in respect of bad or negligent work, etc., referred to in (2) above, are by way of compensation to the employer for the actual damage he has suffered, fines are in contrast with these punishments designed to prevent the commission of faults which would do harm to the employer. Thus, where, in contravention of a factory rule enjoining "good order and decorum," some of the female workers danced during meal hours and created dust which was likely to do damage to the machines, it was held that a fine could be imposed.[2] Indeed, it is quite clear from the words "or likely to cause damage" used in the section that there is no intention to restrict the fine to the employer's actual loss. If a miner, in contravention of the rules of the pit, lit a cigarette in a part of his place of work where this was prohibited, he might legally be fined, if the provisions of the section in question are complied with, the rule being that where the object is prevention of harm, the amount of the fine must not be greater than is reasonably necessary to secure the object in view. And among the circumstances of the case that have to be taken into account in judging whether any fine is fair and reasonable must be reckoned the amount of wages to which the employee in question is entitled, and a fine which is large in comparison with the wages could hardly be justified.

4. An employer may supply an employee with medicine, medical attendance, fuel, provender for a beast of burden used by the employee in his employment, food cooked and eaten on the employer's premises, or a house, and may deduct the price or rent from his wages, the conditions being (*a*) that there shall be a written agreement by the employee to such deductions being made, and (*b*)

[1] *Truck Act*, 1896, Sect 1
[2] Squire *v* Bayer & Co, [1901] 2 K.B 299.

that the amount charged shall not exceed the real and true value of the thing supplied.[1]

Some of these exceptions have an increased interest at the present day, owing to the growth of welfare schemes among industrial firms. Thus, it is a practice among some firms which have established canteens to supply dinner tickets, the total amount of which is at the end of the week deducted from wages. This practice would seem to be governed by the above provisions; as regards condition (*b*) in particular, the view has been held that an employer may not make a charge for the use of cooking utensils, or firing, or a dining-room; in other words, that no proportion of the overhead or current expenses other than the actual cost of the food may be included in the charge. This view seems to involve a very strained interpretation of the words "real and true value," and does not on that account appear to be well-founded. Where the employer is obliged to make provision for welfare in his factory under a Welfare Order (see page 75), he may require no contribution from the employees unless the Minister of Labour approves and two-thirds of the employees have assented.[2]

As to rent, it has been laid down that this does not include damages for holding over, even if called rent.[3]

With regard to what is a written contract by the employee, it is not sufficient for the employee to sign his pay ticket on which the deduction has been entered.[4]

5. There is nothing to prevent an employee asking his employer to pay his wages or part of them to someone else. He may give such authority for one particular occasion or for a particular period, or as holding good until he revokes it, provided that the authority is in writing so as to be his written agreement. Thus, where a deduction was made from a miner's wages on account of

[1] *Truck Act*, 1831, Sect 23. As to supply of food, see Pratt *v* Cook & Sons, Ltd., [1940] A C 437.
[2] *Factories Act*, 1937, Sect. 46 (3).
[3] McFarlane *v.* Birrell (1888), 16 Rettie, (J.) 28.
[4] Hynd *v.* Spowart (1884), 22 Sc. L.R 702

contributions to a sick fund and an education fund without any written agreement, an offence was held to have been committed.[1] It should be noted that the ground for this rule is that "a payment made by an employer at the instance of a person employed to discharge some obligation of the person employed, or to place the money in the hands of some person in whose hands the person employed desires it to be placed, is a payment to the person employed as much as if the current coin of the realm had been placed in his or her hands."[2] But in any such case the money deducted must not be retained by the employer but passed to the third party: the rule has no application to a debt due from the employee to the employer himself.[3]

Therefore, where a deduction is made for a particular fund, say a works' "medical fund," and the amount is merely credited to that fund in the employer's books, and not actually paid to the doctor or the treasurer of the fund, there is no valid payment to the employee.[4]

Further, the present exception is subject to the provisions of the Shop Clubs Act, 1902. It may not be made a condition of employment that the employee shall discontinue membership of a friendly society or abstain from joining a friendly society other than the shop club or fund.[5] Further, it may not be made a condition of employment that the employee shall join a shop club or fund unless that club or fund is a registered friendly society, certified under the Shop Clubs Act.[6] In order to be so certified, the shop club or fund must be one that provides substantial benefits to which the employer is a contributor and must be of a permanent character

[1] Pillar *v* Llynvi Coal and Iron Co. (1869), 4 C.P. 752.

[2] This is a quotation from the judgment of Lord Herschell, in Hewlett *v.* Allen, [1894] A C. 383. The quotation holds good although the decision in that case in view of the circumstances has now to be read subject to the provisions of the *Shop Clubs Act*, 1902, and, it is submitted, would apply even to Wages Council trades (p. 33).

[3] Penman *v.* Fife Coal Co., [1936] A C. 45, 153 L.T. 261.

[4] *Ex parte* Cooper (1884), 26 Ch.D. 693.

[5] *Shop Clubs Act*, 1902, Sect. 1.

[6] *Ibid.*, Sect. 2.

without provision for a periodical share-out and the establishment of the club or fund must be desired by 75 per cent of the employees in question.[1] Its members must, upon leaving the firm, have the right to continue their membership, or, where the rules of the club admit, to have returned to them the amount of their respective shares of the funds actuarially determined.

These provisions do not apply to any superannuation fund or other society established in connection with a railway company to which the company is a contributor, and which existed at the passing of the Act.

The penalties for offences against the Act[2] are: For the first offence, a fine not exceeding £5, and for a subsequent offence occurring within a year of a previous conviction, a fine not exceeding £20. The same offence committed in respect of several persons at one time counts as one offence.[3]

The Schedule to the Act specifies the various matters which must be provided for in the rules of a club certified under the Act.[4]

The employee is entitled to receive particulars in writing of any fine or deduction for materials or for bad work at the time when the wages are paid.[5] The employer must, on demand, produce to any factory or mine inspector a copy of the contract under which such deductions are made, and give a copy to the employee; in addition, he must keep a register of all deductions made by him, and this register must be always open to inspection by a factory or mines inspector.[6]

Deductions illegally made can be reclaimed for as long as 20 years back. If, however, an employer has offended against Sect. 23 of the Truck Act, 1831, by paying any part of the wages in medicine, medical attendance, fuel, mining materials or tools, provender, housing accommodation, meals prepared and consumed on the employer's

[1] *Shop Clubs Act*, 1902, Sect 2
[2] *Shops Clubs Act*, Sect 5
[3] *Ibid*, Sect 4.
[4] *Ibid*, Schedule
[5] *Truck Act*, 1896, Sect 2.
[6] *Ibid*, Sect 6

premises, he is relieved from any claim in respect of any such offence committed before 10th July, 1940 (but not after).[1]

SUPPLY TO PIECEWORKERS OF PARTICULARS OF WAGES RATES

The occupiers of textile factories and certain others have duties under the Factories Act, 1937, as to the publishing of particulars of wages rates for piecework, with the object of enabling each pieceworker before undertaking a job to know exactly on what basis he will be paid. (For the definition of "textile factory" see Sect. 112 (6) of the Act.)

The detailed requirements in the case of textile factories are as follows[2]—

Each worker must be supplied with particulars of the rate of wages applicable to the work he has to do. In hosiery factories, however, and all others, excluding those in the worsted, woollen, and cotton trades, it suffices if they are exhibited on a placard in any room where the same particulars apply to all the workers in that room. In the case of weavers in the worsted and woollen (other than hosiery) and cotton trades, such placard must be exhibited in addition to particulars being supplied to each worker, the placard in the case of the cotton trade containing the basis of regulating the prices.

These particulars must be in writing and must be given out at the same time as the work. In addition, written particulars of the work to be done must be given to each worker at the same time, so far as they affect the amount of wages payable, unless they are ascertainable by an automatic indicator marked in the way laid down in the Act.[3]

The penalty for not complying with these requirements, for fraudulently using a false indicator, or, in the case

[1] *Truck Act*, 1940
[2] *Factories Act*, 1937, Sect 112
[3] *Factories Act*, 1937, Sect 116, and cf Nussey *v* Birtwhistle (1894), 58 J.P 735

of a workman, for fraudulently altering an automatic indicator, is a fine not exceeding £20, and if the contravention is continued, a fine not exceeding £5 per day. The penalty in the case of a workman for disclosing particulars for the purpose of divulging a trade secret is £20, and in the case of anyone else for endeavouring to obtain the disclosure of these particulars for a like purpose, is a fine not exceeding £100 or 3 months' imprisonment.

The Minister of Labour has power to apply these provisions with modifications to any class of non-textile factories or to any class of outworkers of whom lists have to be kept under the Factories Act, 1937, and Orders have accordingly been made and are applicable in the following industries. The provisions are in general in line with those described above for textile factories with alterations in detail, however, in some cases—

Textile workshops.[1]
Making of pens [2]
,, locks, latches, and keys [3]
,, chains, anchors and cart gear [4]
,, iron and steel cables and chains [5]
,, iron and steel anchors and grapnels [4]
,, cart gear.[4]
,, felt hats.[6]
,, and repairing of umbrellas, etc [6]
,, of artificial flowers.[6]
Fustian cutting.[6]
Making of tents,[6]
,, or repairing of sacks [6]
,, of rope or twine [6]
The covering of racquet and tennis balls.[6]
Making of paper bags [6]
,, boxes or other receptacles or parts thereof made wholly or partially of paper, cardboard, chip, or similar material.[6]
Making of brushes [6]
Relief stamping.[6]
Warehouse processes in the manufacture of articles of food, drugs, perfumes, blacking or other boot and shoe dressings, starch, blue, soda or soap.[6]

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[1] Home Office Order dated 2nd Sept., 1898.
[2] ,, ,, ,, 12th July, 1900.
[3] ,, ,, ,, 14th July, 1902.
[4] ,, ,, ,, 14th July, 1902.
[5] ,, ,, ,, 22nd April, 1903.
[6] ,, ,, ,, 23rd May, 1907.

Making of nets.[1]
Pea picking.[1]
Mixing, casting, or manufacture of brass or of articles of brass, and the electro depositing of brass.[2]
Wearing apparel.[3]
Manufacture of cartridges.[4]
,, tobacco.[4]
Bleaching and dyeing.[5]
Printing of cotton cloth.[5]
Making of iron safes.[6]
Household linen.[7]
Curtains and furniture hangings.[8]
Lace.[8]
Laundries.[9]
Making of files.[10]
Manufacture of toy balloons, pouches, and footballs from india-rubber.[11]
Manufacture of chocolates or sweetmeats.[12]
Shipbuilding yards.[13]
Iron and steel foundries.[14],
Non-textile factories and workshops in which is carried on the manufacture or decoration of pottery, that is, earthenware.[15]
Lampshades.[16]

Weights and measures used in a factory for the purpose of ascertaining wages are subject to inspection by any Inspector of Weights and Measures.[17]

[1] Home Office Order dated 23rd May, 1907.
[2] ,, ,, ,, 23rd Sept., 1907.
[3] ,, ,, ,, 14th Sept., 1909.
[4] ,, ,, ,, 15th Nov., 1909.
[5] ,, ,, ,, 22nd Nov., 1909.
[6] ,, ,, ,, 29th April, 1911.
[7] ,, ,, ,, 25th Oct., 1911
[8] ,, ,, ,, 25th Oct., 1911.
[9] ,, ,, ,, 23rd Dec., 1911.
[10] ,, ,, ,, 23rd Dec., 1911.
[11] ,, ,, ,, 23rd Dec., 1911.
[12] ,, ,, ,, 27th Feb., 1912.
[13] ,, ,, ,, 23rd Aug., 1912.
[14] ,, ,, ,, 30th Dec., 1913.
[15] ,, ,, ,, 31st Mar., 1922.
[16] ,, ,, ,, 19th Nov., 1929.
[17] *Factories Act*, 1937, Sect. 121.

CHAPTER IV

STATUTE LAW CONCERNING CONDITIONS OF WORK IN FACTORIES

THE law relating to factories has been consolidated in the Factories Act, 1937. Many orders at present in force were made under corresponding provisions of previous Acts now consolidated in the 1937 Act, which contains an express provision that such Orders shall remain in force.[1] Certain other minor enactments are also in operation and will be referred to in the course of this chapter.

DEFINITION OF "FACTORY"

The term "factory" includes the following classes of premises—

A. Premises in which, or within the close or curtilage or precincts of which, persons are employed in manual labour in any process for or incidental to any of the following purposes, namely:

(*a*) the making of any article or of part of any article; or

(*b*) the altering, repairing, ornamenting, finishing, cleaning, or washing, or the breaking up or demolition of any article; or

(*c*) the adapting for sale of any article;

being premises in which, or within the close or curtilage or precincts of which, the work is carried on by way of trade or for purposes of gain and to or over which the employer of the persons employed therein has the right of access or control.

B. The following premises in which persons are employed in manual labour—

(i) any yard or dry dock (including the precincts thereof) in which ships or vessels are constructed, reconstructed, repaired, refitted, finished, or broken up;

(ii) any premises in which the business of sorting any articles is carried on as a preliminary to the work carried on in any factory, or incidentally to the purposes of any factory;

(iii) any premises in which the business of washing or filling bottles or containers or packing articles is carried on incidentally to the purposes of any factory;

[1] Factories Act, 1937, Sect. 159.

(iv) any premises in which the business of hooking, plaiting, lapping, making-up, or packing of yarn or cloth is carried on;

(v) any laundry carried on as ancillary to another business, or incidentally to the purposes of any public institution;

(vi) any premises in which the construction, reconstruction, or repair of locomotives, vehicles, or other plant for use for transport purposes is carried on as ancillary to a transport undertaking or other industrial or commercial undertaking, not being any premises used for the purpose of housing locomotives or vehicles where only cleaning, washing, running repairs, or minor adjustments are carried out;

(vii) any premises in which letterpress printing is carried on by way of trade or for purposes of gain or incidentally to another business so carried on;

(viii) any premises in which the making, adaptation, or repair of dresses, scenery, or properties is carried on incidentally to the production, by way of trade or for purposes of gain, of cinematograph films or theatrical performances;

(ix) any premises in which the business of making or mending nets is carried on incidentally to the fishing industry;

(x) any premises in which mechanical power is used in connexion with the making or repair of articles of metal or wood incidentally to any business carried on by way of trade or for purposes of gain;

(xi) any premises in which the production of cinematograph films is carried on by way of trade or for purposes of gain, so, however, that the employment at any such premises of theatrical performers within the meaning of the Theatrical Employers Registration Act, 1925, and of attendants on such theatrical performers shall not be deemed to be employment in a factory;

(xii) any premises in which articles are made or prepared incidentally to the carrying on of building operations or works of engineering construction, not being premises in which such operations or works are being carried on;

(xiii) any premises used for the storage of gas in a gasholder having a storage capacity of not less than five thousand cubic feet.[1]

As to premises under category A above, it will be noted that to constitute a "factory" the work must be carried on "by way of trade or for purposes of gain." This is a question of fact.

The following have been held to be within the Factories Act—

The refuse disposal works of a sanitary authority.[2]

The car sheds and repair shops of a tramway undertaking.[3]

[1] *Factories Act*, 1937, Sect. 151.

[2] Henderson *v.* Glasgow Corporation (1900), 2 F. 1127.

[3] Mooney *v.* Edinburgh Tramways Co Ltd. (1901), 4 F. 390.

The following have been held to be outside the Act—

Bottle-washing works in the cellars of a hotel.[1]

Steam engine worked on a farm for grinding meal to feed the livestock.[2]

Part of warehouse in which a fisherman's employees repaired nets for use in his own fishing business.[3]

As regards "adapting for sale," the following processes have been held to be processes of "adapting for sale." Separating the saleable from the unsaleable parts of city refuse;[4] making up natural flowers into wreaths, crosses, etc., by employees whose duties also include serving in the flower shop;[5] the process in a beer-bottling store of taking the beer from the cask and mixing it with carbonic acid gas by mechanical power for the purpose of transferring it into bottles.[6]

The following, on the other hand, have been held not to be adapting for sale so as to constitute the premises a factory: Sorting and dusting of rags for the purpose of their sale to a paper maker.[7]

Any place within the close, curtilage, or precincts of the factory which is used solely for a purpose other than the process carried on in the factory is not part of that factory for the purposes of the Act.[8] The fact that a place is in the open air is no reason for its not being regarded as the factory or part of it.[9] A part of a factory may, with the approval of the Chief Inspector of Factories, be taken to be a separate factory for the purposes of the Act.[10] The Minister of Labour and National Service may also make regulations directing that different departments or branches of a factory shall be treated as different factories for all or any of the purposes of the Act.

[1] Cavanagh *v.* Caledonian Railway Co (1903), 3 F. 28; cf James Keith, Ltd. *v.* Kirkwood, [1914] S C (J.) 150.

[2] Nash *v.* Hollinshead, [1901] 1 K B 700

[3] Curtis *v.* Skinner (1906), 70 J.P. 272, but see Sect 151 (1) (ix), *Factories Act*, 1937.

Henderson *v.* Glasgow Corporation (1900), 2 Fraser 1127

Hoare *v.* R. Green, Ltd, [1907] 2 K.B 315.

Hoare *v.* Truman, Hanbury, Buxton & Co (1902), 66 J.P. 342

Paterson *v* Hunt (1909), 73 J.P 496

Factories Act, 1937, Sect 151 (6).

Ibid. Sect. 151 (7).

[10] *Ibid*, Sect 151 (3).

"Factory" does not include premises in or adjacent to and belonging to a quarry or mine wherein no process is carried on except one ancillary to the getting of minerals and dressing or preparing them for sale.[1]

What the precincts of a factory are, is a question of fact to be decided according to the circumstances in each case. Broadly, they are the walls or fences built round the factory.[2] A gas main belonging to a gas company and situated a quarter of a mile from the gasworks was held not to form part of the works.[3] Similarly, an electrical station in course of erection 150 yards from a dock for the purpose of serving the dock was held not to form part of the dock.[4] The following do not form part of the factory: Administrative and clerical offices, research laboratories, drawing and designing rooms, caretaker's residence, showrooms, sale-rooms, and sports grounds.

On the other hand, a works canteen,[5] works surgery, courtyards, areas, staircases, lavatories, rest rooms form part of the factory. (As regards the supervision of conditions in offices and other workplaces which, even though attached to or included in factory buildings, do not form part of the factory for the purposes of the Factories Act, this is in the hands of the local authorities, and the latter exercise the functions in this regard vested in them by the Public Health Act.)[6]

CONSTRUCTIVE FACTORIES

In addition to premises which are "factories" as above defined, certain specified provisions of the Factories Act are specially applied to certain other places which are not to be regarded as "factories" in general, but which are regarded as "factories" for the purposes of those specified provisions, as follows—

[1] *Factories Act*, 1937, Sect. 151 (5).
[2] Back *v.* Dick Kerr & Co. Ltd., [1906] A C 325.
[3] Spacey *v.* Dowlais Gas and Coke Co. Ltd., [1905] 2 K.B 879.
[4] Rimmer *v.* Premier Gas and Engine Co. Ltd. (1907), 97 L.T. 226.
[5] Revenue Officer for Cardiff *v.* Western Mail, [1931] 1 K.B. 47.
[6] See *Public Health Act*, 1936, Sects. 43–46, 92 (1), and corresponding provisions in the *Public Health (London) Act*, 1936.

Class of Premises	*Provisions Applicable*
Electrical stations.	Regulations for dangerous trades; notice, etc., of accidents and industrial diseases; powers of inspectors.[1]
Docks, wharfs, quays, and warehouses in which mechanical power is used.	Steam boilers; power to require special safety arrangements; orders as to dangerous conditions; welfare regulations; dangerous trades regulations; notice, etc., of accidents and industrial diseases; provisions as to parts of building let off as separate factory; notices; registers; powers of inspectors; duties of persons employed.[1]
Warehouses in which mechanical power is used.	As above, and also provisions as to prime movers, machinery, lifting tackle and machinery; floors, passages, and stairs, orders as to dangerous factories.
Processes of loading, unloading, and coaling a ship in a dock, harbour, or canal, and machinery and plant used therein.	Steam boilers; power to require special safety arrangements; dangerous trades regulations; notice, etc., of accidents and industrial diseases; notices; registers; duties of persons employed; powers of inspectors.[2]
Ships (construction, cleaning, and repair in harbour or wet dock)	Welfare regulations; dangerous trades regulations; notice, etc., of accidents and industrial diseases; hours (*not* prohibition of employment on Sundays and holidays); registers; duties of persons employed; powers of inspectors.[3]

[1] *Factories Act*, 1937, Sect. 103.
[2] *Ibid.*, Sect. 105.
[3] *Ibid.*, Sect. 106.

Class of Premises	Provisions Applicable
Building operations and works of engineering construction.	Sanitary conveniences; steam boilers; air receivers; orders as to dangerous conditions; welfare regulations; dangerous trades regulations; notice, etc., of accidents and industrial disease; notices; registers powers of inspectors and district councils.[1]

The person who, through his employees, is temporarily in use of the premises or machinery in question is deemed to be the "occupier" of the factory for the purposes of the Factories Act. It follows from this that there may be in these cases more than one occupier at the same time. Thus, where a firm was employed to construct shelves in a warehouse under course of erection by a contractor, the former were held to be "occupiers." [2] A repairing firm were held "occupiers" of a ship, of which the crew were still in charge on behalf of the shipowners.[3]

The following points have to be noted on the last-named provisions—

"**Dock**" includes a wet dock.[4] A piece of land within a system of docks used for storing timber and separated from the wharf by a dock railway has been held to be a "dock" or "wharf"; [5] a structure moored in a river, and unconnected with the shore, and used for discharging coal from ships, is a "wharf." [6] On the other hand, a timber yard belonging to a dock company and occupied by timber merchants, and divided from the quay by a wall and a public road is not a "wharf." [7]

Warehouses, Storerooms, etc. The question whether

[1] *Factories Act*, 1937, Sects. 107, 108.
[2] Weavings *v.* Kirk & Randall, [1904] 1 K.B. 213.
[3] Bartell *v.* Gray & Co., [1902] 1 K.B. 225.
[4] Hanlon *v.* N. City Milling Co., [1903] 2 I.R. 163.
[5] Kenny *v.* Harrison, [1902] 2 K.B. 168.
[6] Ellis *v.* Wm. Cory & Son, Ltd., [1902] 1 K.B. 38.
[7] Haddock *v.* Humphrey, [1900] 1 Q.B. 609.

a place used as a warehouse or for storage comes within the Factories Act under the above provisions sometimes presents difficulty. A store attached to a retail business is not excluded from being a "warehouse" within these provisions.[1] Storerooms used in connection with a shop, but situated on the other side of the road have been held to be a "warehouse," [2] but similar accommodation in the *basement* of a shop was held not to be a "warehouse."[3] It has been held that a place without a roof cannot be a "warehouse." [4]

But a warehouse may also be part of a factory, quite apart from the use of mechanical power. Storage space is necessary in manufacturing processes for the purpose of accommodating both the raw material prior to manufacture and the finished product prior to distribution. Such storage space is part of the factory, and is subject to all the provisions of the Factories Act.

WHO IS LIABLE UNDER THE ACT

Throughout the Act it is the "occupier" of the factory on whom the several duties and responsibilities are laid. The occupier is the person who runs the factory, who regulates and controls the work that is done there [5]—i e. under normal circumstances, the employer.

Thus, where a contractor for a payment of £18 per year used a brickyard, and furnished the owner of the yard with bricks at a fixed price, the owner having no control over the yard, it was the contractor who was held to be the "occupier" who employed the labour, although the owner was the occupier as well.[6] And where the owner of a mechanically-driven machine is not the "occupier"

[1] Moreton *v* Reeve, [1907] 2 K B 401
[2] Green *v* Britten & Gilson, [1904] 1 K B 350
[3] Barr *v* W Whiteley, Ltd (1902), 19 T L.R 117
[4] See 53 W.R at p 629 Cf Buckingham *v* Fulham Corporation (1905), 69 J P 297, and M'Ewan *v* Perth Corporation (1905), 7 Fraser 714, where an open yard used for dumping scrap which was occasionally sold, and a yard partly open and with a shed in one part, and used for storing road-mending materials, were held not to be "warehouses"
[5] Ramsey *v* Mackie (1904), 7 Fraser 196
[6] Fitton *v* Wood (1875), 32 L T 554

of the factory, he is deemed the occupier as far as persons employed in connection with that machine are concerned.[1]

The occupier is liable for an offence even though it is committed without his knowledge or consent.[2] The occupier may, however, exempt himself from the penalty by securing the conviction of the actual offender and proving that the offence was committed without his own knowledge or consent, and that he used due diligence in enforcing the Act; but merely to order an employee to observe a particular provision is not enough.[3]

But the Act also places liability on the persons employed in the factory: (*a*) No employee may wilfully interfere with or misuse anything provided under the Act for the health, welfare and safety of the employees. (*b*) Every employee must use every such appliance provided for securing health or safety. (*c*) No employee must wilfully do anything to endanger himself or others.

In the case of a "tenement factory" liability for the most part rests on the owner, not the occupier.[4]

LIMITED COMPANIES

A limited company is liable as occupier of a factory. In addition, any director, manager, secretary, or other officer is liable if the offence was committed with his consent or connivance or facilitated by his neglect.[5]

ADMINISTRATION

The administration of the Act is, generally, in the hands of the Factory Inspectors appointed by the Minister of Labour.[6] But the local sanitary authority is responsible for enforcing (*a*) the provisions as to health and sanitation in factories which do not use mechanical power; (*b*) the provisions as to sanitary conveniences in all factories. In these cases the Factory Inspector has to notify the

[1] *Factories Act*, 1937, Sect. 139.
[2] See, e.g. Rogers *v.* Barlow & Sons (1906), 70 J P. 214.
[3] Rogers *v.* Barlow & Sons (1906), 70 J.P. 214.
[4] *Factories Act*, 1937, Sect. 101. [5] *Ibid.*, Sect. 130 (5).
[6] The Minister was made responsible for the administration of the Act, instead of the Home Secretary, by Order in Council, 1940, No. 907

sanitary authority if he finds an act or default liable to be dealt with by the authority, and may take an officer of the authority into the factory: if the authority do not act within a month, their powers can be exercised by the Factory Inspector.[1]

The powers of Factory Inspectors (and local sanitary authorities) include generally those necessary for carrying the Factories Act into effect. The particular duties of a Factory Inspector specified in the Act include: The power of entry by day or night into any factory where he believes any person to be employed, and by day into any place he may believe to be a factory; the power of taking a constable into a factory where he has reasonable cause to apprehend serious obstruction; the power of inspecting factories and all documents required by the Act to be kept; to make inquiries and to ascertain if the Public Health and Factories Acts are being complied with, and to examine alone or otherwise any person in the factory or anyone whom he has reason to believe to have been employed within the last two months in the factory and to obtain a signed declaration from such person so examined; and to conduct proceedings in person before a court of summary jurisdiction or magistrate.[2]

EXEMPTIONS, ETC.

The common form of the provisions of the Factories Act is (*a*) to lay down the general requirement, (*b*) in addition to empower the Minister to exempt from or to add to the requirement in particular cases or to prescribe a standard. The Minister has thus the power to legislate by regulation or order for particular classes or descriptions of factories, classed not only by industry but also by locality. In the following pages the general requirements alone are set out, reference should be made to the particular section of the Act to ascertain the limits within which the Minister can exercise his special powers.

[1] *Factories Act*, 1937, Sects. 8, 9.
[2] *Ibid*, Sect. 123.

HEALTH PROVISIONS

CLEANLINESS

A factory must be kept in a clean state, and free from effluvia from drains and sanitary conveniences and nuisances. Accumulations of dirt and refuse must be removed daily from floors and benches of workrooms, and from staircases and passages. Every workroom floor must be washed weekly, unless sweeping or some other method is equally effective and suitable. Inside walls and partitions, ceilings and tops of rooms and walls, sides and tops of passages and staircases must (*a*) if the surface is smooth and impervious, be washed with hot water and soap every 14 months. (If they are painted or varnished, they must be repainted or revarnished every 7 years.) (*b*) In other cases they must be distempered every 14 months.[1]

For modifications of the provisions as to inside walls and ceilings in the case of certain factories, see Home Office Order S. R. & O. (1938), No. 487.

OVERCROWDING

Four hundred cubic feet per person must be allowed in every workroom.

No space more than 14 feet from the floor is to be taken into account. A gallery is deemed a separate room.

A notice must be posted in every workroom specifying the number of persons who may be employed in that room.[2]

TEMPERATURE

A reasonable temperature must be maintained, but not so as to interfere with the purity of the air. What is a reasonable temperature is a question of fact, to be determined in relation to such circumstances as the nature of the process, and time of the year.

In any workroom in which the work is substantially

[1] *Factories Act*, 1937, Sect. 1. [2] *Ibid.*, Sect. 2.

sedentary and not strenuous, a temperature of 60° minimum must be maintained after the first hour, and at least one thermometer must be provided there.[1]

VENTILATION

Each workroom must be adequately ventilated by the circulation of fresh air and so as to render any impurities harmless.[2]

LIGHTING

Sufficient and suitable lighting must be maintained in every part of a factory in which persons are working or passing. Standards of lighting have been prescribed.[3] Glazed windows and skylights must be kept clean on both sides (although they may be whitewashed or shaded against heat or glare).[4]

FLOOR DRAINAGE

If the process is one that makes the floors wet, there must be adequate means of draining.[5]

SANITARY CONVENIENCES

Sufficient and suitable sanitary accommodation must be provided, and where persons of both sexes are employed, there must be separate accommodation. The Minister is the sole authority as to what is sufficient and suitable accommodation in each case.[6]

The Regulations on this matter are laid down in S.R. & O. (1938), No. 611. Briefly, the minimum standard is—

Factories employing up to 100 males:	1 lavatory for every 25 males.
,, ,, over 100 males:	4 lavatories plus one for every 40 males employed after the first 100 and sufficient urinals.
,, ,, over 500 (subject to certain conditions as to control)	1 lavatory for every 60 males and sufficient urinals.
Factories employing females . .	1 lavatory for every 25 females.

(Numbers less than 25, 40, or 60 must be reckoned as 25, 40, or 60)

[1] *Factories Act*, 1937, Sect. 3. [2] *Ibid.*, Sect. 4.
[3] See Factories (Standards of Lighting) Regulations, 1940 (S.R. & O., 1941, No. 94).
[4] *Factories Act*, 1937, Sect. 5. [5] *Ibid.*, Sect. 6. [6] *Ibid.*, Sect. 4.

The conveniences must be kept clean, and properly ventilated and lighted; there must be a ventilated space between them and any workroom; they must be under cover, and partitioned off, and those for the use of females must have proper doors and fastenings; they must be conveniently accessible to the employees; where males and females are employed, the interior of the conveniences must not be visible, even when the door of any convenience is open, from any place where persons of the other sex have to pass; and the approaches must be separate.

MEDICAL SUPERVISION

In any of the following cases: (*a*) Any outbreak of disease in a factory attributable to the process or work; (*b*) Any change of process or materials involving risk of injury to health to the persons employed; (*c*) Employment of young persons in work involving risk of injury to their health, the Minister has power to require arrangements to be made for medical supervision, including first-aid treatment and preventive medical treatment. The power can be exercised by making special regulations for a class of factories or an order, valid for 6 months in the first instance, in respect of a particular factory.[1] A factory engaged on the manufacture or repair of war materials or on Government work may be directed by a duly authorized Factory Inspector to employ doctors, nurses, and welfare supervisors for medical supervision, nursing, and first-aid services, and welfare supervision.[2]

SAFETY PROVISIONS

The following must be securely fenced—

(1) Every moving part of a "prime mover" (i.e. an engine or appliance giving mechanical energy from whatever source) with the exception of electric generators,

[1] *Factories Act*, 1937, Sect. 11.

[2] Factories (Medical and Welfare Services) Order, S.R. & O. (1940), No. 1325.

motors, rotary convertors, and flywheels directly connected therewith.

(2) Every flywheel connected with a "prime mover."

(3) The head and tail race of every water wheel or water turbine.[1]

The following must be securely fenced or made equally secure as if they were fenced—

(1) Every part of electric generators, motors, and rotary convertors and every flywheel directly connected thereto.

(2) Every part of transmission machinery.

(3) Every dangerous part of any machinery.[2]

(4) Any part of a stock bar projecting beyond the headstock of a lathe.

But an examination, lubrication, or adjustment which it is necessary to carry out while the machinery is in motion may be carried out by male persons over 18 specified by Regulations.[3] Further, where the nature of the operation makes a fixed guard impracticable, a device may be provided which automatically prevents the operator from coming into contact with that part.[4]

Where there is a regulation to fence machinery, the fencing must be in accordance with the best method known, not merely the method usually followed in good local factories.[5]

It is no defence to say that the machinery if fenced would not be a commercial proposition.[6]

Nor is it a defence to say that the unfenced machine is kept in such a position, e.g. at so great a height, that it cannot cause danger.[7]

With regard to the civil liability for breach of the statutory duty to fence, the defence of common em-

[1] *Factories Act*, 1937, Sect 12

[2] See Fotheringham *v.* Babcock & Wilcox Ltd , [1922] S C (J.) 60; Stimson *v* Standard Telephones Ltd., [1939] 2 All E R. 441.

[3] See S.R. & O (1938), No. 641.

[4] *Factories Act*, 1937, Sects. 12, 14, 15

[5] Schofield *v* Schunk (1855), 24 L T. (O.S.) 253

[6] Davies *v.* Thomas Owen & Co., Ltd., [1919] 2 K.B.39.

[7] Doel *v.* Sheppard (1856), 25 L.J.Q B. 124.

ployment cannot be set up,[1] nor can a defence of contributory negligence.[2]

TRANSMISSION MACHINERY

Efficient devices must be maintained in every workroom or place by which the power can promptly be cut off from the transmission machinery in that room or place. No driving belt when not in use may be allowed to rest or ride upon a revolving shaft. Efficient mechanical appliances must be used to move driving belts to and from fast and loose pulleys so as to prevent the driving belt from creeping back on the fast pulley.[3]

NEW MACHINERY

In the case of any machine constructed after the 30th July, 1937, driven by mechanical power, every set-screw, bolt, or key on any revolving shaft, spindle, wheel, or pinion must be effectively guarded; and toothed or friction gearing which does not require constant adjustment while in motion must be completely encased unless it is as safe as it would be if completely encased. Any person (including an agent) selling or letting on hire a machine not complying with these requirements is liable to a fine of £100 maximum.[4]

SELF-ACTING MACHINES

In factories or parts of factories built since 1st January, 1896, the traversing carriage of any self-acting machine must not be allowed to run out within a distance of 18 inches from any fixed structure not being part of the machine, if the space over which it runs out is a space over which any person is liable to pass, except that the traversing carriage of any self-acting cotton spinning or

[1] Groves *v.* Wimborne (Lord), [1898] 2 Q.B.402; Murray *v.* Schwachmann Ltd. (1937), 106 L.J.K.B. 354.

[2] Britton *v.* Great Western Cotton Co. (1872), L.R. 7 Ex 130; Sowter *v.* Steel Barrel Co. (1935) J.P. 379; Vowles *v.* Armstrong-Siddeley, [1938] 4 All E.R. 796.

[3] *Factories Act*, 1937, Sect. 13.

[4] *Ibid.*, Sect. 17.

woollen spinning machine may be allowed to run out within a distance of 12 inches from any part of the headstock of another.

A person employed in a factory must not be allowed to be in the space between the fixed and the traversing parts of a self-acting spinning mule unless the machine is stopped with the traversing part on the outward run, but the space in front of a self-acting machine is not included.[1]

CLEANING OF MACHINERY IN MOTION

A woman or young person may not clean any part of a "prime mover" or transmission machinery while in motion, nor may such person clean any part of a machine if it entails risk of injury from any moving part of that or of an adjacent machine.[2]

YOUNG PERSONS AND DANGEROUS MACHINERY

Where a machine is prescribed by the Minister as dangerous for young persons, no young person may work thereat unless he has been fully instructed as to the dangers and precautions to be observed, and either has had sufficient training at the machine or is under proper supervision by a person with thorough knowledge and experience of the machine.[3]

VESSELS CONTAINING DANGEROUS LIQUIDS

Every fixed vessel of which the edge is less than 3 feet above the ground and containing any scalding, corrosive, or poisonous liquid, must either be covered or fenced to at least that height. Where practicable, steps must be taken to prevent any person from falling into the vessel.[4]

[1] *Factories Act*, 1937, Sect. 19. [2] *Ibid.*, Sect. 20.
[3] *Ibid.*, Sect. 21. For the list of machines so prescribed, see Order, S.R. & O. (1938), No. 485.
[4] *Ibid.*, Sect. 18.

LIFTING APPLIANCES

The following provisions apply to lifting machines and lifting tackle, i.e. hoists, lifts, cranes, chains, etc. They must be soundly constructed and properly maintained. They must be subject to examination periodically (six months in the cases of hoists and lift and chains, and fourteen months in the case of cranes).[1] Reports of the examinations have to be entered in the general register. The maximum working loads have to be plainly marked. All hoists and lifts must be incapable of being opened except at a landing and incapable of being moved from the landing until the gate is closed. These must be built so as to prevent persons or goods being trapped. Lifts for carrying persons must have efficient automatic devices to prevent overrunning.

Every cage must have a gate on each side from which it gives access to a landing, and the cage must only be movable when the gate is closed.

New or reconstructed lifts must have at least two separate ropes or chains capable of carrying the whole weight of the platform and the maximum working load in the event of a breakage of the ropes. Every chain must be annealed at least once in every fourteen months;[1] chains of less than ½-in. bar, or those used with molten metal or molten slag, every six months.

Where a person is employed near an overhead travelling crane so that he would be liable to be struck by the crane, proper steps must be taken to ensure that the crane does not approach within 20 feet.[2]

Exemption from some of the above provisions is given to certain classes of hoists.[3]

FLOORS, PASSAGES AND STAIRS

These must be of sound construction and properly

[1] For extension of time, see Factories (Examination of Plant) Emergency Order, S.R. & O. (1941), No. 702.

[2] *Factories Act*, 1937, Sects. 22–24.

[3] See Order, S.R. & O. (1938), No. 489, as amended by S.R. & O. (1946), No. 1947.

maintained. Every staircase must have a handrail. If the staircase has an open side, the handrail must be on that side. A staircase involving danger through its construction or the condition of its surface, etc., must have a handrail on both sides. The open side must be further guarded by a lower rail or other effective means.

Openings in floors must wherever practicable be fenced. All ladders must be sound, and properly kept.[1]

ACCESS TO WORK

The employer must provide safe access to every workplace. If any person works at a place where he has not secure foothold and handhold, and is liable to fall 10 feet, the place must be secured by fencing or otherwise.[2]

DANGEROUS FUMES

Any confined space involving risk of fumes to persons working there must have a manhole 18 inches long and 16 inches wide, and every person must wear a belt with a rope, of which the other end is held by a person outside, and must wear a suitable breathing apparatus. Breathing apparatus and lifting apparatus, belts, and ropes must be readily accessible and regularly inspected, and a sufficient number of persons employed must be trained in the use of the apparatus and in artificial respiration. No work must be done in a boiler furnace or boiler flue until it has sufficiently cooled to make work safe. In the case of explosive dust the plant used must be enclosed and sufficient vents must be provided. No plant containing explosive substances must be welded or otherwise operated on by heat until it has been rendered non-explosive or non-inflammable.

In indoor plants containing any explosive or inflammable gas subjected to pressure, the part in question may only be opened after every step has been taken to reduce the pressure to atmospheric pressure and the

[1] *Factories Act*, 1937, Sect. 25.
[2] *Ibid.*, Sect 26

flow of the gas has been stopped by a stop valve or otherwise.[1]

STEAM BOILERS

Every steam boiler must have attached to it a proper safety valve, stop-valve, and a proper steam gauge and water gauge to show the pressure of steam and the height of water in the boiler, and be examined thoroughly by a competent person at least once in every fourteen months.[2]

The safety valve must be such that the boiler is incapable of being worked at a pressure greater than that stated in the certificate.

If it is a boiler range, each must have a number plate and means for attaching a test pressure gauge, and before anyone enters a boiler all inlets for steam or hot water must be disconnected, and all controlling valves and taps locked. If it has a common blow-off pipe, the blow-off tap must be such that it can only be opened by a key, and the key in its turn must only be capable of being removed when the tap is closed and must be the only key for that set of blow-off taps.

Every such boiler must be maintained in proper condition. A report of the result of every such examination in the prescribed form must within 28 days be entered into or attached to the general register of the factory, signed by the person making the examination, and, if that person is an inspector of a boiler-inspecting association, by the chief engineer of the association or his authorized officer.

The fourteen-monthly examination of the boiler must be a double one—

(*a*) of the boiler when cold;

(*b*) under normal steam pressure and that on the first occasion when steam is raised after the examination of the cold boiler.

[1] *Factories Act*, 1937, Sects 27, 28

[2] For extension of the time, see Factories (Examination of Plant) Emergency Order, S R & O (1941), No 702.

If an examiner fails to make a proper examination, he is liable to a fine of £50. The chief inspector, if not satisfied as to the examiner's competence, may have the boiler re-examined, and, if the report of the first examination is shown to be inadequate, or inaccurate, at the employer's cost.[1]

STEAM RECEIVERS AND CONTAINERS, AIR RECEIVERS

Steam receivers must have a reducing valve, safety valve, steam pressure gauge, stop valve, and number plate, and must be examined every 26 months, and be such that the safe working pressure indicated by the examination report cannot be exceeded.

Air receivers are made subject to similar requirements.[2]

WATER-SEALED GASHOLDERS

Water-sealed gasholders with capacity of 5000 cubic feet or more must be examined every 2 years; those in use more than 20 years must have a special examination of the internal state of the sheeting, and samples kept for inspection; a record of the oldest lift of every gasholder must be kept open for inspection; no gasholder may be repaired or demolished except under supervision of a specially trained person. Each gasholder must bear a number.[3]

ESCAPE IN CASE OF FIRE

Any factory in the following classes must obtain a certificate from the local sanitary authority that it has satisfactory means of escape in case of fire—

Factories of more than twenty persons, built before 30th July, 1937; factories where more than ten are employed above first floor or more than twenty feet above the ground level; new factories employing ten or more above ground floor; and all factories containing explosive or highly inflammable materials.

[1] *Factories Act*, 1937, Sect. 29.

[2] *Ibid*, Sects 30, 31. For extension of time for examinations, see Factories (Examination of Plant) Emergency Order, S R & O. (1941), No. 702.

[3] *Ibid*, Sect. 33.

The local authorities' certificate must also contain precise details as to the maximum number of persons employed in explosive materials, etc., and any other matters taken into account in granting the certificate. Where the factories are extended or their staff increased materially or they begin to store explosive material, the factory occupier must give written notice to the Council, who may require the occupier to make alterations.

Doors must not be fastened so that they cannot easily and immediately be opened from the inside. Doors other than sliding doors in rooms where more than ten persons are employed must open outwards; similarly doors at the end of a staircase giving exit from the factory. Every new hoist-way or lift-way must be completely enclosed with fire-resisting material and be fitted with fire-resisting doors and at the top be provided with a vent or be enclosed with material easily broken by fire.

Every means of exit other than the ordinary exit must be marked by a notice in red letters. Where twenty or more are employed, there must be proper provision for fire warning throughout the whole building, and the contents of every workroom must be so arranged as to provide free passage-way for everybody. In every factory employing more than twenty above the first floor or more than 20 feet above the ground, or where explosive or highly inflammable materials are kept, the employees must be given fire drill.[1]

Any court of summary jurisdiction has power to prohibit the use of any dangerous ways, works, machinery, or plant in a factory, and also the use of a factory or part of a factory which is in such a condition that any process carried on therein would involve physical danger. By "ways" are meant habitual lines of passage.[2] It includes floors, temporary stagings,[3] but not temporary obstructions negligently allowed in a roadway.[4] "Plant" includes

[1] *Factories Act*, 1937, Sects. 34–37
[2] Willetts *v.* Watt & Co., [1892] 2 Q.B. 92.
[3] Giles *v.* Thames Iron Works Co. (1885), 1 T.L.R. 469
[4] McGuffin *v.* Palmer (1882), 10 Q.B.D. 1

any materials or instruments necessary to the trade, e.g. a horse used in the ordinary course of business,[1] but safe plant does not become "dangerous" within this section by reason of a person's careless or improper use of it.[2]

WELFARE

DRINKING WATER

The employer must provide a supply of wholesome drinking water. If the water is not laid on, the supply must be renewed daily. The water must be delivered in an upward jet; otherwise cups must be supplied with facilities for rinsing them in drinking water.[3]

WASHING, CLOAKROOMS, SEATS

The employer must also provide washing facilities[4] (including a supply of soap and clean towels or effective substitutes), accommodation for workers' clothing—including drying facilities—and in the case of female workers facilities for sitting sufficient to enable them to take advantage of any opportunities for sitting in the course of their work.[5]

FIRST AID

Boxes or cupboards of the prescribed standard containing only first-aid appliances must be kept—one box or cupboard for every 150 employees or fraction of 150—and must be in charge of a responsible officer, a notice of the name of the latter being posted up in every room for which the box is provided. If 50 or more persons are employed in the factory, the officers must be trained in first aid. Exemption from this provision may be obtained where a special ambulance room is provided.[6]

[1] Yarmouth *v.* France (1887), 19 Q B D. 647.
[2] Greenwood *v.* Greenwood (1907), 97 L.T. 771.
[3] *Factories Act*, 1937, Sect. 41.
[4] Except where poisonous substances are used or in processes prescribed as liable to cause skin affections (see S.R. & O. (1938), No 581).
[5] *Factories Act*, 1937, Sects. 42–44.
[6] *Ibid.*, Sect. 45.

The "prescribed standard" is as follows[1]—

A. In factories in which the number of persons employed does not exceed ten, or (in the case of factories in which mechanical power is not used) does not exceed 50 persons, each first-aid box or cupboard shall contain at least—

(i) A copy of the first-aid leaflet (Form 923) issued by the Factory Department of the Home Office;
(ii) A sufficient number (not less than six) of small sterilized dressings for injured fingers;
(iii) A sufficient number (not less than three) of medium-size sterilized dressings for injured hands or feet;
(iv) A sufficient number (not less than three) of large sterilized dressings for other injured parts;
(v) A sufficient number of sterilized burn dressings (small and large);
(vi) A 2 per cent alcoholic solution of iodine or a 1 per cent aqueous solution of gentian violet;
(vii) A bottle of sal volatile, having the dose and mode of administration indicated on the label.

B. In factories in which mechanical power is used and in which the number of persons employed exceeds ten but does not exceed 50, each first-aid box or cupboard shall contain at least—

(i) A copy of the first-aid leaflet (Form 923) issued by the Factory Department of the Home Office;
(ii) A sufficient number (not less than a dozen) of small sterilized dressings for injured fingers;
(iii) A sufficient number (not less than six) of medium-size sterilized dressings for injured hands or feet;
(iv) A sufficient number (not less than six) of large sterilized dressings for other injured parts;
(v) A sufficient number of sterilized burn dressings (small and large);
(vi) A sufficient supply of sterilized cotton-wool, in ½-oz. packets;
(vii) A 2 per cent alcoholic solution of iodine or a 1 per cent aqueous solution of gentian violet;
(viii) A bottle of sal volatile, having the dose and mode of administration indicated on the label;
(ix) Eye drops, prepared as described in the first-aid leaflet (Form 923).

[1] Home Office Order, S.R. & O. (1938), No. 486.

C. In factories employing more than 50 persons, each first-aid box or cupboard shall contain at least—

(i) A copy of the first-aid leaflet (Form 923) issued by the Factory Department of the Home Office;
(ii) A sufficient number (not less than two dozen) of small sterilized dressings for injured fingers;
(iii) A sufficient number (not less than one dozen) of medium-size sterilized dressings for injured hands or feet;
(iv) A sufficient number (not less than one dozen) of large sterilized dressings for other injured parts;
(v) A sufficient number of sterilized burn dressings (small and large);
(vi) A sufficient supply of sterilized cotton-wool, in ½-oz. packets;
(vii) A 2 per cent alcoholic solution of iodine or a 1 per cent aqueous solution of gentian violet;
(viii) A bottle of sal volatile, having the dose and mode of administration indicated on the label;
(ix) Eye drops prepared as described in the first-aid leaflet (Form 923);
(x) A supply of suitable splints and cotton-wool or other material for padding;
(xi) A supply of adhesive plaster;
(xii) A tourniquet;
(xiii) One dozen roller bandages;
(xiv) Half a dozen triangular bandages;
(xv) Safety pins.

All materials for dressings must be those designated in and of a grade or quality not lower than the standards prescribed by the British Pharmaceutical Codex, 1923.

Items (x) to (xv) inclusive need not, however, be included in the standard first-aid box or cupboard (*a*) where there is a properly equipped ambulance room, or (*b*) if at least one box containing such items and placed and maintained in accordance with the requirements of Sect. 45 of the Factories Act, 1937, is separately provided.

Each first-aid box or cupboard must be distinctively marked; new boxes must be marked "FIRST AID."

For modifications in certain specified industries see Sawmills and Woodworking Factories (Home Office Order 1489/1918) and the industries which are the subjects of the Welfare Orders below.

CANTEENS

A factory employing more than 250 persons may be directed by the Chief Inspector of Factories to provide a canteen where hot meals can be purchased by the employees.[1]

WELFARE ORDERS

The Minister may make orders to secure the welfare of factory workers in relation to arrangements for preparing or heating, and taking meals; the supply of drinking water; the supply of protective clothing; ambulance and first-aid arrangements; the supply and use of seats in workrooms; facilities for washing; accommodation for clothing; arrangements for supervision of workers and rest rooms.[2] Orders have been issued for the following—

	S.R. & O.
Ambulance arrangements at Blast Furnaces, etc.	1067/1917
Bakehouses	191/1927
Biscuit factories	872/1927
Blast furnaces	1067/1917
Cement works	94/1930
Clay works	1013/1932
Copper mills	1067/1917
Dyeing, use of bichromates in	369/1918
Fish curing	13/1927
,, ,, (Scotland)	535/1926
,, ,, (Norfolk and Suffolk)	1662/1920
Foundries	1067/1917
Fruit preserving	1136/1919
Glass bevelling	288/1921
Glass bottle and pressed glass, manufacture of	558/1918
Gut scraping, etc.	1437/1920
Hollow-ware making and galvanizing	2032/1921
Iron mills	1067/1917
Laundries	654/1920
Metal works	1067/1917
Oil-cake mills	534/1929
Saw mills	1489/1918
Sacks (cleaning and repairing)	860/1927
Shell factories	824/1918
Sugar factories	684/1931
Tanning, use of bichromates in	368/1918
Tanning works	312/1930
Tin or terne plate making	1033/1917
Wood-working factories	1489/1918
Factories employing 25 or more (as to supply of drinking water)	1068/1917

HEALTH, SAFETY, AND WELFARE IN SPECIAL PROCESSES

In any factory in which dust, fume, or other impurity is generated by the process, the employer must protect

[1] Factories (Canteens) Order, S.R. & O. (1943), No. 573.
[2] *Factories Act*, 1937, Sect. 46.

the persons employed against inhalation thereof and where practicable provide exhaust appliances as near as possible to the point of origin of the dust or fume. Every stationary internal combustion engine must be provided with means for letting off the exhaust gases into the open air from the engine, and the engine must be partitioned off from any workroom.[1]

POISONOUS SUBSTANCES

In any room where lead, arsenic, and other poisonous substances are used, no food or drink may be taken, and in such rooms and those where any process prescribed as giving rise to siliceous dust or asbestos dust is carried on, no person may remain during rest or meals intervals other than rest pauses, and mess-room accommodation must be provided in the factory.[2]

The following restrictions apply to any part of the factory where the process in question is carried on, and a notice of the prohibition must be posted up in the factory.

Silvering mirrors by the mercurial process Making white lead	No young person employable.
Glass melting or annealing	No female young person employable.
Making or finishing bricks or tiles (not ornamental) Making or finishing salt	No girl under 16 employable.[3]

LEAD PROCESSES

Women and young persons may not be employed at—

(*a*) Work at a furnace where the reduction or treatment of zinc or lead ores is carried on;

(*b*) The manipulation, treatment, or reduction of ashes containing lead, the desilverizing of lead, or the melting of scrap lead or zinc;

(*c*) The manufacture of solder or alloys containing more than 10 per cent of lead;

(*d*) The manufacture of any oxide, carbonate, sulphate, chromate, acetate, or silicate of lead;

[1] *Factories Act*, 1937, Sect. 47.
[2] *Ibid.*, Sect. 48.
[3] *Ibid.*, Sect. 57.

(*e*) Mixing or pasting in connection with the manufacture or repair of electric accumulators;

(*f*) The cleaning of workrooms where any of the above processes are carried on.

Where women and young persons are employed in processes where dust and fumes from a lead compound are produced or where they are liable to be splashed with lead compound—

(*a*) An efficient exhaust draught operating on the dust or fume at its point of origin must be provided.

(*b*) The persons must be medically examined at intervals as provided, and no person who has been suspended from employment as a result may be employed on such processes.

(*c*) No food, drink, or tobacco is to be allowed in the room, and nobody may remain there during meal-times.

(*d*) Clean, protective clothing must be provided and worn

(*e*) Cloakroom, messroom, and washing accommodation must be provided as prescribed.

(*f*) The rooms, tools, and apparatus must be kept clean.[1]

WEIGHT LIFTING

An employer must not allow a young person to lift, move, or carry a load so heavy as to be likely to injure him.[2]

LAUNDRIES

In laundries where mechanical power is used there must be means used for regulating temperature in every ironing room and for carrying away steam in every washhouse; stoves for heating irons must be kept separate from ironing rooms or ironing tables; no gas irons emitting noxious fumes may be used.[3]

UNDERGROUND ROOMS

A room half the height of which is below the street or ground level is an "underground room." It can be certified by the Factory Inspector as unsuitable as a workroom. He may so certify it on the ground of construction or any hygienic ground. In the case of a room

[1] *Factories Act*, 1937, Sects. 58, 59.
[2] *Ibid.*, Sect. 56.
[3] *Ibid.*, Sect. 55.

taken into use as a workroom after 1st July, 1938, the occupier must notify the Inspector, and if the process is hot, wet, or dusty or gives off fumes must obtain the Inspector's consent before beginning work there. There is an appeal from the Inspector, and in the case of an existing workroom it may continue to be used until the appeal is decided.

OTHER PROCESSES

The Minister may require the provision of screens or goggles in any process involving risk of injury to the eyes,[1] and may make regulations to prevent shuttle-kissing. White phosphorus may not be used in the manufacture of matches.[2]

DANGEROUS TRADES REGULATIONS

The Minister has power to certify any manufacture, machinery, plant, process, or manual labour to be dangerous (if satisfied that it is dangerous generally or to any particular class of employees), and to make regulations in such cases.[3]

Detailed provisions are laid down as to the preliminary steps to be taken in this matter, viz. the publication of the regulations in draft, the lodging of written objections by persons affected, the holding of a public inquiry in certain events, the laying of the regulations before Parliament for approval.

The trades certified to be dangerous and the regulations respectively affecting them are as follows—

Trade	*S.R. & O.*
Aerated water, manufacture of	1932/1921
Asbestos	1140/1931
Brass, etc., casting of	484/1908
Bronzing	361/1912
Building operations	736/1928
Celluloid, manufacture, manipulation and storage	1825/1921
Cellulose solutions	990/1934
Chemical works	731/1922

[1] See S.R. & O. (1938), No. 654, for prescribed processes
[2] *Factories Act*, 1937, Sects. 49–51. [3] *Ibid*, Sect. 60.

Trade	*S.R. & O.*
Chromium-plating	445/1931
Cinematograph films, manufacture, etc.	82/1928
Cinematograph films, stripping, or drying	571/1939
Docks, wharves, and quays, loading or unloading, etc., at . . . . . 231/1925 and	279/1934
Electric accumulators, manufacture of	28/1925
Electricity, generation, transformation, distribution or use of	1312/1908
Enamelling, vitreous, of metal or glass	1258/1908
Felt hats, manufacture of (with aid of inflammable solvent)	623/1902
File-cutting by hand	507/1903
Flax and tow, spinning and weaving of, etc.	177/1906
Grinding of metals, cleaning of castings (miscellaneous industries)	904/1925
Grinding of cutlery and edge tools	1089/1925
Hemp, jute and hemp or jute tow, spinning and weaving of, etc.	660/1907
Hides and skins, handling of, etc.	2076/1921
Horizontal milling machines	548/1928
Horsehair from China, Siberia, or Russia, use of	984/1907
Indiarubber, manufacture of, etc.	329/1922
Kiers in print works, etc.	106/1938
Lead, smelting of materials containing, manufacture of red or orange lead and of flaked litharge	752/1911
Lead, manufacture of certain compounds of	1443/1921
Locomotives and wagons, use of, on lines and sidings	679/1906
Luminizing	865/1947
Mules, self-acting, spinning by means of	679/1906
Painting of vehicles (with lead paint)	290/1926
Paints and colours, manufacture of	17/1907
Patent fuel manufacture	258/1946
Pottery, manufacture and decoration of, making of lithographic transfers, frits, or glazes . 2/1913 and	393/1932
Refractory material, crushing, grinding, etc.	541/1919
Ships in shipbuilding yards, construction and repair of	461/1914
Tinning of metal hollow ware, iron drums, and harness furniture	720/1909
Woodworking machinery, use of	1196/1922, 207/1927 and 1227/1945
Wool, East Indian, use of	1287/1908
Wool, goat hair and camel hair sorting, willeying, washing, combing, and carding	1293/1905
Woollen or worsted textiles, manufacture, dyeing or finishing of	1463/1926
Yarn, heading of, dyed by means of a lead compound	616/1907

DEFENCE REGULATIONS

During the war the Minister was given power to exempt factories and processes from provisions of the Act in the interests of the prosecution of the war or the

maintenance of essential supplies or services. Such Regulations are—

	S.R. & O.
Examination of plant	1702/1941
Electricity supply (hours, etc.)	187/1943
Flour mills (hours, etc.)	202/1942
Medical and welfare services	1325/1940
Building and engineering construction	66/1941
Docks (canteens)	222/1941
Factories (canteens)	573/1943
Aircraft engines, etc., testing	495/1944
Factories using electricity, hours	1870/1947

NOTICE OF ACCIDENTS AND INDUSTRIAL DISEASES

Written notice[1] must forthwith be sent to the district inspector of fatal accidents and of any accident causing an employee more than three days' disablement from earning full wages at his ordinary work. (The words of the statute are "work at which he was employed." When a workman comes back temporarily on other work, because he cannot do his ordinary work, he would still be in a state of "disablement" within the meaning of these provisions.) Where death occurs after such notice is given,[2] notice of the death must immediately be sent to the inspector. Any relative of the deceased, any factory inspector, the occupier of the factory, and any duly appointed representative of the employees may attend the inquest, and examine witnesses in person or by counsel, solicitor, or agent, subject to the coroner's order.

The penalty for failure to send a notice is a fine not exceeding £10, for which the occupier is liable. Where the occupier is not the employer, the employer has the duty of reporting the accident immediately to the occupier—otherwise the employer is liable to a fine not exceeding £5.

The Minister has power to extend these provisions and to require notice in special classes of occurrence irrespective of whether disablement is caused or not.[3]

[1] *Factories Act*, 1937, Sect. 64 (1).
[2] *Ibid.*, Sect. 64 (2).
[3] *Ibid.*, Sect. 65 (1).

Notice[1] of the following must be sent to the Inspector, whether disablement is caused or not—

All cases of—

1. Bursting of a revolving vessel, wheel, grindstone, or grinding wheel moved by mechanical power.

2. Collapse or failure of a crane, derrick, winch, hoist, or other appliance used in raising or lowering persons or goods, or any part thereof (except the breakage of chain or rope slings), or the overturning of a crane.

3. Explosion or fire causing damage to the structure of any room or place in which persons are employed, or to any machine or plant contained therein, and resulting in the complete suspension of ordinary work in such room or place or stoppage of machinery or plant for not less than five hours, where such explosion or fire is due to (i) the ignition of dust, gas, or vapour, or (ii) the ignition of celluloid or substances composed wholly or in part of celluloid.

4. Electrical short-circuit or failure of electrical machinery, plant, or apparatus, attended by explosion or fire or causing structural damage thereto, and involving its stoppage or disuse for not less than five hours.

5. Explosion or fire affecting any room in which persons are employed and causing complete suspension of ordinary work therein for not less than twenty-four hours.

6. Explosion of a receiver or container used for the storage at a pressure greater than atmospheric pressure of any gas or gases (including air) or any liquid or solid resulting from the compression of gas.

Whenever a case of lead, phosphorus, arsenical, or mercurial poisoning occurs in a factory, written notice has to be sent to the Factory Inspector and the examining surgeon (a doctor attending a patient whom he believes to be suffering from any of these complaints has also the duty of reporting this to the Chief Inspector of Factories, the penalty for default being a fine not exceeding 40s.).[2] The

[1] Dangerous Occurrences Notification Order, S.R. & O. (1947), No. 31.

[2] *Factories Act*, 1937, Sect. 66 (1) (2).

Minister has power[1] to extend these regulations to other diseases occurring in a factory, and they have accordingly been extended to toxic jaundice, epitheliomatous ulceration due to tar, mineral oil, etc., chrome ulceration, poisoning by carbon bisulphide, aniline poisoning, chronic benzene poisoning and compressed air illness.[2]

INQUESTS AND INVESTIGATIONS

In any inquest in case of death from a factory accident or notifiable industrial disease (see last paragraph) the following have the right to attend and examine witnesses: any factory inspector, any relative of the deceased, the factory occupier, a duly appointed representative of the employees, the appointed representative of a trade union or friendly society to which the deceased belonged or any of the employees belongs, and the appointed representative of the employer's association to which the occupier belongs. They can examine witnesses in person or by counsel, solicitor, or agent, subject to the coroner's order.[3]

The Minister has power to direct a formal investigation of factory accidents and cases of disease.[4]

EMPLOYMENT OF WOMEN AND YOUNG PERSONS[5]

For the purposes of the regulation of hours, a woman or young person must be "employed" in one or other of the following ways: in a process; in cleaning a part of the factory used for a process; in cleaning or oiling the machinery; in work incidental to or connected with the process; or work connected with the article made. An

[1] *Factories Act*, 1937, Sect 66 (3).

[2] Order dated 27th November, 1915; 28th November, 1919; 31st December, 1924, also S R. & O. (1938), No 1386.

[3] *Factories Act*, 1937, Sect 67.

[4] *Ibid.*, Sect. 68.

[5] "Young Person" means a person between the ages of 15—the school leaving age— and 18 Provision is not made for the hours of employment of children under 15, because the employment of children in industrial undertakings is prohibited (*Employment of Women, Young Persons, and Children Act*, 1920).

apprentice so employed and a person so employed without wages are also included.[1] The following are expressly excluded: women employed solely in cleaning the factory other than cleaning incidental to a process[2]; women in managerial positions[3]; male young persons employed in repairing work as part of the regular maintenance staff.[4]

The maximum hours for women and young persons "employed" within the above definition are as follows—

(*a*) Total hours worked must not exceed nine a day, or forty-eight a week (forty-four in the case of those under 16).

The period of employment must not exceed eleven hours a day, and must begin and end between 7 a.m. and 8 p.m. (in the case of workers under 16, 6 p.m.) on ordinary days, 7 a.m. and 1 p.m. on Saturdays.

(*b*) Continuous employment not more than four and a half hours without half an hour for a meal, or if an interval of not less than ten minutes is allowed during the spell, the spell may be increased to five hours.

(i) Sunday work is prohibited.[5]

(ii) Holidays: Christmas, Good Friday, Bank Holidays.[6] (There are certain variations for Scotland.) In lieu of any of these days, another whole day may be given, but at least half of the holidays must be given between 15th March and 1st October.[7]

Three weeks' notice of such substituted holidays has to be posted up in the factory.[8]

(iii) Meals must be taken at the same hour. No working during meal-times, and no remaining in a room where a manufacturing process is carried on.[9]

(iv) A notice of the hours and meal-times must be

[1] *Factories Act*, 1937, Sect. 152 (4).
[2] *Ibid.*
[3] *Ibid.*, Sect. 79.
[4] *Ibid.*, Sect. 88.
[5] *Ibid.*, Sect. 77.
[6] *Ibid.*, Sect. 78 (1).
[7] *Ibid.*, Sect. 78 (2) For variation of holidays in special classes of factory, see S.R & O (1947), No 184.
[8] *Ibid.*, Sects. 77, 78.
[9] *Ibid.*, Sect. 76.

posted up. They may not be changed more than once in three months, and notice is to be given to the Inspector of Factories.[1]

(v) No work outside the factory except during the permitted period of employment if the employee has worked that day in the factory, subject to an exception for shop employment in the case of women and young persons over 16.[2]

(vi) No employment within four weeks after childbirth.[3]

EXCEPTIONS TO THE ABOVE RULES

1. Different times may be fixed for different days of the week.[4]

2. An hour may be added to the daily hours in five-day-week factories, and employment on Saturday is allowed in such factories for four and a half hours if no overtime is worked on any of the 5 days.[5]

3. On the ground of trade exigencies or the convenience of the persons employed, permission may be obtained for commencing work between 6 a.m. and 7 a.m.[6]

4. The morning spell for youths over 16 may be 5 hours if they work with men and if their continuous employment is necessary to the men carrying on their work.[7]

5. Meal and rest intervals need not be simultaneous in the following cases—

(*a*) Processes necessitating work to be continuous;

(*b*) Different sets of persons employed on different processes;

(*c*) Different sets of persons necessarily divided for the purpose of taking their meal in the employer's canteen.[8]

[1] *Factories Act*, 1937, Sect. 72
[2] *Ibid.*, Sect. 75.
[3] *Ibid.*, Sched. III, Part II.
[4] *Ibid.*, Sect. 72 (1).
[6] *Ibid.*, Sect. 82.
[5] *Ibid.*, Sect. 88.
[7] *Ibid.*, Sect. 87.
[8] *Ibid.*, Sect. 84. For regulations see S.R. & O (1938), No. 607.

6. The rules forbidding employment or remaining in the workroom during the intervals do not apply to male young persons in the wrought-iron, steel, tinplate, paper, and glass industries.[1]

7. The rule forbidding remaining in the workroom during the intervals does not apply to—

(*a*) continuous processes;

(*b*) different sets of persons having different intervals;

(*c*) rest pauses.[2]

MALE YOUNG PERSONS IN CERTAIN PROCESSES

Male young persons over 16 can be employed outside the above hours (as shown below) in the following processes—

The smelting of iron ore.

The manufacture of wrought iron, steel, or tinplate.

Processes in which reverberatory or regenerative furnaces, necessarily kept in operation day and night in order to avoid waste of material and fuel, are used in connection with the smelting of ores, metal rolling, forges, or the manufacture of metal tubes or rods, or in connection with such other classes of work as may be specified by Regulations.

The galvanising of sheet metal or wire (except the pickling process).

The manufacture of paper.

The manufacture of glass.

As to medical examination of male young persons employed in night shifts, see S.R. & O. (1938), No. 608.

(*a*) In work necessitating night work, the person may be employed on not more than 6 turns a week, with 14 hours at least between each turn. He may not be employed between midnight and 6 a.m. in two consecutive weeks, nor more than 56 hours a week or 144 hours in 3 weeks, and no overtime may be worked.

(*b*) In other work, the person may be employed under

[1] *Factories Act*, 1937, Sect 85

[2] *Ibid.*, Sect. 86.

the shift system between 6 a.m. and 10 p.m., but not more than 6 turns a week, and with 14 hours between each. The maximum weekly hours are 56, and no overtime may be worked.[1]

SPECIAL INDUSTRIES

Variations from the hours are also allowed by the special schemes laid down for laundries,[2] manufacture of bread, flour, confectionery, and sausages,[3] and fish and fruit preserving.[4]

NOTICE AS TO SPECIAL EXCEPTIONS

Before availing himself of any of these exceptions the employer must give 7 days' notice to the Factory Inspector and post the prescribed notice in the factory.[5]

OVERTIME

Women and young persons over 16 may be employed overtime in any factory, but—

(*a*) not more than 100 hours per year may be worked;

(*b*) not more than 6 hours per week may be worked;

(*c*) it must not take place in more than 25 weeks in the year;

(*d*) the total hours work in any day must not be more than ten (in five-day-week factories, 10½);

(*e*) the maximum period of employment each day is 12 hours, and must be within the limits already fixed, i.e. 7 a.m. and 8 p.m. (but in the case of women only, it can be 9 p.m.).

In calculating overtime, all time in which any employee is working overtime in that department must be included.[6]

[1] *Factories Act*, 1937, Sect. 81
[2] *Ibid.*, Sect. 92.
[3] *Ibid.*, Sect 93.
[4] *Ibid.*, Sect. 94, and see S.R. & O. (1938), No. 729
[5] *Ibid.*, Sect. 97.
[6] As to the separation of departments or sets for this purpose, see S.R. & O. (1938), No. 640.

But the Minister has considerable powers of varying these rules—

(*a*) He can increase the yearly allowance of 100 to 150 in the case of women.

(*b*) He can increase for not more than 8 weeks per year the daily maximum overtime hours for women, in work subject to pressure (i.e. so as to be more than ten hours per day).

(*c*) He can increase the weekly allowance or the number of weeks per year owing to exigencies of trade (in the case of a class of factories), and in the case of individual factories on account of a rush of orders, or a breakdown of machinery or other emergency.

(*d*) Where the nature of the business involves different persons being employed overtime on different occasions to a great extent, he can allow the overtime to be reckoned by reference to the individual worker, subject to a still further reduced maximum of 75 hours per year for women and 50 for young persons, and he can restrict overtime for young persons in processes where overtime would injure their health.[1]

(*f*) He can reduce overtime in any industry, if satisfied as a result of representations and an inquiry that it will not involve serious loss to the industry.[2]

YOUNG PERSONS EMPLOYED OUTSIDE FACTORY

A special scheme of hours applies to young persons employed outside the factory in collecting, carrying, or delivering goods, carrying messages, and running errands, as follows: Maximum weekly hours, 48; maximum spell, 5 hours; if employment is between 11.30 and 2.30, three-quarters of an hour interval must be given in that period; on one weekday each week, the person must

[1] See S.R. & O. (1938), No. 1163.

[2] *Factories Act*, 1937, Sect. 73

For special overtime schemes by Order, see S R & O (1938) No 727 (Aerated Waters), (1938) No 728 (Laundries), (1938) No 1163 (Florists); (1938) No 1245 (Chocolate and Sugar Confectionery), (1938) No. 1528 (Biscuits), (1938) No 1612 (Glass Bottles), (1939) No 509 (Bread, Flour, Confectionery and Sausage)

cease work at 1 p.m. Overtime is limited to 6 hours a week and to 50 hours a year, and can only take place in 12 weeks in a year. The person must be given 11 hours consecutive rest each day, including the period from 10 p.m. to 6 a.m.[1]

TWO-SHIFT SYSTEM FOR WOMEN AND YOUNG PERSONS OVER 16

The Minister may authorize the two-shift system of employment of women and young persons over 16 between 6 a.m. and 10 p.m. (6 a.m. to 2 p.m. on Saturday). The average shift per day must not exceed 8 hours (in five-day-week factories, 10 hours, but not exceeding 48 hours in a week or 88 hours a fortnight). The consent of the majority of the workpeople concerned is requisite.[2]

Staggering of Hours in Factories Using Electricity. There is during the present fuel emergency an emergency scheme for modifying the above rules in factories using electricity. See Appendix.

CERTIFICATES OF FITNESS

No young person under 16 may remain in factory employment for longer than the prescribed period, viz. 14 days[3], without a certificate of fitness from the examining surgeon. A factory inspector has also power to require such a certificate in the case of young persons between 16 and 18.

Examining surgeons are appointed by the Chief Inspector of Factories. Where there is no surgeon appointed, the poor law medical officer acts in that capacity. A medical practitioner who has an interest in any factory (other than merely being employed as factory doctor) is excluded from acting as examining surgeon for that factory.

The fees for the examination of, and for certificates of fitness to, young persons and for examinations under

[1] *Factories Act*, 1937, Sect. 98.
[2] *Employment of Women and Young Persons Act*, 1936.
[3] S.R. & O. (1938), No. 534.

Factories Act Regulations may be regulated by agreement between the factory occupier and the surgeon; failing such agreement the scale is as follows[1]—

A. For examinations as to fitness and issue and refusal of certificates of fitness—

When the examination is at the factory, 7s. 6d. for the first and 4s. for each other person examined on the occasion of any one visit to the factory, and, in addition, if the factory is more than two miles from the surgeon's central point, 2s. for each complete mile over and above the two miles.

When the examination is not at the factory but at the residence of the surgeon, or at some other place appointed by the surgeon for the purpose and approved by the Chief Inspector of Factories, 4s. for each person examined.

B. For examinations in pursuance of special regulations under the Act, making entries in registers, issue of certificates, and the performance of other duties as may be required by the regulations in connection with the examinations—

Seven shillings and sixpence for the first and 2s. for each other person examined on the occasion of any one visit to the factory, and, in addition, if the factory is more than two miles from the surgeon's central point, 2s. for each complete mile over and above the two miles.

Where the examination is at the surgeon's residence or other place appointed by him and approved by the Chief Inspector of Factories, 2s. 6d. for each person.

In cases of investigation of lead, phosphorus, arsenical or mercurial poisoning or anthrax, and in cases where the examining surgeon carries out examinations under the directions of the Minister, no fees are payable by the occupier of the factory, the surgeon being paid by the Ministry.

In cases of doubt the examining surgeon must apply to the local education authority for the school medical

[1] S.R. & O. (1938), No. 527.

record, and the local education authority is bound to supply this.[1]

OUTWORKERS

Every occupier of a factory and every contractor employed by him must keep a list in the prescribed form giving names and addresses of all outworkers employed by them in any of the occupations prescribed by the Minister (see below). These lists or particulars from the list have to be sent to the Factory Inspector as required by him, and also kept open for his inspection, and have to be sent to the sanitary authority twice a year (before 1st February and 1st August). It is the duty of the sanitary authority to notify the other sanitary authorities in the districts in which the workplaces of the various outworkers named in the list are situated, and the factory occupier, if notified by a sanitary authority that the workplace of any of his outworkers situate in that authority's district is dangerous to health, may not continue to supply work to be done in that workplace. The following are the prescribed occupations (Orders, 10th April, 1911, 9th February, 1912, 20th January, 1913).

The making, cleaning, washing, altering, ornamenting, finishing, and repairing of apparel; the making up, ornamenting, finishing and repairing of table linen, bed linen, or other household linen (including in the term "linen" articles of cotton or cotton and linen mixtures), and any processes incidental thereto; the making, ornamenting, mending, and finishing of lace and of lace curtains and nets; the making of curtains and furniture hangings and any processes incidental thereto; cabinet and furniture making and upholstery work; the making of electro-plate; the making of files; the manufacture of brass and of any articles or parts of articles of brass (including in the term "brass" any alloy or compound of copper with zinc or tin); fur pulling; the making of iron and steel cables and chains; the making of iron and steel anchors and grapnels; the making of cart gear, including swivels, rings, loops, gear buckles, mullin bits, hooks, and attachments of all kinds; the making of locks, latches and keys; the making or repairing of umbrellas, sunshades, parasols or parts thereof;

[1] *Factories Act*, 1937, Sects. 99, 100, 126, 127

the making of artificial flowers, the making of nets other than wire nets; the making of tents, the making or repairing of sacks, the covering of racquet or tennis balls; the making of paper bags, the making of boxes or other receptacles or parts thereof made wholly or partially of paper, cardboard, chip or similar material; the making of brushes, pea picking, feather sorting, the carding, boxing, or packeting of buttons, hooks and eyes, pins and hair pins, the making of stuffed toys, the making of baskets, the manufacture of chocolates or sweetmeats, the making or filling of cosaques, Christmas crackers, Christmas stockings, or similar articles or parts thereof, the weaving of any textile fabric

The penalty is: a fine not exceeding £10.

A sanitary authority can also prohibit a factory occupier or contractor from giving out any work in most of the occupations enumerated above,[1] to be done in any place which is injurious or dangerous to health.[2]

NOTICES, REGISTERS, AND RETURNS

Every factory occupier has to send to the Factory Inspector within a month of the commencement of his occupation written particulars of the name and address of the factory, nature of the work, whether mechanical power is used, and, if so, its nature, and name of the firm. The penalty for contravention is a fine not exceeding £20 or £1 for each day after that month (whichever is greater).[3]

A notice in the prescribed form has to be kept posted up at the factory entrance (and elsewhere in the factory, if the Factory Inspector so directs), so that it be easily read by all the employees, giving the following information: The prescribed abstract of the Factories Act, names and addresses of the Factory Inspector and examining surgeon, a notice of the clock, if any, by which the work period and meal times are regulated, and every other notice and document required under the Factories Act to be posted up [4]

A register (the "General Register") has to be kept in

[1] The exceptions are The making of electro-plate, files; brass, iron and steel chains, cables, anchors, grapnels, cart gear, locks, latches and keys, cabinet and furniture

[2] *Factories Act*, 1937, Sects 110–111

[3] *Ibid.*, Sect 113

[4] *Ibid.*, Sect 114

each factory giving in the prescribed form particulars as to the young persons employed, the washing, etc., of factory, notifiable accidents, the special exceptions of which the employer avails himself, and any other prescribed matters. Extracts from the register must be sent to the Factory Inspector whenever required by him, and the register must be open to inspection by the examining surgeon. The penalty for contravention is a fine not exceeding £5. Periodical returns at intervals of one year have also to be made to the Chief Inspector of Factories at the Ministry showing number of employees at given dates and the other particulars that may be required.

The general register and the other records must be kept available for inspection by the factory inspector or examining surgeon for a period of two years.[1]

PENALTIES FOR CONTRAVENTIONS GENERALLY

The general penalty for contraventions of the Act (i.e. apart from those contraventions for which an express penalty is laid down) is a fine of £20 maximum. If the offence is continued after the conviction, there is a further continuing penalty of £5 a day.

If any person dies or suffers injury in consequence of the contravention, the occupier or owner of the factory is in addition liable to a fine of £100 maximum. The Minister may apply the whole or part of the fine for the benefit of the injured person or his family.

Any such sum must be deducted from any damages awarded under the Employers' Liability Act (see p. 96), but this does not apply to workmen's compensation payments.[2] Contributory negligence by the injured person is no defence.[3]

For forging a certificate, use of forged certificate, making false entry into register, etc., or false declaration,

[1] *Factories Act*, 1937, Sects. 116–118.
[2] *Workmen's Compensation Act*, 1925, Sect. 32.
[3] Blenkinsop *v.* Ogden, [1898] 1 Q.B. 783.

using false entry or declaration, there is a fine not exceeding £100 or imprisonment not exceeding 3 months.

The person other than the occupier who actually commits the offence is liable to be prosecuted in addition to the occupier. And the parent of a young person who knowingly allows the latter to be employed contrary to the Act is liable to a fine not exceeding £5.

CHAPTER V

THE LAW CONCERNING EMPLOYERS' LIABILITY FOR ACCIDENTS—WORKMEN'S COMPENSATION

THE legal provisions comprised in the Workmen's Compensation Acts so largely govern the liability of employers in respect of injuries to employees, and they have been given so wide an application to industrial accidents that this chapter must be concerned in the main with their exposition. It is necessary, however, before proceeding to this exposition, to summarize the provisions (*a*) of the Common Law, and (*b*) of the Employers Liability Act, 1880.

LIABILITY AT COMMON LAW

The Common Law provisions are important (1) in cases which are not covered by statute, (2) in cases where, although a statute applies, the Common Law remedy is not excluded as an alternative, and the injured person chooses for his own reasons to proceed by the Common Law remedy.

The Common Law position is as follows, and must be interpreted subject to the statutory provisions set forth later.

If an employee is injured in consequence of a direct breach of contract by his employer, the employer is liable. If he is injured in consequence of his employer's negligence[1], the employer is liable unless the employee accepted

[1] Such negligence is, of course, not confined to cases where the employer by negligently performing an action causes injury; it arises in whatever respect the employer has shown negligence to which the injury in question is to be attributed. Thus the dangerous state of the place of work, or defective plant or tools provided by the employer may give rise to a claim under this heading, and the employer would be liable if he knew or by reasonable care could have known of the

the risk. If the employee was himself guilty of contributory negligence the damages are apportionable according to their respective degrees of fault.[1] To prove acceptance of the risk it is not sufficient to show that the employee knew of the existence of the risk, but also that he undertook it voluntarily,[2] and even this will not suffice if the employer's negligence amounted to breach of a statutory duty (e.g. a contravention of the Factories Act).[3]

There are three Common Law duties of the employer—

(*a*) He has to provide a safe workplace.

(*b*) He has to provide safe plant and appliances.

(*c*) He has to provide a safe system of work.[4]

In addition to these three basic duties there is a further duty in connection with *young persons under eighteen*, viz. to instruct them as to the dangers likely to arise from their work, and this carries with it the correlative *positive* duty of instructing them how to perform their work.[5]

Where the injury is caused by the negligence, not of the employer himself, but a fellow employee, the employer is not liable, unless he can be shown to have been negligent in engaging that fellow employee or to have been guilty of contravening some statutory duty, or any of the Common Law duties set out above. This is the principle of "common employment,"[6] and applies only in so far as it is not excluded by the statutory provisions set forth later. The employment is common where both employees in question are working under the orders of the

danger or defect. (Cole *v.* de Trafford, [1918] 2 K.B. 523.) Negligence by the employer in the choice of employees would also be a good ground, although an employer is not supposed to guarantee the competence of his employees (Wilson *v.* Merry (1868), 1 H.L., Sc. 326), and the employment in a particular job of an insufficient number of employees in proportion to the risks does not amount to negligence. (Saxton *v.* Hawkesworth (1872), 26 L.T. 857.)

[1] *Law Reform (Contributory Negligence) Act*, 1945.

[2] Smith *v.* Baker, [1891] A.C. 325; Williams *v.* Birmingham Battery Co., [1899] 2 Q.B. 338; Baker *v.* James Bros. & Sons, [1921] 2 K.B. 674.

[3] Davies *v.* Thomas Owen & Co., [1919] 2 K.B. 39.

[4] Wilsons & Clyde Coal Co., Ltd *v.* English, [1938] A.C. 57. Davidson *v.* Handley Page, Ltd., [1945] 1 All E.R. 235.

[5] See, e.g. Grizzle *v.* Frost, 3 F. & F. 622.

[6] A Government Bill now before Parliament proposes to abolish the defence of "common employment."

same employer, although not necessarily in the same grade,[1] and where the safety of the one employee must normally depend on the care and skill of the other or others,[2] or in other words, where the work necessarily, or naturally, or in the usual course involves juxtaposition, local or casual, of the fellow employees and exposure to the risks of the negligence of one affecting the other.[3] The defence is not open where the injured employee is too young to be capable of having agreed to bear the risk of a fellow worker's negligence.[4]

LIABILITY UNDER THE EMPLOYERS' LIABILITY ACT, 1880

The effect of this statute is to exclude the defence of common employment (see above), in the case of the class of employees to whom it applies, where injury arises from—

(*a*) Any defect[5] in the condition of the ways, works, machinery, or plant connected with, or used in the business of the employer, if arising from, or if it has not been discovered or remedied owing to, the negligence of the employer or of some person in the service of the employer entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition; or

(*b*) The negligence of any person in the service of the employer, who has any superintendence entrusted to him, whilst in the exercise of such superintendence, and

[1] E.g. an overseer in a mine is in "common employment" with a miner (Hall *v.* Johnson (1865), 34 L.J., Ex. 222). See also Holloway *v.* Donaldson Line Ltd. (1935), 41 Com Cas 47; Bromley *v.* Collins, [1936] 2 All E.R. 1061, Bloor *v.* Liverpool Derricking and Carrying Co. Ltd., [1936] 3 All E.R. 399, C.A; Fanton *v* Denville, [1932] 2 K.B. 309; Hunt *v.* Rice & Sons, [1936] All E.R. 576.

[2] Morgan *v.* The Vale of Neath Railway Co (1865), 1 Q.B. 149.

[3] Radcliffe *v.* Ribble Motor Services, Ltd., [1939] A.C. 215, Lancaster *v* L.P.T.B., [1947] 2 All E.R. 267; Graham *v.* Glasgow Corporation, [1947] 176 L.T. 142; Glasgow Corporation *v.* Neilson, [1947] 2 All E.R. 346.

[4] Holdman *v.* Hamlyn, [1943] 2 All E.R. 137.

[5] See Wilsons and Clyde Coal Co. Ltd. *v.* English, [1938] A.C. 57; 106 L.J.P.C. 117, Robertson *v.* Kinneil Cannel and Coking Coal Co. (1931), 101 L.J.P.C. 44.

whose sole or principal duty is that of superintendence and who is not ordinarily engaged in manual labour; or

(*c*) The negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such accident resulted from his having so conformed; or

(*d*) The act or omission of any person in the service of the employer done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or

(*e*) The negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway.

In these cases, the injured person can recover. If, however, he knew of the defect or negligence which caused his injury and did not notify his employer or a superior, he cannot recover, unless he was aware that it was known to his employer or superior.

The Act applies only to the following employees—

(*a*) Railway employees.

(*b*) Persons to whom the Employers and Workmen Act, 1875, applies (see page 222).

The amount of compensation that may be recovered is limited to the amount of three years' earnings in the employment in question (inclusive of any payments in kind, like food and clothes).[1]

Written notice of the injury must be given to the employer within six weeks of its occurrence, the Court having power to dispense with this requirement in fatal cases, and to allow a defective notice to stand. Each action must be commenced in the County Court and within six months of the occurrence, but in fatal cases the period allowed is 12 months.

[1] Noel *v* Redruth Foundry, [1896] 1 QB 453. As to election between these and proceedings under the Workmen's Compensation Acts, see Avery *v* L N E R Co, [1938] A C 606.

THE WORKMEN'S COMPENSATION ACTS

The law regarding workmen's compensation has been consolidated in the Workmen's Compensation Act, 1925. The principle underlying this legislation is a different one from that at the basis of the Common Law rules, and the other statutes referred to in the previous paragraphs. While the latter are concerned only with negligence directly or indirectly attributable to the employer and the award of damages for loss or suffering caused by such negligence to the employee or his relatives, the former is not concerned with negligence as such, but with the fact of injury to the workman during the course of his work, and the award of compensation to the workman or his relatives for the loss of earning power resulting from this injury. Such injury may be either (*a*) injury through an accident, or (*b*) injury to health from industrial disease. These two classes of injury in respect of either of which compensation is payable under the Workmen's Compensation Act will be dealt with in turn.

Who are Entitled to Compensation. The Act does not cover all employed persons as such. It covers (*a*) all those who are engaged in manual labour, (*b*) other employees whose wages do not exceed £420 a year. Apprentices are covered, but not outworkers, nor casual employees employed for another purpose than the employer's trade or business. If, however, a body like a works' sports club itself engages or pays a casual worker, e.g. a golf caddy, the latter is covered.[1] A person will not be covered between whom and the employer in question a contract of service does not exist, e.g. an independent contractor—on this point, generally, see pages 7–8 above. An "outcropper" in a mine who does not work under the orders of the colliery firm is an independent contractor.[2] But a person will not be outside the Act merely because

[1] *Workmen's Compensation Act*, 1925, Sect 3, *National Health Insurance, Contributory Pensions and Workmen's Compensation Act*, 1941, Sect 13

[2] Cf Crowley *v* Limerick C C, [1923] 2 Ir R 178, C A, Underwood *v* Perry & Son, Ltd (1923), W C & I Rep 63, C A.

he is at the time engaged only on trial. A person working on trial is engaged under a contract of service, even though the terms of this contract are merely preliminary to and less defined than the contract which is in the contemplation of the parties to be arranged subsequently. Another distinction is that between an apprentice and a mere pupil or trainee, e.g. an ex-service man undergoing a course at a Government instructional factory, who received a maintenance allowance and was subject to rules as to regularity, was held to be outside the Acts as a mere trainee.

Whether a non-manual worker is in receipt of remuneration exceeding £420 a year or not is a question of fact. The words "remuneration" and "earnings" in the Act have to be distinguished. The detailed provisions set out later as to the calculation of earnings for the purpose of computing the amount of compensation have no application to the present question.

Where the injury results in the employee's death, the persons entitled to compensation are those dependents of the employee who are members of his family,[1] and who are alive when the compensation agreement or award is made. To be a dependent it is not necessary for the claimant to have been totally dependent upon the deceased employee; he may be only partially dependent, which means being partly dependent on the deceased for the ordinary necessaries of life suitable to his class and position.[2]

In determining whether a person is a partial dependent, one is entitled to take account of prospective matters. Thus, where an injured boy was at the time of the injury earning wages of an amount which allowed no contribution to the family income, but died later at a time when, but for the accident, his wages would have allowed such a contribution, the father was held to be

[1] I e wife, husband, parent, grandparent, step-parent, child, grandchild, stepchild, brother, sister, half-brother, half-sister Adopted children are also included (*Adopted Children (Workmen's Compensation) Act*, 1934)

[2] *Workmen's Compensation Act*, 1925, Sects 2, 1

a partial dependent.[1] As to what are the ordinary necessaries of life, these are food, clothes, shelter, and the necessary concomitants, but not savings which careful persons put by for a rainy day, or insurance.

Who is Liable to Pay Compensation. The employer is, as a general rule, the person liable to pay compensation. In the case of a person employed for the purposes of a game or recreation by a club, the club manager or committee is the employer.

Where an employee is temporarily lent or let on hire to another person, the employer remains liable. Where, however, the work on which the employee is engaged has been sub-let to the employer by someone else in the ordinary way of the latter's business, the employee injured on premises under the latter's control may claim either from the latter or his employer (e.g. when a firm of decorators undertakes the work of decorating a house for a firm of builders which has in its turn undertaken the work of building and decorating). But, where someone other than the employer pays compensation under this rule, he can recover the amount from the employer.[2]

If the circumstances of the accident indicate that some person other than the employer is legally liable to pay damages (e.g. where the accident has been caused by a third party's negligence) the employee may claim compensation from his employer and damages from the third party, but cannot recover both, and the employer who has to pay compensation under such circumstances may claim to be indemnified by the third party.[3] If the third party was acting within the scope of his employment, this indemnity will, in turn, generally be against his employer. Thus, where a carter employed by a ship canal company who was in attendance at a factory when machinery was being loaded was injured through a factory

[1] Cf. Smith *v* "Gwendalough" (Owners) (1920), 122 L.T. 228, C A.; Peart *v* Bolckow Vaughan & Co., [1925] 1 K B 399; Lee *v* Munro (1929), 140 L T. 129.

[2] *Workmen's Compensation Act*, 1925, Sects 5-6.

[3] *Ibid.*, Sect. 30.

workman dropping a rod upon the vehicle, the canal company having paid compensation was allowed to claim against the factory. If the injured employee, having been awarded damages, is unable to recover them through no fault of his own, e.g. if the defendant in the action for damages has not the means to pay, he may then take action for compensation from his own employer.

In cases of industrial disease, the person liable is the person who, during the year previous to the date when the employee was disabled, last employed him in the kind of work from which the disease arises. If that employer, however, is able to prove that the disease was, in fact, contracted in the employment of another person, the latter is liable. And if the disease was of a kind which can be gradually contracted, other persons who during the year previous to the date of disablement employed the injured employee in the same kind of work can be required to bear their proper share of the compensation.[1]

Where the employer becomes bankrupt or the employing company goes into liquidation, the employer's rights to call upon an insurance company to pay the employee's claim under an insurance policy are transferred from the employer to the employee who can thus claim direct from the insurance company. The liability of the insurance company is, of course, limited to the liability to the employer under the policy. Thus, when a firm only partly covers itself, the employee would have to prove for the balance in the bankruptcy or liquidation. Again, some employers' mutual indemnity associations contract only to pay such sums as stand to the respective credits of their employing members. The employee cannot claim to be placed in a better position than the employer.[2]

If the employer was not insured, the employee's claim is included among debts having priority over other

[1] *Workmen's Compensation Act*, 1925, Sect 13.
[2] *Ibid*, Sect. 7

debts in the bankruptcy or liquidation. Where the compensation in this case is a weekly payment the debt is the amount of the equivalent lump sum (see page 118).[1]

From Which Accidents Claims Arise. The accidents in respect of which compensation is payable are those which arise out of, and in the course of, the employment, provided that the employee in each case is disabled for more than three days from earning full wages at the work on which he was employed.[2]

By "accident" is meant an unlooked-for mishap or any untoward event which is not expected or designed.[3] It is immaterial if the accident is of a kind which would not have occurred to a normally healthy person, or, if it had occurred, would not have disabled him.[4] The following examples will illustrate the position in this respect—

A miner at work while suffering from high blood pressure ruptures a blood vessel while trying to lift a heavy piece of fireclay. Compensation granted.

A clerk suffering from degeneration of the heart collapses and dies while hurrying to catch a train to take him back to the office from which he has been absent on official duties. Compensation granted.

A man suffering from degeneration of the arteries has a slight hip injury while carrying bundles of faggots; two days later he has an apoplectic seizure due to the state of the arteries and dies. Compensation granted.

A boy with latent tuberculosis is injured by a fall from a wagon. Tuberculosis is then definitely diagnosed. Compensation awarded, because the injury had brought the disease into life.

An injured labourer is unable to undergo an operation necessary to make him fit for work because of an ailment contracted in the Army. Declaration of liability granted against the firm.

A miner suffering from heart disease dies while at work. Compensation refused on the grounds that his condition was such that he might have died at any time, and that his death was not an unexpected event.

A miner suffering from heart disease has an attack of angina pectoris while engaged on his ordinary work of shovelling away

[1] *Workmen's Compensation Act*, 1925, Sect. 7.
[2] *Ibid.*, Sect. 1.
[3] Fenton *v.* Morley, [1903] A.C. 443
[4] Clover Clayton & Co. *v.* Hughes, [1910] A.C. 242.

a fall from the roof, and dies. Compensation refused on the ground that there was no accident [1]

In order to prove that an accident arises out of, and in the course of, the employment, it is necessary to show that it arose because the employee was at the time doing something which he was employed to do —in other words, that the employee was engaged within the sphere of his employment—*or* because his employment exposed him to the risk of that accident, *and* that it took place after the commencement and before the end of the employment. We shall deal with those three points separately, viz. (*a*) sphere of employment, (*b*) special risks, and (*c*) beginning and end of employment.

Sphere of Employment. It is only in cases where fatal or serious and permanent disablement is the result of the accident that the law construes the sphere of employment to mean any actions done "for the purposes of, and in connection with, his employer's trade or business."[2] Otherwise, by employment is meant the circle of duties which the employee has been engaged to perform and no more, and an employee injured in an accident due to his serious and wilful misconduct will have no claim.[3] The following cases will serve as illustrations of these rules which often in practice necessitate the drawing of fine distinctions—

A miner is engaged, his work being to drive a certain face in order to keep the line along the wall in proper position. Place No. 21 was allocated as his place of work In order to produce more coal he went to No 22, and there was killed by a fall of stone. Compensation refused, because No 21 was his sphere of employment

A boot-finisher took home boots left with his employers to do work on them at home in order to learn the better-paid trade of boot repairing, and was injured while engaged on such work at

[1] Cf. Clover Clayton & Co. *v* Hughes, [1910] A C 242; Spence *v.* Baird & Co , [1912] S C 343 , Ruscroft *v* Stewarts & Lloyds, Ltd , 140 L.T. 64, C A ; Breen *v* Morgan Crusible Co, (1033), 26 B.W.C.C 368; Falmouth Docks Co *v* Treloar, [1933] A C 481; James *v* Partridge Jones (No 2), [1933] A C 501.

[2] *Workmen's Compensation Act*, 1925, Sect. 1.

[3] *Ibid*

home. Compensation refused because the work was unpaid, done in the man's own time, and outside the sphere of the employer's control.

A lorry driver passing another lorry which had broken down halted to give it a tow. In the manoeuvring he was crushed between the two vehicles. Compensation refused.

A colliery fireman A asked his mate B, who had not been duly appointed for shot-firing under the Explosives in Coal Mines Order, to help him in that work. B fired a shot before A gave the signal and A lost his eye as a result. Compensation granted as the unauthorized delegation by A to B did not carry A outside his sphere of employment, at any rate as understood in cases of serious and permanent disablement.

A, B (his son), and C were employed in a coalpit on bricking work. A, finding he had forgotten one of his tools, sent B to fetch one from an adjoining pit. B was asphyxiated in the latter place, and A going to his rescue met the same fate. Compensation to A's dependents was refused because A was not entitled to exercise his paternal authority over B so as to enlarge his sphere of employment.

A and B, miners, were bringing down a piece of coal by means of blasting (an operation they were entitled to do), and each bored a separate bore. One shot exploded and A, forgetting there was a second shot to go off, went to examine whether his own work was successful. On arrival there he was seriously and permanently injured by the second shot exploding. The Mines Orders forbid approach to a shot under such circumstances. Compensation granted.

A and B, miners, were engaged in blasting rock C, a fireman, was also present as the firing was done by electricity. After the shot was fired A left his place of safety unknown to the others, proceeded to couple up the electric cable to his detonator, and was killed while doing so through the remaining charge exploding. The Mines Orders prohibit anyone but the firemen coupling the cable. Compensation refused because A had undertaken a duty which he was not qualified or engaged to do.

A fireman employed by a railway company lost his right foot through an injury while going from the shed to the station along a forbidden route. Compensation refused on the ground that the man had placed himself outside the sphere of his employment by walking along a forbidden route to save himself the trouble of a longer walk.

A was a stoneman holding a shot-firer's certificate. To save himself the trouble of drilling another hole, he drilled out the stemming of a misfired shot, and lost his left arm by an explosion. The Mines Orders provide that in case of misfire another shot must be fired in a fresh hole not less than a foot away. Compensation was granted, since A's act, whatever its motive, was done for the purpose of and in connection with his employers' business.[1]

[1] Stokoe *v.* Mickley Coal Co., Ltd. (1927), 138 L.T. 566.

A miner when going out of the pit after working overtime rode on a tub on the haulage way and was killed. Compensation refused because the man was not doing something similar in kind to what he was expected to do, but something peculiar and quite outside his sphere of employment.

A cotton porter had to supervise the weighing of bales of cotton at different warehouses, and to get from one to another used the public trams at the firm's expense In attempting to board a moving tram he fell and was killed. Compensation granted because getting on a moving tramcar by which the man was entitled to travel in the course of his employment was not such an additional risk as to take him outside the sphere of his employment.

Special Risks. To illustrate the distinction between a special risk and other risks in its application to workmen's compensation, two cases where the accident was sunstroke may be cited. A sailor collapsed through sunstroke in the tropics; compensation was granted because his employment brought him to a tropical region. But, in the case of a coal porter employed in England, who died from sunstroke during a heat-wave, compensation was refused because it was not his employment that brought him within the risk of such an occurrence.

Other instances where the question of special risks has been in issue are—

A commercial traveller was driving a motor-cycle on business for his firm during a storm, and was killed by a falling tree. Compensation was granted, the Court ruling that liability for street accidents must be judged on the ground that where an employee has to bear the risk of such accidents, i e where the employment brings him into a danger zone, the injury arises out of the employment.

A painter was pushed off his steps by a drunken man and injured by the fall. Compensation granted because it was a risk connected with working out of doors.

A post office sorter employed in sorting mail bags died from septic inflammation. The atmosphere where he worked was excessively dusty. Compensation granted.

A pottery worker was killed at work during a quarrel with one of his mates. Compensation refused.

A boy employed by a firm of boxmakers was struck in the eye

[1] Cf. Casey *v* Humphreys (1913), W.C & I.Rep. 435; Lane *v* Lusty, [1915] 3 K.B. 239; Stephen *v* Cooper, [1929] A C. 570; Thomas *v.* Ocean Coal Co., [1933] A.C. 100.

by a nail thrown by another boy worker, and lost the sight of his eye. Compensation granted because the risk of nails being thrown in that trade where boy labour was largely used was incidental to the employment.[1]

Beginning and End of Employment. The cases where it is an issue whether the accident arose in the course of the employment are mainly those where there are interruptions in the normal employment and those where the employee is on the employer's premises or in a vehicle belonging to his employer before the work actually commences or after it stops. In each case it is a question of fact, the following being illustrations—

(*a*) *Interruption of Work.* A manager in a firm's staff canteen was entitled to his meals in addition to wages He was served with impure tea and was incapacitated. Compensation refused.

A dustman whose duty it was to collect refuse every morning was allowed 40 minutes within the morning period for refreshment and had to arrive back at the depot at 1.10 p.m. He overstayed the time allowed for refreshment. At 1 40, while returning to the depot, he was thrown from his cart through the horse shying at a lorry and injured Compensation granted.

A night watchman was scalded while making tea in a can, through swinging the can to "mash" the tea. Compensation granted.

A mill overlooker used to go each morning to the engine room for a chat for a few minutes before the engine started. One morning while there he was fatally scalded. Compensation refused.

A hot-water boiler and a cold-water tap for washing were provided by a cotton firm for the convenience of those who desired to have breakfast in the factory. A girl while washing a cup at the tap during the breakfast interval cut her hand. Compensation refused.

A driver left his wagon to speak to a lady friend; while getting back he fell down and fractured his leg. Compensation granted.[2]

A boy machine-driller, sitting at a table in the works canteen after his midday meal, was injured by a dart rebounding from a darts board in another part of the room at which other workers were playing. Compensation granted.[3]

(*b*) *Accident Before or After Work Period.* A miner's boy was

[1] Cf. Nisbet *v.* Rayne, [1910] 2 K.B. 689; Hewitt *v.* Partridge Jones and Paton, Ltd. (1922), 128 L T 238, C.A.; Lawrence *v.* Matthews, [1929] 1 K.B. 1; Smith *v.* Stepney Corporation (1929), W.C. & I.Rep 349, C A.; Brooker *v.* Thomas Borthwick & Sons (Australasia), Ltd., [1933] A.C. 669.

[2] Reed *v.* G.W.R., [1909] A C. 31.

[3] Knight *v.* Howard, Wall Ltd., [1938] 4 All E.R. 667.

injured when riding to work on a coach belonging to his employers to the place where the lamps were given out. Compensation granted on ground that the boy was only in the coach by reason of his employment.

A miner after finishing his day's work broke his leg while crossing part of his employer's premises used as a public footpath. Compensation was refused at the County Court, but the Court of Appeal remitted the case to the County Court judge for re-hearing on the ground that the point to which he should direct himself was whether the accident happened on the colliery premises or on a public footpath.

A colliery firm provided a train to enable its workers to get to the mine from their homes. There was practically no other means of reaching the mine for workmen living at a distance, but the men were not obliged to use the train. Compensation refused to a miner who was injured while crossing the line to catch the train, through lack of evidence that it was part of his contract to use the train.

A pit-head bath was provided by a firm on their premises for those of their miners who desired to use it. A miner after ceasing work was using the bath and fractured his skull through slipping on the tiled floor. Compensation refused on ground that the man had remained on his employer's premises for the enjoyment of a privilege conferred and not in the performance of a duty imposed.[1]

Unexplained Accidents. Cases occur where there is an accident of which it is not possible to find the cause—unexplained accidents. The distinctions to be drawn here will be between cases of injury where it is not possible to trace a connection with the employment, and those where the connection is there, although there may be gaps in the chain of causation. The two following cases will illustrate this distinction—

A detonator exploded, after a miner had cut the fuse, and injured the miner. The cause of the explosion was unknown. Compensation was granted, it being pointed out in the judgment of the Court (the House of Lords) that while in explosions things happened which could not be explained, to call the explosions spontaneous was an inaccuracy, the truth being that there are chemical changes either by contact or movement which cause an explosion.

A railway guard was found lying unconscious in a tunnel with a fractured skull and died without regaining consciousness. The window of the compartment in which he had been was found

[1] Cf. Stewart & Son, Ltd. *v.* Longhurst, [1917] A.C. 249; Allen *v* Siddons (1932), 25 B.W.C.C. 350; Gaskell *v.* St. Helens Colliery (1934), 150 L.T. 506; L.N.E.R. *v.* Brentnall, [1933] A.C. 489.

open. There were three or more possible explanations, e.g. he might have fallen out in trying to close the door after it had swung open; he might have fallen out in trying to close the window; he might have been hanging out of the window out of curiosity, etc. None of these possibilities were however supported by reasonable inference. Compensation was refused, the Court pointing out that the circumstance of one surmise being more probable than another mattered nothing so long as they were in the sphere of surmise and outside that of reasonable inference.[1]

The Amount of Compensation in Fatal Accidents. In cases of fatal accidents, a lump sum is payable, and in addition, a children's allowance where the dependants include any child under 15 in addition to some other member of the employee's family. The maximum allowable for lump sum plus children's allowance is £700. The lump sum is, subject to a maximum of £400.

(i) where there are whole dependants, the amount of the employee's earnings with the employer during the last three years, or £300, whichever is larger. (If any weekly payments have been made between the accident and the death, the total of these or amount paid in redemption of them is to be deducted from the amount of the lump sum. If the employee has not been in the employer's service for three years, the amount of the three years' earnings is taken as 156 times the average weekly earnings during that service);

(ii) where there are only partial dependants, a proportion of that specified under (i) as settled by the County Court;

(iii) where there are no dependants, the amount of the medical and funeral expenses up to £15 maximum.

The children's allowance is, in respect of each child under 15—

(*a*) where the child and other member of the family are whole dependants, 15 per cent of the employee's average weekly earnings for every complete week between the date of the death and that of the child's fifteenth birthday (see example on page 109);

[1] Cf. Pomfret *v.* Lancs. & Yorks. Rly., [1903] 2 K.B. 718.

(*b*) if any of the above were only partial dependants, a proportion of that specified under (*a*) as settled by the County Court. (For the purpose of the children's allowance the average weekly earnings are reckoned as £1 where they are less than £1, and as £2 where they are more than £2. If an amount has been paid in redemption of weekly payments, this amount if, and so far as, it exceeds the amount of the lump sum is deducted from the children's allowance.)[1]

EXAMPLE. A man (average weekly earnings, 28s.) dies leaving widow, child A, 13 years, child B, 4 years.

A will reach 15 in (say) 90 weeks, B in (say) 560 weeks.			
The lump sum payable – 28s. × 156		£218	8 –
Allowance for child A – 15% of (28s. × 90)	=	18	18 –
,, ,, B – 15% of (28s. × 560)	=	117	12 –
Total payment	=	£354	18 –

Say the man in the above case had average weekly earnings, 45s.

45s. × 156 gives a sum more than £300			
Lump sum payable is		£300	– –
Allowance for child A is 15% of 40s. (the maximum) × 90		27	– –
Allowance for child B = 15% of 40s. × 560	=	168	– –
Total payable	=	£495	– –

The *children's allowance* is not necessarily in respect of the deceased employee's children. It is payable in respect of any children under 15 who were dependent upon the deceased employee. Thus, it has been held to cover cases where the deceased left a widow and a grandchild, and where the deceased, an unmarried man, left his mother and eight brothers and sisters under 15. It also covers illegitimate children, but only those of the deceased employee himself.

Partial Dependency in Fatal Cases. The County Court has, as stated, the power of settling which proportion of the amount which would have been payable in the

[1] *Workmen's Compensation Act*, 1925, Sect. 8, and cf. Swan *v* Pure Ice Co, [1935] 2 K.B. 265.

event of total dependency should be paid in cases of partial dependency. This proportion is to be the sum which, in the words of the Act,[1] is "reasonable and proportionate to the injury to such dependants." The County Court here has an important power of deciding a question which is normally one of fact, so that only in the most exceptional cases can there be a likelihood of appeal to a higher court. The following cases will illustrate the view the County Courts take in this matter—

A family, while depending on the earnings of the father, had been the more dependent on the earnings of the deceased son. The latter had been fatally injured by a fall of roof in the colliery in which he was employed; his earnings were £2 a week and, of this, he contributed 36s to the family purse. The total upkeep cost of the household was £4 4s., the remainder being contributed by the other members of the family, including the father On the death of the son, ten persons had to be kept on 48s. per week, seven of the remaining children being under 15 years of age. It was contended on behalf of the family that they had lost their greatest contributor and that they should therefore receive the maximum amount allowable in cases of total dependency, namely, £600. In announcing its award, the Court held that it had been proved that there was very serious dependency on the wages of the deceased son; it could not, however, be said that there was total dependency. The position of a member of the family, although for the time being a very important and serious one to the family funds, was not the same as that of a father. A father was bound to keep his children, and in this case the boy was just coming into manhood, and could leave the family seat at any time he liked. There was, therefore, a strong expectation that in a short time he would have left the family and started out on his own. Accordingly the Court assessed compensation at £450.

A father claimed £300 in respect of the death of his son. The father was aged 69, and ever since the shock of his son's death he had himself been unable to work. Whether this circumstance should be taken into account was the question to be decided. The Court held that it should. It was true that the Statute did not give damages to bereaved or impoverished dependants, but only made up to them a part of the monetary loss suffered by them in being deprived of the deceased workman's wage. There was, however, no difference, in principle, in taking into account the alteration in the wage-earning capacity of the claimant which occurred on the date of the death and the consequently greater need of compensation. Any consideration of

[1] *Workmen's Compensation Act*, 1925, Sect. 8 (2).

this aspect of the claimant's fortunes was both legitimate and necessary for the proper assessment of the amount payable.[1]

The Amount of Compensation in Cases of Incapacity.

(*a*) *Total Incapacity.* The amount payable in case of total incapacity is calculated thus (apart from the Supplementary Allowances—see below)—

1. Where average weekly earnings are 50s. or more, the amount payable is one-half of those earnings up to 30s. (maximum).
2. Where average weekly earnings are more than 25s. and less than 50s., the amount is ¼ of those earnings + 12s. 6d.
3. Where average weekly earnings are 25s. or less the amount is ¾ of those earnings.[2]

(*b*) *Partial Incapacity.* The amount payable in cases of partial incapacity is calculated thus—

1. Where average weekly earnings are 50s. or more, the amount payable is—

   ½ (pre-accident average weekly earnings—post-accident average weekly earnings).

2. Where average weekly earnings are less than 50s., the amount is—

$$\frac{\text{amount of compensation under (1) above}}{\text{pre-accident average weekly earnings}} \times (\text{pre-accident average weekly earnings—post-accident average weekly earnings}).$$

Note that where the average weekly earnings are 25s. or less the last formula means that the compensation is ¾ (pre-accident average weekly earnings—post-accident average weekly earnings).

Supplementary Allowances.[3] The above amounts of weekly payments have been increased as follows—

Total Incapacity. (*a*) 5s. for each of the first 13 weeks, thereafter 10s. a week, *plus*

(*b*) In respect of the workman's wife, 5s. for each of the first 13 weeks, thereafter 10s., *plus*

(*c*) (In the case of fathers) 5s. for each child under 15 (or 16 if at school)—subject to a maximum total compensation of ⅞ of the pre-accident wages.

[1] Cf. Osmond *v.* Campbell and Harrison, Ltd., [1905] 2 K.B. 852; O'Neill *v.* Bansha Co-operative Society, [1910] 2 Ir.R. 324, C.A.; Keane *v.* Mt. Vernon Colliery, [1933] A.C. 309.

[2] *Workmen's Compensation Act*, 1925, Sect. 9; cf. Thompson *v* L.N.E.R., [1935] 2 K.B. 90.

[3] *The Workmen's Compensation (Supplementary Allowances) Act*, 1940, and the *Workmen's Compensation (Temporary Increases) Act*, 1943.

Partial Incapacity. A proportionate part of the above amounts, i.e. in the same proportion as the original weekly payment bears to the weekly payment which would be given for total incapacity —subject to a maximum total compensation of $\frac{7}{8}$ of the difference between the post-accident and pre-accident wages.

The total of the supplementary allowances under (*a*) and (*b*) above, plus the normal compensation must not exceed $\frac{9}{8}$rds of the pre-accident wages (in total incapacity) or $\frac{9}{8}$rds of the difference between the post-accident and pre-accident wages (in partial incapacity), but this is again subject to a minimum supplementary allowance of 5s. in respect of (*a*) and (*b*).

No compensation is payable in respect of the first three days of incapacity where the incapacity lasts less than four weeks. In fixing the weekly payment, any payment or allowance made by the employer during the incapacity is to be taken into account.[1]

If the employee has recovered sufficiently to be fit for work of a certain kind, but he is unable to obtain such work as a result wholly and mainly of his injury or would be able, but for the injury, to obtain work of the same kind and grade as his pre-accident work, his case (so long, of course, as he is not in receipt of unemployment benefit) is to be treated as one of whole and not partial incapacity. This provision has been held to apply in cases where the injured person is no longer unable to work, but where injury has caused a disfigurement which affects the chances of his obtaining work, e.g. a miner who loses the sight of an eye but is otherwise fit to work as a miner.[2]

Average Weekly Earnings. When, for any reason, these cannot be calculated, the average earnings of another person employed on the same work and in the same grade may be taken as a basis. "Earnings" need not be the same as the nominal wages. Where a railway porter receives tips, these would be included[3]—similarly, the rent of a house which was let free to the employee by the employer. But it does not include a special allowance for

[1] *Workmen's Compensation Act*, 1925, Sect. 9.

[2] *Workmen's Compensation Act*, 1931. Bywater *v.* Stothert & Pitt (1932), 102 L.J.K.B. 1; French *v.* Archibald Russell, Ltd (1934), 50 T.L.R. 451; Hughes *v.* Penmaenmawr Co. (1933), 148 L.T. 485; Ruston and Hornsby Ltd. *v.* Goodman, [1933] A.C. 150.

[3] Great Western Railway Co. *v.* Helps, [1918] A.C. 141.

expenses incurred in the employment, e.g. an allowance for travelling expenses. Where the employee is also engaged under a contract of service with any other employer, his earnings from each employment will be included, e.g. a bricklayer who is also a paid secretary of the local branch of his trade union. But where there is payment on some other basis than a contract of service, this cannot be included, e.g. a miner who is paid for acting as delegate for his union,[1] or a worker who receives a Government allowance for attending a Court of Referees or "Rota" committee as workmen's representative.

In taking the average of the weekly earnings over a year the divisor is 52, unless there are breaks in the employment (in which case the appropriate lower figure is substituted for 52). Such breaks may occur by reason of illness or other unavoidable cause,[2] such as absence through a strike, or closing down of works for "wakes" week.[3]

The employer is bound, at the employee's request, to give the latter a written list of his earnings over the appropriate period.[4]

State of the Labour Market. In the application of the above rules as to payment during incapacity to periods in which labour conditions are in themselves sufficient to account for unemployment, the main question to be considered in each case is "which is the ruling factor in the unemployment—the man's injury or the conditions of the labour market?" As long as an injury incapacitates it is not open to an employer to claim that, apart from the injury, the man would be unable to find work. Thus, supervening causes like heart trouble, old age, and even imprisonment, have not been allowed to stand in the way of compensation. Where labour conditions are bad, compensation has to be assessed by the measure of the injury according to the state of the normal market at that time and without regard to abnormal and temporary conditions.

[1] Wild *v.* John Brown & Co. Ltd., [1919] K.B. 134.
[2] *Workmen's Compensation Act*, 1925, Sect. 10 (3).
[3] Anslow *v* Cannock Chase Colliery Co., [1909] A.C. 435
[4] *Workmen's Compensation Act*, 1925, Sect. 10

The following cases further illustrate the working of the principle—

A miner stopped work on 30th April, 1926, in consequence of the calling of the General Strike, and on 14th June was certified as suffering from nystagmus. He was refused compensation on the ground that the disease did not entail any loss of earnings. This decision was on appeal overruled, because the incapacity still subsisted although a concomitant cause, viz. the stoppage, prevented the man from earning wages.

A workman injured in October, 1925, was paid full compensation till 5th April, 1926, when he resumed work at full pay with the firm. On 4th May, 1926, he was called out on strike. On 18th October, 1926, he started work again with another firm. Compensation for the period 4th May–18th October refused.

An employee of a newspaper firm was paid full compensation from February to July, 1925, when he restarted work. On 3rd May, 1926, he was called out on strike. The firm then gave notice that they would in future employ only non-union labour, and offered him employment on that condition Compensation granted because the new offer implied the loss of a right, since, if the man had accepted the offer and his employment with the firm had terminated, his position in the labour market would have been precarious.

A collier employed at 53s. 3d. per week was in 1919 certified as suffering from nystagmus. In May, 1920, he had recovered so far as to be able to do surface work, and was employed on surface work until 1922. Since that date, however, he was unable to find any surface work. He claimed compensation at £1 per week as for total incapacity, but the firm countered this by claiming that the compensation should be 5s. 3d on the ground that in spite of the nystagmus he was able to earn wages of 42s. 8d. per week as a surface worker. The County Court, in deciding against the workman, found as facts: (*a*) That but for the nystagmus he could be earning 53s. 3d. per week; (*b*) That with the nystagmus he was fit to do surface work at 42s. 8d. per week at current rates; (*c*) That he could not get surface work solely on account of labour conditions In the majority judgment of the House of Lords, reference was made to Sect. 9 of the Act which based compensation for partial incapacity on the amount which the workman "is earning or is able to earn" after the accident. The question was: Does "is able to earn" mean "is in such physical condition that he is able to earn"—or does it also include the proviso of employment being available? Their Lordships felt bound to regard the question in the light of that provision of the Act which allows failure to obtain employment to be evidence of total incapacity when that failure is a consequence of the injury. This seemed to exclude the idea that "able to earn" applied to any circumstances not personal to the man himself. It dealt expressly with the case of the man who could not find work, and it gave the criterion whether the failure to find work was due

mainly or wholly to the accident. Here they were faced with the County Court's finding in fact that the failure to find work was due solely to the state of the labour market, but that state of affairs was expressly excluded by the section.[1]

Review of Weekly Payments. Either employer or employee may take steps to vary the rate of weekly compensation according to changes in the extent of the incapacity. Where the parties are unable to agree as to the proposed variation (see page 126 as to registration of agreements) recourse must be had to the County Court (or other arbitrator) unless the proposal is that of the employer to end or diminish the compensation and one or other of the following three conditions are satisfied: (i) The employee is in receipt of compensation for total incapacity and has actually returned to work; *or* (ii) he is in receipt of compensation for partial incapacity and his earnings have actually been increased; *or* (iii) he has been certified by the employer's doctor to have wholly or partially recovered, and the certificate remains unchallenged.[2]

The employee's rights as to challenging such a certificate are protected as follows: Ten days' notice of the proposed change must be sent to the employee together with a copy of the certificate. If within the 10 days the employee sends to the employer a certificate from his own doctor disagreeing with the first report and stating the grounds, the proposed change cannot take effect without resort to one of the medical referees appointed by the Home Secretary under the Act (see page 116). The employer is not entitled to vary the compensation or make any change in the *status quo* in the interval between receiving the employee's counter certificate and the decision from the medical referee.[3]

It is also important to observe that the above procedure necessitates compliance in all details with the provisions

[1] Cf James *v* Ocean Coal Co, [1904] 2 K B 213, Bevan *v* Everglyn Colliery Co, [1912] 1 K B 63

[2] *Workmen's Compensation Act*, 1925, Sect 12.

[3] *Ibid*

as to procedure before the medical referee if the employer's right to vary the compensation is to be preserved. Thus, where a firm had an injured employee re-examined and, eight days later, served on him a notice of intention to diminish compensation with a copy of the new medical certificate, it was held that the observance of the condition as to sending the certificate within six days [1] was essential, and, failing this, the firm could not diminish the compensation. Further, where a notice has been served by the employer, the employee who does not send a counter certificate within the prescribed time is not debarred from bringing the matter to the County Court under Sect. 11 (1). Where, however, the employee does take advantage of the procedure, and sends a counter certificate, he has no right to reopen the case unless and until new circumstances arise justifying an application for review.

Where a change in or stoppage of the compensation is made, it dates from the date of the agreement or County Court judgment as the case may be, and not from the date of the change in the man's condition on which it is based.

References to Medical Referees. Medical referees are appointed by the Home Secretary under the Act for the purposes of settling disputes as to physical condition and fitness for work. The injured person has first to be medically examined, and within six days a copy of the report must be supplied to him (where the examination was made by the employer's doctor) or to the employer (where the examination was made by the injured person's doctor); then on the application of either party, the County Court may refer the matter to a medical referee. The right to compensation of a person refusing to undergo an examination by a medical referee under these circumstances is suspended. The medical referee's certificate is conclusive on the matters it certifies.[2] How strictly the

[1] *Workmen's Compensation Act*, 1925, Sect. 19.
[2] *Ibid.*, Sect. 19.

provision as to its finality is interpreted is illustrated in the following cases—

A coal drawer had two bones of his right foot broken in the course of his work, and was paid compensation from 1920 to 1925. In the latter year his employers took advantage of the procedure under the 1923 Act and obtained a reference as to the man's condition to a medical referee, who reported that he was fully recovered. The County Court held that the employee's original declaration of liability must still stand good as the report was not conclusive on the question whether there was a danger of the incapacity recurring in the future. The Court of Appeal, in allowing the employers' appeal against this decision held that the certificate was quite clear and definite, and discharged the employers from all liability.

A workman, who received injuries to his back, was paid compensation. Eventually the medical referee certified that he had "completely recovered from the accident," but when he came before the Sheriff the workman lodged a minute stating that skiagrams taken since the giving of the certificate disclosed conditions which were not apparent on external examination, and that there was a reasonable probability of incapacity. The Sheriff refused to remit the matter to the medical referee for further report, but the Second Division of the Scottish Court of Session remitted the case to the Sheriff to inquire into the facts set out in the workman's minute. The House of Lords, on appeal, held that the decision of the Scottish Court of Session was a departure from procedure of a grave character. The Sheriff's duty was to inquire where there was an accident, whether the injury resulted therefrom, and whether it arose out of, and in the course of, the employment. The medical referee's duty, on the other hand, was to determine the question of recovery. It was the workman's duty to bring to the notice of the medical referee such a matter as a reasonable probability of recurrence of the injury. Of course, if the certificate of the medical referee had been ambiguous the Sheriff could have remitted it to the medical referee, but where it was not ambiguous, as in this case, it was clearly for him to accept it as final The appeal was therefore allowed [1]

Two special cases have to be noticed—

(*a*) If an employee was under 21 at the date of accident, he may after the expiry of six months from that date, but not later than six months after his twenty-first birthday, apply for review; he will then be entitled to an increase in compensation on the basis of what he would be

[1] Cf. Gray *v.* Shotts Iron Co., [1912] S.C. 1267 Ellerbeck Collieries *v.* Cornhill Insurance Co., [1932] 1 K.B. 401, Edwards *v* Penrhiceiber Navigation Colliery & Co., Ltd, [1933] A.C. 28.

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[1] Cf Gray v Shotts Iron Co [1912] S C 1267 Ellerbeck Collieries v Cornhill Insurance Co [1932] 1 K B 401 Edwards v Pembrokeshire Navigation Colliery & Co, Ltd [1933] A C 28

earning at the date of review if there had been no accident.[1]

(*b*) Where a review takes place more than six months after the accident, and there have been fluctuations in wage rates in the class of employment in which the employee was at the time of the accident, the rate of compensation may be increased or diminished on the basis of what his earnings would have been during the 12 months previous to the review if they would have been more than 20 per cent greater or less than his earnings during the 12 months previous to the accident.[2]

Redemption of Weekly Payments. The employee has no right to demand that weekly payments shall be redeemed by a lump sum payment, but the employer may with the consent of the employee make such a redemption (see page 120 as to registration of an agreement of this kind); otherwise, he may apply to the County Court for the order to this effect. The amount of the lump sum payment is, in cases of permanent incapacity to a person over 21, the cost of a Post Office annuity for the employee equal to three-quarters of the annual value of the weekly payments; in other cases the amount is fixed by the County Court.[3]

Medical Examination. Any person receiving weekly payments may be required by the employer to undergo examination by the latter's doctor subject to the then existing Home Office regulations. Under the present regulations on the subject the employee is not bound to undergo an examination, except at a reasonable hour nor (after the expiry of a month from the date of the award or first payment) oftener than once a week during the second month, once a month during the third to the sixth month, and once in every two months afterwards, one additional examination being allowed for review proceedings.[4]

[1] *Workmen's Compensation Act*, 1926
[2] *Workmen' Compensation Act* 1925, Sect 11
[3] *Ibid*, Sect 13
[4] *Ibid*, Sects 18, 19.

Notice of Accident. A claim for compensation is not maintainable if the employee has failed to give notice of the accident as soon as possible after its occurrence, and the employer is thereby prejudiced. The notice may be given verbally to the employer or to any person designated by the employer, and may be made by entry in the Accident Book whenever required by law to be kept.[1]

The following cases illustrate the attitude of the courts on the question of want of notice.

A carting boy crushed his finger at work, tied it up on reaching home, bathed it with boracic and dressed it, but paid no further attention to it. A week later he died of tetanus. Compensation allowed because on the evidence even iodine would not have removed the tetanus germ, and the firm were therefore not prejudiced.

A mechanic when chipping a boiler felt something fly into his eye and made a casual complaint to the foreman. Nine months later, happening to cover his right eye, he discovered the left eye was blind and then reported it. The eye was removed and a piece of metal was found at the back. Compensation granted because notice was given as soon as the nature of the injury was realized.

A mill girl gently received a nose injury, but ignored it till it became septic two months later. She then reported it. On the girl's appeal case remitted to the County Court on the ground that there was no evidence that the injury at the time it happened was of a kind that would indicate to the girl that she would be incapacitated.

A dock labourer was thrown on to machinery by a falling crate. He was paid compensation for injury to his rib. Two years after wards trouble developed with his hip. The firm submitted that there was failure to notify the injury to the hip. The Court of Appeal dismissed the firm's appeal on the ground that they knew of the accident and thought that it would be hard on the workman if he had to mention all his small aches and pains.

A machinist died from a septic finger. The only notice was a medical certificate sent to the firm to the effect that he could not follow his employment. Compensation granted because that certificate was enough to put the firm upon inquiry and they were not prejudiced.

A shipmaker sustained a scratch from a screw. He continued at work for three days after which a fellow workman applied some salve. Five days later he had to leave work and told the employer. Actual notice of claim was made some six months later in a letter from the man's solicitors. Compensation refused.

A brickmaker cut his hand with a stone in the clay and was incapacitated. Formal notice of the accident was however not

[1] *Workmen's Compensation Act, 1906*, Sects. 14, 15.

given till four months afterwards. Seven months after that a finger had to be amputated. Compensation refused because poisoning was one of those things about which early inquiry gave information and the employer had been therefore prejudiced.[1]

Time for Making Claims. In addition to giving notice in time, the employee is also bound to make a claim within a specified period, namely, within six months from the accident, or in fatal accidents, within six months from the date of death. Otherwise, a claim will not be maintainable unless the failure to make the claim in time was due to mistake or some other reasonable cause.[2] What is reasonable cause is illustrated by the following cases—

A workman sustained an accident on 15th May and gave notice of it in August but did not make a claim till 19th November. The reason for the delay in making the claim was that he had been confused by conflicting professional advice. Compensation refused because the man knew in August of his right to compensation and the claim should therefore have been made by 15th November.

A miller's labourer claimed for an injury to his leg which took place 7 years previously. *Held* sufficient cause for the delay having regard to the fact that he had been in the employment for 35 years, and was a trusted servant of the employer and had been paid half wages during the period of incapacity.

A drawer in the employment of a colliery racked the muscle of his back in April 1924 and immediately reported the injury to the foreman. The latter considering the injury to be trivial, did not report it to the under manager. The workman continued working until 15th March 1928 when he had to undergo medical treatment for trouble arising from his injury. He was wholly incapacitated for work from 15th March 1928 to 21st January 1929. But he did not claim compensation until October 1928. The judgment of the House of Lords referred to what it called "the best statement of the law on this point" in *Ellis* v. *Fairchild Shipbuilding and Engineering Co.* 1913 S.C. 217.

'A man may have an accident and honestly believe at the time that nothing serious has happened to him and therefore, not conceiving that he had a good claim against his employer makes no claim, but if it afterwards turn out that he has made a mistake in fact and really has been injured that may be reasonable cause for his not making a claim within six months.'

[1] Cf. Howarth *v.* Clifton and Kersley Coal Co. (1920) 89 L.J.K.B. 1249. Hayward *v.* West Leigh Colliery Co. [1911] A.C. 540. Day *v.* Bernardes (1924) 131 L.T. 397. C.A. Bedford Bell and Whinney Ltd. [1933] 26 B.W.C.C. 161. White *v.* Leicestershire Colliery Co. (1932) 101 L.J.K.B. 617.

[2] *Workmen's Compensation Act* 1925, Sch. I.

Held that the failure to claim in time was occasioned by a mistake or other reasonable cause.[1]

A networker employed by a firm of trawler-owners developed tar boils in 1927. The disease spread from his hands to other parts of his body, and in March, 1929, an operation was performed after which he was totally incapacitated. He was not told that it was tar cancer until December, 1929. A certifying surgeon was consulted, and on 3rd January, 1930 he gave a certificate fixing the date backwards to 24th March 1929. Compensation was claimed from 24th March 1929 onwards. *Held* that reasonable cause had been shown for not going to the certifying surgeon and making a claim within the statutory period.

A workman had an accident. Eleven years afterwards he became totally incapacitated, and only then made a claim. *Held* reasonable cause for the delay, having regard to the fact that the man had been earning as much during the 11 years as before the accident: there was no need for the claim till he broke down again.

Industrial Diseases. Compensation is payable in respect of certain diseases specified as industrial diseases, disablement or suspension in consequence of any of these maladies being treated as an 'accident' within the meaning of the Act.[2] These diseases are the following:

Anthrax. Lead poisoning or its *sequelae*. Mercury poisoning or its *sequelae*. Phosphorus poisoning or its *sequelae*. Arsenic poisoning or its *sequelae*. Poisoning by benzene and its homologues, or its *sequelae*. Poisoning by nitro- and amido-derivatives of benzene and its homologues (trinitrotoluene, aniline and others), or their *sequelae*. Poisoning by dinitrophenol or its *sequelae*. Poisoning by nitrous fumes or its *sequelae*. Dope poisoning (that is, poisoning by any substance used as or in conjunction with a solvent for acetate of cellulose) or its *sequelae*. Poisoning by tetrachlorethane or its *sequelae*. Poisoning by carbon bisulphide or its *sequelae*. Poisoning by nickel carbonyl or its *sequelae*. Poisoning by *Gonioma Kamassi* (African boxwood) or its *sequelae*. Manganese poisoning. Dermatitis produced by dust or liquids. Ulceration of the skin produced by dust or liquid. Ulceration of the mucous membrane of the nose or mouth produced by dust. Epithelomatous cancer or ulceration of the skin due to tar, pitch, bitumen, mineral oil or paraffin or any compound, product or residue of any of these substances. Ulceration of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances. Chrome ulceration or its *sequelae*. Scrotal epithelioma (chimney sweeps

[1] Shotts Iron Co. Ltd. *v.* Fordyce (1930), Sc. L.T. 397, Hill *v.* Holliday & Co. (1913), 3 W.C.C. 177, C.A.

[2] *Workmen's Compensation Act*, 1925, Sect. 43.

cancer) Compressed air illness or its *sequelae* Cataract in glass workers Cataract caused by exposure to rays from molten or red hot metal Ankylostomiasis The disease known as miner's nystagmus whether occurring in miners or others and whether the symptoms of oscillation of the eyeballs be present or not Subcutaneous cellulitis of the hand (beat hand) Subcutaneous cellulitis or acute bursitis arising at or about the knee (beat knee) Subcutaneous cellulitis or acute bursitis over the elbow (beat elbow) Inflammation of the synovial lining of the wrist joint and tendon sheaths Glanders Telegraphist's cramp Writer's cramp Twister's cramp Disease by twisting cotton or woollen (including worsted) yarns Inflammation ulceration or malignant disease of the skin and subcutaneous tissues due to exposure to X rays or radio active substances

The right to compensation arises where the disease was due to an employment in which the employee was engaged at any time during the 12 months previous to his being disabled or suspended and where in consequence of the disease the employee either dies or is certified by the examining surgeon (see page 88) to be disabled from earning full wages or is suspended under Factories Act Regulations The liability to pay the compensation rests on the employee's last employer during the 12 months in question in the employment in question That employer can however escape liability if he can prove that the disease was contracted in the employment of some other employer (who would then be liable) or where the disease was gradually contracted in different employments he can call upon the other employers to contribute [1]

The employee loses his right to compensation if, at the time of entering the employment he has made a wilful and false statement in writing that he has not previously suffered from the disease The effect of this section has in practice been to give rise to the custom in certain occupations of demanding a written declaration from applicants for employment to the effect that they have not suffered

[1] *Workmen's Compensation Act* 1925 Sect 43 and see McGillivray v Hope [1935] AC 1

This has been interpreted to mean employments of the nature to cause the disease with any of the employers during the previous twelve months Cf Scott v Summerlee Iron Co [1926] Sc LT 160

from a particular disease, and it has been held that a man who, though only partially incapacitated, is prevented through this practice from obtaining employment is entitled to be treated as wholly incapacitated, on the basis of the principle referred to on page 112.

In most of the industrial diseases a distinction is made regarding the burden of proof according to whether the disease arises in connection with a specified employment or otherwise. The specified employments in the case of the respective diseases are as follows—

Anthrax . .	Handling of wool hair bristles hides and skins
Lead poisoning or its *sequelae*	Any process involving the use of lead or its preparations or compounds [1]
	Handling of lead or its preparations or compounds
	Any process involving the use of mercury or its preparations or compounds
Phosphorus poisoning or its *sequelae*.	Any process involving the use of phosphorus or its preparations or compounds
	Any process involving the use of arsenic or its preparations or compounds
	Handling arsenic or its preparations or compounds
	Handling benzene or any of its homologues or any process in the manufacture or involving the use thereof
Poisoning by nitro and amido derivatives of benzene and its homologues (trinitrotoluene (T.N.T.) and others) or their *sequelae*	Handling any nitro or amido-derivative of benzene or any of its homologues, or any process in the manufacture or involving the use thereof
Poisoning by dinitrophenol or its *sequelae*	Handling dinitrophenol or any process in the manufacture or involving the use thereof.
Poisoning by nitrous fumes or its *sequelae*	Any process in which nitrous fumes are evolved.

[1] In industries for which there are regulations directed against lead poisoning which require periodic medical examinations of the persons employed in certain specified processes, this item in the Schedule includes only the processes so specified

Dope poisoning (that is poisoning by any substance used as or in conjunction with a solvent for acetate of cellulose) or its *sequelae*	Any process in the manufacture of aircraft
Poisoning by tetrachlorethane or its *sequelae*	Any process in the manufacture or involving the use of tetrachlorethane
Poisoning by carbon bisulphide or its *sequelae*	Any process involving the use of carbon bisulphide or its preparations or compounds
Poisoning by diethylene dioxide (dioxan) or its *sequelae*	Handling diethylene dioxide or any process involving its use
Poisoning by chlorinated naphthalene or its *sequelae*	Any process involving contact with or exposure to dust or fume of chlorinated naphthalene
Poisoning by methyl bromide or its *sequelae*	Any process involving exposure to the fume of methyl bromide
Poisoning by tricresyl phosphate	Manufacture or use of tricresyl phosphate
Poisoning by triphenyl phosphate	Manufacture or use of triphenyl phosphate
Poisoning by nickel carbonyl or its *sequelae*	Any process in which nickel carbonyl gas is evolved
Poisoning by *Goniona Kamassi* (African boxwood) or its *sequelae*	Any process in the manufacture of article from *Goniona Kamassi* (African boxwood)
Manganese poisoning	Handling of manganese or substances containing manganese
Dermatitis produced by dust or liquid	—
Ulceration of the skin produced by dust or liquids	—
Ulceration of the mucous membrane of the nose or mouth produced by dust	
Epithelomatous cancer or ulceration of the skin due to tar, pitch bitumen mineral oil or paraffin or any compound product or residue of any of these substances	Handling or use of tar pitch, bitumen, mineral oil or paraffin, or any compound product or residue of any of these substance
Ulceration of the corneal surface of the eye due to tar, pitch bitumen mineral oil or paraffin or any compound, product or residue of any of these substances	Handling or use of tar pitch, bitumen mineral oil or paraffin, or any compound product or residue of any of these substances
Chrome ulceration or its *sequelae*	Any process involving the use of chromic acid or bichromate of ammonium, potassium, or sodium, or their preparations
Scrotal epithelioma (chimney-sweep's cancer)	Chimney sweeping

Compressed air illness or its *sequelae*	Any process carried on in compressed air
Cataract in glass workers	Any process in the manufacture of glass involving exposure to the glare of molten glass
Cataract caused by exposure to rays from molten or red hot metal	Any process in the manufacture of iron or steel normally involving exposure to rays from molten or red hot metal
Ankylostomiasis	Mining
The disease known as miners' nystagmus whether occurring in miners or others and whether the symptoms of oscillation of the eyeball be present or not	Mining
Subcutaneous cellulitis of the hand (beat hand)	Mining
Subcutaneous cellulitis or acute bursitis arising at or about the knee (beat knee)	Mining
Subcutaneous cellulitis or acute bursitis over the elbow (beat elbow)	Mining
Inflammation of the synovial lining of the wrist joint and tendon sheath	Mining
Glanders	Care of any equine animal suffering from glanders handling the carcass of such animal
Telegraphist's cramp	Use of telegraphic instruments
Writer's cramp	
Twister's cramp caused by twisting of cotton or woollen (including worsted) yarns	
Inflammatory or malignant disease of the skin or subcutaneous tissues or of the bones or the sequelae or anaemia of aplastic type due to X rays radium or other radioactive substance	
Yellow discoloration with of the skin papillomata or keratotic due to mineral oil	Cotton spinning by means of self acting mules

In each of these cases where the employee is in the employment in question the presumption is that the disease is due to that employment in the absence of evidence to the contrary [2]

[1] This applies only to workmen employed as minders or piecers in connection with the process of cotton spinning by means of self acting mules and certain special conditions are laid down as to giving notice etc (See Order of 30th April, 1932 —S.R. & O. 1932, No. 314.)

[2] *Workmen's Compensation Act*, 1925, Sect. 44

The Home Secretary has power to make special schemes to cover cases of silicosis and asbestosis,[1] and has exercised this power in certain cases.[2]

Coal Mines. No person may be employed in a coal mine unless the owners have in force a contract of insurance against their liability under workmen's compensation *or* a special trust fund for discharging that liability called a Compensation Trust. The indemnity afforded by a contract of insurance need not in the case of incapacity for work extend to payment of compensation payable at a time when the incapacity is continued for not more than 26 weeks, whether consecutive or not, other than a payment payable on the owner becoming bankrupt or making an arrangement with creditors or the liquidation of the company where the latter is the owner. The penalty for contravention is imprisonment for 3 months maximum or a fine of £100 maximum, or both. In the case of a corporation, the director, manager, secretary, or other officer can be convicted as well as the corporation.

There must be exhibited at the colliery office in such a way as to be easily accessible and easily read by the workmen a certificate that the contract of insurance is in force or a notice signed by the owner, stating that the Compensation Trust conforms with the Workmen's Compensation (Coal Mines) Act, 1934.[3]

An employer is liable for accidents happening to miners who are members of rescue brigades formed under regulations under the Coal Mines Act, 1911, in the course of their training or in the course of rescue or ambulance work.[4]

Compensation Agreements. No agreement may be made between an employer and employee by which the latter contracts out of his rights under the Act. A special

[1] *Workmen's Compensation Act*, 1925 Sect 47, and *Workmen's Compensation (Silicosis and Asbestosis) Act*, 1930

[2] Viz refractories industries (S R & O, 1925, No 70), metal grinding (S.R & O, 1927, No 380), various industries (S R & O, 1928, No 975)

[3] *Workmen's Compensation (Coal Mines) Act*, 1934, Sect 2

[4] *Workmen's Compensation Act*, 1925, Sect. 34

scheme may, however, be made by agreement between employer and employee if it assures the latter compensation on a scale not less favourable to him than the scale under the Act. Such a scheme to be valid has to be certified by the Registrar of Friendly Societies.[1]

With the exception of contracting out agreements, however, employer and employee may make any agreement as to the amount of compensation payable whether as a weekly payment or in redemption of weekly payments or otherwise, and the compensation may be paid direct by the employer to the employee. Any such agreement has to be registered by the County Court. Similarly, when an employer without admitting liability makes a composition agreement to preclude a further claim, such agreement has also to be registered by the County Court.[2]

The Act also provides for the settlement of claims by an arbitrator agreed upon by the parties or by a committee representative of the employer and employees.[3]

Finally, there is nothing in the Act which prevents an injured employee who does not wish to claim compensation accepting an *ex gratia* payment from his employer.

Duration of the Workmen's Compensation Acts. The scheme of Workmen's Compensation set out above will continue until the "appointed day" for the coming into operation of the National Insurance (Industrial Injuries) Act, 1946.[4] In general, the present scheme will apply to cases where the right to compensation arose in respect of employment before the "appointed day."[5]

[1] *Workmen's Compensation Act*, 1925, Sect 31
[2] *Ibid.*, Sects 23, 24
[3] *Ibid.*, Sect 21
[4] See next chapter
[5] It has been announced that it is intended that the "appointed day" shall be 5th July, 1948 *National Insurance (Industrial Injuries) Act*, 1946, Sect 80 (1)

CHAPTER VI

INDUSTRIAL INJURIES ALLOWANCES - THE NEW SCHEME

THE National Insurance (Industrial Injuries) Act, 1946, due to come into operation on an "appointed day,"[1] makes compensation for industrial injuries a social service instead of continuing as part of the system of employer's liability. The administration is transferred from the Home Office to the Ministry of National Insurance, which will operate the scheme by means of a Central Fund made up of contributions from employers, workmen, and the Exchequer. The scheme has the following new features

1. It covers employed persons generally (called "insured persons"), and not certain defined classes

2. Benefits in disablement are at uniform rates and will depend on the degree of disablement, not on loss of earnings.

3. The disablement benefit is not capable of being commuted into a lump sum

4. Instead of lump sum payments to the dependants in fatal cases there is a pension to the widow with allowance for a child. In certain circumstances a pension is payable to the parent(s) and to an adult relative.

5. Claims will be dealt with by a Pension Officer, subject to rights of appeal to local tribunals and the Industrial Injury Insurance Commissioner, whose decision will be final. This supersedes the present procedure of arbitration in the county court, subject to appeal to the Court of Appeal and the House of Lords.

6. Medical questions, i.e. those relating to the degree of disablement, are to be decided by medical boards.

7. An advisory council representative of employers

[1] Announced to be 5th July, 1948.

and workmen in equal numbers will advise the Minister on regulations and other matters of policy.

Insured Persons. All persons employed under a contract of service, *whatever the amount of their earnings*, are insured persons under the new Act. Apprentices are also included.[1]

Fire Brigades. Members and trainees of prescribed fire or rescue brigades and first-aid or salvage parties which are set up in factories, works, or mines are within the Act.[2]

Classes of employees whom the Minister has power to except from the Act (by Regulations) are Government employees,[3] employees of public and local authorities, persons in subsidiary employment, persons whose employment is inconsiderable.[4]

INJURIES WITHIN THE ACT

The risks in respect of which allowances under the Act are payable to insured persons are the following—

(*a*) Personal injury caused by accident arising out of and in the course of the insured person's employment (if insurable employment) on or after the "appointed day" for the coming into effect of the Act. (The date announced is 5th July, 1948.)

(*b*) A prescribed disease or prescribed personal injury due not to accident but to the nature of the insured person's employment and developed on or after the "appointed day."[5]

Regarding (*a*), the meaning of the term "accident arising out of and in the course of the employment" has already been explained in the previous chapter. An important difference, however, arises in the treatment of accidents arising out of breach of rules or orders.

Acting in Breach of the Regulations. Under the new

[1] *National Insurance (Industrial Injuries) Act*, 1946, First Schedule.
[2] *Ibid*, para. 8.
[3] *Ibid*, Sect. 76.
[4] *Ibid*, First Schedule, Part II, paras. 1, 7, 8.
[5] *Ibid*, Sects. 7 (1), 55 (1).

Act, if a man is at the time of an accident acting in breach of any rules of his employment, statutory or otherwise, or of his employer's orders, or if he is acting without his employer's instructions, the accident is still to be regarded as arising out of and in the course of the employment, provided the following conditions are satisfied—

(*a*) that the accident would have been regarded as arising out of and in the course of the employment if there had not been any such breach of rules or orders or absence of instructions;

(*b*) that the man's act was done for the purpose of and in connection with, the employer's trade or business.[1]

INDUSTRIAL DISEASES

The Act also applies to all those diseases and personal injuries which are prescribed by Regulations To be so prescribed, the disease or injury must be due to the nature of a particular employment, and it must have developed after the Act comes into force. The Act may be applied to a disease or injury in relation to any insured persons if the Minister considers it is a risk of their occupation and not a risk common to all persons, and that, apart from special circumstances, particular cases can be attributed to the nature of the employment with reasonable certainty.

CONTRIBUTIONS

The weekly rates of contribution are[2]—

	Employer	*Insured Person*
Man over 18	4d	4d
Woman over 18	3d	3d
Boy under 18	2½d	2½d
Girl under 18	2d	2d

The contribution must be paid in respect of each week of employment, including a week in which a person is employed only for part of the week.[3]

[1] *National Insurance (Industrial Injuries) Act*, 1946 Sect 8
[2] *Ibid*, Second Schedule
[3] *Ibid*, Sect 3 (2)

Liability to Pay Contributions. The employer is in the first instance liable to pay both the employer's contribution and that of the insured person, but he has a right to recover the latter up to £10.[1]

Where a person works for no money payment, the employer must pay both his own and the employee's contribution and may recover nothing from the latter.[2]

Absence from Work. The employee's absence from work for part of a week does not relieve either the employer or himself from paying the whole contribution for that week, if he is in fact employed part of the week. Where, however, he is not at work for *any* part of the week (i.e. Sunday midnight to Sunday midnight), *and* he receives no wages for that week or any part of it, no contribution is payable.

Contributions are not payable—

(1) where the absence is solely due to a specific disease or disablement (bodily or mental);

(2) where wages are paid in respect of some day or days on which the employee does not work in a normal working week.

Exemption from Contributions. The Minister has power to exempt by Regulations certain classes of insured persons from payment of contributions, viz.—

(*a*) mariners and airmen who are not domiciled or resident here,

(*b*) persons in subsidiary employment;

(*c*) persons whose employment is inconsiderable.

In the case of (*b*) and (*c*), employers may also be exempted from payment of contributions.[3]

Benefits. A child who is an insured person is exempt

[1] *National Insurance (Industrial Injuries) Act* 1946 Sects 3 (1) 4.
[2] *Ibid*, Sect 5 (4)
[3] *Ibid* Sect 77, Second Schedule, Part II

from contributions while he is still within the age of compulsory school attendance so also is his employer during the same period [1]

In respect of industrial diseases Regulations may modify the scales and conditions relating to Injury and Disablement Benefits

INJURY BENEFIT

Injury benefit of 45s a week or 7s 6d for any day of incapacity is payable for a maximum of 156 days from the accident No benefit is payable for the first three days after the accident unless the person is incapable of work as a result of the accident on not less than twelve days during the period of 156 days

Young Persons Injury benefit while under seventeen is 22s 6d and between seventeen and eighteen 33s 9d per week

Increase of Injury Benefit Injury benefit is increased by 7s 6d for a child and 16s for wife or other adult dependant of the prescribed classes

DISABLEMENT BENEFIT

A person is entitled to disablement benefit in each of the following cases (1) when as a result of the accident he is at the end of the injury benefit period suffering from loss of physical or mental faculty which is likely

Rat of Disablement Pension

Degree of Disablement	*Weekly Rate*
	£ s. d.
100	4 5 0
90	4 1 0
80	3 16 0
70	3 11 0
60	2 7 0
50	2 2 6
40	1 18 0
30	1 13 6
20	0 9 0

[1] National Insurance (Industrial Injuries) Act 1946 Sect 78 (1)
[2] Sect 12 and Third Schedule

to be permanent; (2) when at that time he is suffering from substantial loss of physical or mental faculty, i.e. if the disablement is assessed at 20 per cent or more (see below); (3) when after the end of the injury benefit period he becomes subject to a loss of physical or mental faculty, which is substantial and likely to be permanent. If a person suffers disfigurement as a result of the accident, that by itself is counted as loss of physical faculty.[1]

The Minister lays down by Regulations what loss of faculty will amount to 100 per cent, and other disabilities will be assessed by reference thereto. Disabilities are taken into account whether or not they involve loss of earning power or additional expense. If a final assessment cannot be made because of the possibility of changes, a provisional assessment must be made for a shorter period of reasonable length having regard to the condition and the possibility of changes.

Percentage Less than 20 per cent. Disablement benefit classified to be less than 20 per cent disablement carries only the right to a disablement gratuity. This amount will be fixed by the Minister in accordance with the length of the period taken into account and the degree of disablement, and it will not exceed £150. The scale will be the same for all persons, except that a lower amount may be fixed where during part of the period the claimant was under eighteen. It cannot, however, be less than half the amount he would receive if he were over eighteen for the whole of the period, or, in the case of a person who was then over seventeen, less than three-quarters.

Percentage Over 20 per cent. Assessment for 20 per cent or over gives the right to disablement pension and, if granted till a definite date, ceases on the death of the insured person before that date. Three-quarters of the rates only are payable for a period between the ages of seventeen and eighteen, and half the rates while under seventeen (unless an increased pension for a child or adult dependant is payable).

[1] *National Insurance (Industrial Injuries) Act* 1946, Sect 7 (2)

WHEN PENSION CAN BE INCREASED

1. For unemployability—20s. per week.

2. For special hardship—11s. 3d., i.e. if the pensioner (*a*) is incapable, and likely to remain permanently incapable, of following his regular occupation, and (*b*) is incapable of following suitable employment of a similar standard.

A person may not receive this increase of pension while he is entitled to the increase for unemployability.[1]

Constant Attendance. A pension payable for 100 per cent disability may be increased if, as a result of the loss of faculty, the pensioner requires constant attendance. No such increase is payable while the pensioner is receiving medical treatment free of charge in a hospital or similar institution.[2]

Treatment in Hospital. Where a pensioner enters a hospital, etc., for receiving approved treatment, he is to be considered as having had his disablement assessed at 100 per cent.

Children. A pensioner with a child or children who is entitled to an increase for unemployability or hospital treatment is entitled to an increase of 7s. 6d.

Adult Dependants. Increase for adult dependants is paid to a disablement pensioner where an increase for unemployability or hospital treatment is payable.

An increase for an adult dependant may only be made for one person for one period.

DEATH BENEFIT

Widows. The deceased's widow is entitled to death benefit if at his death she was residing with him.

The rate of pension is 30s. per week in the following cases: (*a*) so long as the widow is entitled to a children's allowance (see below); (*b*) where she was over fifty at the deceased's death or has become fifty while in receipt of children's allowance; (*c*) where at the date of the

[1] *National Insurance (Industrial Injuries) Act*, 1946, Sect 14.
[2] *Ibid*, Sect 15

death she was permanently incapable of self-support. In all other cases the rate of pension is 20s. per week.

Widowers. A widower of an insured person dying in consequence of the injury is entitled to a pension for life of 30s. per week if at her death he was being wholly or mainly maintained by her and was permanently incapable of self-support.

Children. If the deceased leaves a child there is an allowance of 7s. 6d. per week.

A dependant parent is entitled to death benefit of 20s. a week; 30s. if both parents. A dependant relative will subject to certain prescribed conditions be entitled to a pension of 20s. per week.

No relative is entitled to a relative's pension where there is some other person entitled to a pension as a widow, widower, or parent.

Forfeiture of Benefit. Regulations may provide for forfeiture of injury benefit for (*a*) acting in a manner calculated to retard recovery, or (*b*) failing to comply with any Regulations to submit to medical examination and treatment, or (*c*) failing to attend a training or rehabilitation course, or (*d*) failing to make a proper claim or give notice in the proper time in connection with any proceedings to determine a claim to benefit, or (*e*) wilfully obstructing or committing misconduct in connection with any medical examination or treatment or course of training or rehabilitation. But in the case of (*a*), (*b*), and (*e*) the maximum period of forfeiture is six weeks.

PROCEDURE FOR MAKING CLAIMS AND SETTLING DISPUTES

Instead of claims being made against the employer, they will be made to the Minister, and instead of disputes being referred to the County Court Judge the Act allocates functions to:

(1) The Minister of National Insurance.

(2) The Industrial Injuries Commissioner.

(3) Local Appeal Tribunals.
(4) Insurance Officers.
(5) Medical Boards.
(6) Medical Appeal Tribunals.

Local appeal tribunals are to consist of a chairman appointed by the Minister, persons representing employers and a similar number representing insured persons.

Medical boards are to be appointed by the Minister, and consist of medical practitioners, one of whom is to be appointed chairman. Medical appeal tribunals are to be appointed by the Minister, and consist of a chairman and two medical practitioners.

Claims to Benefits. All claims for benefit in the first place have to be made to an Insurance Officer. He must consider the claim immediately. If no "special question" arises, he must either refer the case to the local appeal tribunal, or must himself decide the case. The Insurance Officer must so far as possible make such reference to the local appeal tribunal within fourteen days of its being submitted to him.[1]

A dissatisfied claimant, or a person whose right to benefit (e.g. one of a number of relatives who claim relative's benefit) may be affected by the decision, may appeal from the Insurance Officer to a local appeal tribunal in the prescribed time and manner. If a "special question" has been duly decided and the decision on that question is the only ground of decision, it will be necessary to obtain leave of the chairman of the appeal tribunal before the appeal can be proceeded with. A local appeal tribunal must record each of its decisions in writing, with a statement of its findings on material questions of fact.[2]

Further Appeal. An appeal lies to the Commissioner from any decision of a local appeal tribunal within three months of its decision or such further period as may be allowed by Regulations or the Commissioner may for special reasons allow. Such appeal can be brought only

[1] *National Insurance (Industrial Injuries) Act*, 1946, Sect. 45.
[2] *Ibid.*, Sect. 46.

with leave of the tribunal or the Commissioner. The following may appeal—

An Insurance Officer;

A claimant, person entitled to benefit, or persons whose right to benefit may be affected by the decision appealed against;

An association of employed persons (e.g. a trade union) to which the claimant or beneficiary belonged at the date of the accident;

In the case of death benefit, an association of employed persons of which the deceased was a member at the time of the accident.

Leave to appeal must be granted if a principle of importance is involved, or if there are any other special circumstances. The local appeal tribunal must record in writing their reasons for granting leave to appeal.[1]

"Special questions" are: (1) those relating to insurable employment; payment of contributions; increase of disablement pension in respect of the need of constant attendance; limitation of benefit payable in respect of death.

The above are questions to be determined by the Minister.[2]

(2) Questions as to children, which are to be decided as similar questions arising under the Family Allowances Act, 1945.

(3) "Disablement questions," to be decided by a medical board or medical appeal tribunal.[3]

An appeal lies from the Minister to the High Court on a point of law arising from special questions as to insurable employment and payment of contributions, or the Minister may himself refer such point of law to the High Court. The Minister may review the decision given on any special question if new facts are brought to his notice (but not while such an appeal is pending). The

[1] *National Insurance (Industrial Injuries) Act*, 1946, Sect. 47.
[2] *Ibid.*, Sect 36.
[3] *Ibid.*

decision of the High Court on a reference or appeal is final, i.e. there is no further appeal to the Court of Appeal or House of Lords, and the Minister may be ordered to pay the costs of any person, irrespective of whether the Minister is successful or appeals.[1]

Procedure on Disablement Questions. The case of every claimant for disablement benefit must be referred by the Insurance Officer to a medical board for the disablement questions to be determined. An appeal lies from the decision of a medical board, to a medical appeal tribunal. No appeal lies against a provisional assessment for two years from the first reference of the case to a medical board.[2]

Fresh Evidence on Disablement. Decisions of a medical board or medical appeal tribunal may be reviewed on the ground of non-disclosure or misrepresentation. An assessment of the amount of disablement may be reviewed on the ground of substantial and unforeseen aggravation of the results of the injury, if substantial injustice would be done by not revising it. No assessment may be reviewed, except with the leave of a medical appeal tribunal, less than five years from the date on which it was made, or, in the case of a provisional assessment, six months.[3]

DECLARATION OF LIABILITY

A claimant may ask to have the question decided whether or not the accident was an "industrial accident" (i.e. one arising out of and in the course of insurable employment) even though the claim is disallowed for other reasons; and even without making a claim an insured person may ask to have such question decided. There is an appeal to the local appeal tribunal and the Commissioner against a refusal. (The only ground of such refusal is that it is unlikely that the question will need to be decided for the purpose of a claim.)[4]

[1] *National Insurance (Industrial Injuries) Act*, 1946, Sect. 37.
[2] *Ibid.*, Sect. 39.
[3] *Ibid.*, Sect. 40.
[4] *Ibid.*, Sect. 49.

Review of Decisions. The decision of an Insurance Officer, a local appeal tribunal or a Commissioner may be reviewed at any time by an Insurance Officer or referred by him to a local appeal tribunal on the ground of a mistake or change of circumstances or because the decision of a special question has since been revised. A decision that an accident is not an industrial accident may not be reviewed, and a decision that the accident was an industrial accident may only be reviewed on the ground of misrepresentation of a material fact. A decision given on a review, and any refusal to review, are subject to appeal.[1]

Cases before local appeal tribunals or the Commissioner will be in public, except where otherwise decided by the Commissioner or tribunal for special reasons, and the Regulations may provide for a party to be represented at the hearing by a professional or any other person.[2] Benefit is payable under an award, although an appeal is pending, and is never recoverable except in cases where, on review or appeal, a pension is given instead of a gratuity or allowance or vice versa.[3]

INJURY CASES BEFORE THE ACT

The Workmen's Compensation Acts continue to apply to cases where the right to compensation arose in respect of employment before the "appointed day."

[1] *National Insurance (Industrial Injuries) Act*, 1946, Sect. 50.
[2] *Ibid.*, Sect. 51.
[3] *Ibid.*, Sect. 52.

CHAPTER VII

THE LAW CONCERNING TRADE UNIONS AND TRADE ASSOCIATIONS

THE principal statutes affecting the position in law of trade unions and employers' associations are the following—

Trade Union Act, 1871.

Conspiracy and Protection of Property Act, 1875.

Trade Union Act (1871) Amendment Act, 1876.

Trade Disputes Act, 1906.

Trade Union Act, 1913.

The subject can conveniently be dealt with under the following headings—

(*a*) Status.

(*b*) Legislation.

(*c*) Registration; registered unions.

(*d*) Limitation of powers.

(*e*) Strikes and lock-outs.

(*f*) Conspiracy and statutory offences.

Unless otherwise stated, the term "trade union" throughout this chapter includes unions of employers ("employers' associations") as well as of employees.

Status. A trade union, within the meaning of the statutes mentioned above, is any combination whose principal objects are under its constitution, (1) the regulation of the relations between employees and employers or between employees or between employers *or* the imposing of restrictive conditions on the conduct of any trade or business, *and* (2) the provision of benefits to its members.[1] These objects are called "statutory objects," but the fact that a union has other objects in addition to the statutory objects will not prevent it being a trade union.[2] A trade union branch may also be a trade union.[3]

[1] *Trade Union Act*, 1913, Sects. 1–2.
[2] *Ibid*, Sect 1.
[3] *Trade Disputes Act*, 1906, Sect. 5 (2).

The following have been held not to be trade unions as failing to satisfy the above definitions—

A society of composers and publishers formed for the protection of musical copyright (the ground of the decision being that the principal object of the society was to enforce the rights of its members, not to impose restrictive conditions on the conduct of their business).[1]

An association whose principal object was the acquisition of patent rights, though also empowered to regulate output and price.[2]

An association to promote and protect a certain branch of trade, with power to punish members guilty of dishonourable trade dealing or of refusing arbitration of disputes.[3]

Before the Trade Union Act, 1871, was passed, trade unions were unincorporated societies without express legal recognition, and, if their objects were against public policy as being in unreasonable restraint of trade, were illegal. (For the principles governing the legality of restraint of trade, see pages 21-25.) The Act in question freed trade unions from the illegality consequent on being regarded as against public policy; the exact nature of the change is explained later. In addition, the same Act allows trade unions to become registered, and, by virtue of registration, to enjoy certain privileges set out later (page 146).

There are, therefore, four classes of trade unions which the law recognizes, and which differ from each other in legal status—

(*a*) Those which derive their legality from the 1871 Act and are not registered.

(*b*) Those which derive their legality from the 1871 Act and are registered.

[1] Performing Right Society *v* London Theatre of Varieties, [1924] A.C. 1.

[2] British Association of Glass Bottle Manufacturers *v.* Nettlefold (1911), 27 T.L.R. 527

[3] Merrifield, Ziegler & Co. *v.* London Cotton Association, Ltd. (1911), 105 L.T.R. 97

(*c*) Those which are legal apart from the 1871 Act (i.e. at Common Law) and are not registered.

(*d*) Those which are legal apart from the 1871 Act and are registered.

Legislation. No action of tort may be brought against a trade union, nor against any of its members or officials as a representative of the union (i.e. so as to make the union liable).[1]

The fact that a trade union has purposes which are in restraint of trade is not sufficient to make it illegal, either in the sense that its members become thereby liable to be prosecuted (e.g. for conspiracy), or in the sense that agreements or trusts are not binding in law.[2]

But, although the law does not render the agreements or trusts of the trade unions which it legalizes [3] *invalid*, it renders certain specified kinds of agreements *unenforceable*, since it prohibits actions being maintained with the object of directly enforcing them or recovering damages for their breach. These are—

1. Any agreement between members of a trade union as such concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed.

2. Any agreement for the payment by any person of any subscription or penalty to a trade union.

3. Any agreement for the application of the funds of a trade union—

(*a*) To provide benefits to members;

(*b*) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union;

[1] *Trade Disputes Act*, 1906, Sect. 4

[2] *Trade Union Act*, 1871, Sects 2–3

[3] The provisions as to unenforceable agreements do not apply to those trade unions which are legal apart from the 1871 Act, viz those classed (*c*) and (*d*) above Swaine *v* Wilson (1889), 24 Q.B D 252, Gozney *v.* British Trade and Provident Society, [1909] 1K B 901

(*c*) To discharge any fine imposed upon any person by sentence of a Court of Justice.

4. Any agreement made between one trade union and another.

5. Any bond to secure the performance of any of the above-mentioned agreements.

It is to be noted that the prohibition does not extend to *all* actions concerning such agreements, but only those instituted for the purpose of *directly* enforcing them (or recovering damages for their breach). It has been held that such legal proceedings are intended as have for their object the obtaining of some personal benefit by the plaintiff.[1] The following are cases where the prohibition was held not to apply -

A claim by a trade union against one of its branches for an injunction to prevent the branch misapplying funds.[2]

A claim by a member of a trade union against the trade union for an injunction to prevent the payment of strike money otherwise than in accordance with the rules.[3]

A claim by a trade union against one of its branches for a declaration that a resolution for secession passed by the branch was not valid under the rules of the union, and for an injunction to prevent dissipation of the funds as the result of such secession.[4]

An action against a trade union to compel restoration of misapplied union funds.[5]

A claim by a member of a trade union for an injunction to prevent the union making a levy upon its members for a purpose not authorized by the rules.[6]

An action on an account stated brought by a member of a trade association against the other members, the

[1] Yorkshire Miners' Association *v.* Howden, [1903] 1 K.B. 328
[2] McLaren *v.* Miller (1880), 7 R. 867.
[3] Yorkshire Miners' Association *v.* Howden, [1905] A.C. 256
[4] Cope *v.* Crossingham, [1909] 2 Ch. 148.
[5] McDowall *v.* McGhee (1913), 2 S.L.T. 238.
[6] Steele *v.* S. Wales Miners' Federation, [1907] 1 K.B. 361.

plaintiff being entitled under the rules of the association to receive from a pool of excess profits certain amounts on the basis of monthly accounts received from the association.[1]

An action by a member of a trade union against the union for a declaration that a proposed amendment of rules to the effect of requiring the members to make contributions for Parliamentary purposes was *ultra vires*.[2]

An action by a member of a trade association for a declaration that his membership had not ceased under the association's rules by his selling his business to a partnership in which he had a share (the court holding that the question was not one of enforcing an agreement, but was antecedent to any such question).[3]

Application for directions as to the distribution of the funds of a trade union on winding-up.[4]

In the following cases, on the other hand, it was held that actions were not maintainable in consequence of the statutory prohibition—

An action by a trade union against one of its branches for an injunction to prevent misapplication of funds and for payment to the parent union of that part of the branch funds which were not required for the branch expenses.[5]

A claim by a member of a trade union against the union for an injunction to prevent the union imposing certain fines, the court holding that the claim was in effect one to enforce rules for the benefit of a member.[6]

A claim by a member of a trade association against the association for an injunction to prevent the association putting into force a fine imposed upon the member for non-compliance with its rules.[7]

[1] Evans & Co Ltd. *v.* Heathcote, [1918] 1 K.B. 418.
[2] Osborne *v.* Amalgamated Society of Railway Servants, [1910] A.C. 87.
[3] Johnston *v.* Aberdeen Master Plumbers' Association, [1921] S.C. 62.
[4] Strick *v.* Swansea Tin Plate Co. (1887), 36 Ch.D. 562.
[5] Duke *v.* Littleboy (1880), 49 L.J. Ch. 802.
[6] Mullett *v.* United French Polishers, London Society (1904), 20 T.L.R. 595.
[7] Rae *v* Plate Glass Merchants Association, 56 S.L.R. 315.

Taking the classes of unenforceable agreements set out above (page 142) one by one, we have to note the following decisions—

1. An action by a member of a trade union to restrain the union from expelling him for participating in his employer's profit-sharing scheme is not an action for enforcing an agreement between members concerning the conditions of their employment, and is therefore maintainable.[1]

2. An action by a member of a trade union, who had been wrongfully expelled on the ground of non-payment of subscriptions, to compel the union to reinstate him is not an action for directly enforcing an agreement for the payment of a subscription, and is therefore maintainable.[2]

3. An action by a trade union against a member to recover accident benefit paid to him by the union, but recoverable from him on his resumption of employment, is an agreement for the application of trade union funds to provide benefits to members and is, therefore, not maintainable.[3]

"Benefits" must be understood in its ordinary meaning in connection with friendly and provident societies so as to include, e.g. sick benefits, disablement benefits, funeral benefits, but not payment to a member of his costs in legal proceedings.[4] An action by a nominee to recover death benefit payable in respect of a deceased member is an action to enforce an agreement to provide benefits to members and is, therefore, not maintainable,[5] and, similarly, actions in such circumstances by personal representatives[6] or by assignees;[7] but it was otherwise

[1] Braithwaite *v.* Amalgamated Society of Carpenters, [1922] 2 A.C. 440.
[2] Blackall *v.* National Union of Foundry Workers (1923) 39 T.L.R. 431.
[3] Baker *v.* Ingall, [1912] 3 K.B. 106.
[4] Lees *v.* Lancashire and Cheshire Miners' Association (1906), *Times* newspaper, 20th June.
[5] Crocker *v.* Knight, [1892] 1 Q.B. 703.
[6] Russell *v.* Amalgamated Society of Carpenters and Joiners, [1912] A.C. 421.
[7] Winder *v.* Guardians of Kingston-upon-Hull, etc. (1888), 20 Q.B.D. 412.

where a dependent of a member sued in his own right to recover benefit to which he was entitled under the rules in the event which happened of the member becoming insane.[1]

(4) and (5) do not need comment.

Registration; Registered Unions. A trade union may not be registered as a company or as a friendly society or as an industrial and provident society.[2]

No trade union may be registered if any of its objects are illegal,[3] or if its principal objects are not those given in the definition of a trade union (page 140).[4]

The procedure to be followed in registering a trade union is that any seven or more members subscribe their names to the rules of the union,[5] and application is made to the Registrar with printed copies of these rules and the names and titles of the officers.[6] The Registrar is the Registrar of Friendly Societies in England, Scotland, or Ireland, as the case may be;[7] and the trade union must be registered in the country (England, Scotland, or Ireland) in which it has its registered office.[8] If a trade union has been in operation for more than a year before the date of its application for registration, the application must also be accompanied by a general statement of receipts, funds, effects, and expenditure in the same form as the annual statement (see below, page 148).

No trade union may be registered under a name identical with that of any other existing trade union, or so nearly resembling it as to be likely to deceive the members or the public.[9]

A subsequent change of name needs the approval of the Registrar and the consent of two-thirds of the total

[1] Love *v* Amalgamated Society of Lithographic Printers [1912] S C 1078
[2] *Trade Union Act*, 1871, Sect 5
[3] *Ibid*, Sect 6
[4] *Trade Union Act*, 1913, Sect 2
[5] *Trade Union Act*, 1871, Sect 6
[6] *Ibid*, Sect. 13
[7] *Ibid*, Sect 17
[8] *Trade Union Act* (1871) *Amendment Act* 1876 Sect 6
[9] *Trade Union Act*, 1871, Sect 3 (3) and R *v* Registrar of Friendly Societies, L R (1881), 7 Q B D 745, 747

membership.[1] It will not take effect until registered and, for this, written notice of the change, signed by seven members and countersigned by the union secretary, and accompanied by a statutory declaration of compliance with the provisions of the Act, has to be sent to the Registrar.[2] A change of name will not affect any right or obligation of the union or of a member or any pending legal proceedings.[3]

The rules of a registered trade union must contain the following provisions—

1. The name of the trade union and place of meeting for the business of the trade union.

2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade union.

3. The manner of making, altering, amending, and rescinding rules.

4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers.

5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.

6. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union.

7. The manner of dissolving the trade union.[4] (A copy of the rules must be delivered to every person on demand on payment of a sum not exceeding one shilling.)[5]

Every registered trade union must have a registered office,[6] and must send annually to the Registrar in the

[1] *Trade Union Act* (1871) *Amendment Act*, 1876, Sect 11
[2] *Ibid*, Sect 13
[3] *Ibid.* Sect 11
[4] *Trade Union Act*, 1871, Sect. 14 and First Schedule
[5] *Ibid*, Sect 14
[6] *Ibid.*, Sect 15

prescribed form (1) a statement of receipts, funds, effects, and expenditure, showing assets and liabilities and showing separately the expenditure in respect of its several objects. (Every member of the union is also entitled to receive a copy of the statement free of charge.) (2) a copy of all alterations of rules and changes of officers during the year of account and a copy of the rules then in force.[1]

A trade union carrying on business in more than one of the countries of the United Kingdom must send copies of the rules and amendments to the Registrar in each country in question.[2]

A trade union may also, instead of applying for registration, apply to the Registrar for a certificate that it is a trade union within the meaning of the Acts; the Registrar has to grant the certificate if he is satisfied that its principal objects are those given in the definition. (Page 140.)

A certificate of registration may be withdrawn or cancelled by the Registrar at the request of the trade union or on proof that the certificate was obtained by fraud or mistake, or that any one of the purposes of the trade union is illegal or that the trade union has wilfully, and after notice from the Registrar, violated any of the provisions of the Trade Union Acts, or has ceased to exist. The Registrar must give at least two months' written notice to the trade union, except where the cancellation is at the trade union's own request or on the ground of an unlawful purpose (in the latter case the certificate has to be cancelled forthwith).[3] A certificate that a union is a trade union within the meaning of the Acts may also be withdrawn by the Registrar if satisfied after giving the union an opportunity to be heard that it is no longer justified.[4]

An appeal lies to the High Court from a refusal to grant

[1] *Trade Union Act*, 1871, Sect 16.
[2] *Trade Union Act* (1871) *Amendment Act*, 1876, Sect. 6.
[3] *Ibid*, Sect 8.
[4] *Trade Union Act*, 1913, Sect 2 (3).

or from a withdrawal of a certificate of registration or of a certificate that a union is a trade union.[1]

A registered trade union or a branch of it may purchase or take on lease in the names of its trustees land to any extent, and may sell, exchange, mortgage, or let land. There is no obligation on any purchaser, assignee, mortgagee or tenant to inquire into the trustees' authority for any such transaction and the trustees' receipt is a good discharge.[2] A union has no power to take by devise.[3]

All the property, real and personal, of a registered trade union is vested in and is under the control of the trustees of the union for the use and benefit of the union and the members, and the property of a branch of a registered union is vested in, and is under the control of, the trustees of the branch unless the rules provide for it to be vested in those of the parent union. On the death or removal of a trustee the property vests in the succeeding trustees without any conveyance or assignment, except that stocks and securities in the public funds of Great Britain and Ireland have to be transferred into the names of the new trustees.[4] Further, in the case of stock transferable at the Bank of England or the Bank of Ireland, the Registrar on written application from the secretary of the union and three members may direct its transfer to the names of any other persons as trustees if he is satisfied that any person in whose name the stock stands is abroad, becomes bankrupt, files any petition, executes any deed of assignment, arrangement, or composition, becomes a lunatic, is dead, or has been removed from his office, or if it is unknown whether he is alive or dead; the transfer must be made by the surviving or continuing trustees, and failing them, by the Accountant-General or Deputy

[1] *Trade Union Act*, 1913, Sect. 2 (4). (For the rules governing this right of appeal see S R. and O. (1913), No 1274/L. 27)

[2] *Trade Union Act*, 1871, Sect. 7, as amended by Sect 207 and Schedule 7, *Law of Property Act*, 1925

[3] *In re* Amos Carrier *v.* Price, [1891] 3 Ch. 159

[4] *Trade Union Act*, 1871, Sect 8; *Trade Union Act* (1871) *Amendment Act*, 1876, Sect. 3.

or Assistant Accountant-General of the Bank in question.[1]

A member of a registered trade union has the power of nominating a person to receive benefit payable upon the member's death, not exceeding £100. The nomination must be in writing and sent to the registered office of the union, and a nomination may be revoked or varied in a similar manner. Any person may be nominated (except an officer or servant of the union who is not husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator), but the union may limit by rule the scope of the persons who may be nominated.[2]

If a member of a registered trade union[3] who is entitled to a sum not exceeding £100 from the union funds dies intestate and without having made a nomination, the sum is payable without letters of administration to the person whom a majority of the trustees of the union judge to be legally entitled to receive it (i.e. under the law of intestacy).[4] If a member who dies without making a nomination was illegitimate, the sum in question may be paid by the trustees of the union to the person or persons who in the opinion of the majority of them would have been entitled if the member had been legitimate. Trustees making any payment under these provisions will be protected in the event of an adverse claim.[5] If the nomination is in respect of a sum exceeding £80 net, the trustees must require production of a duly stamped receipt for the death duty payable or an Inland Revenue Certificate that none is payable; where the personal property of the deceased exceeds £100, any one payment of a sum under the above provisions does not affect liability to probate duty.[6]

The trustees of a registered trade union are not liable

[1] *Trade Union Act* (1871) *Amendment Act*, 1876, Sect 4
[2] Lavin *v* Henley (1910), 102 L T 560
[3] *Trade Union Act* (1871) *Amendment Act*, 1876, Sect 10
[4] *Provident Nominations and Small Intestacies Act*, 1883, Sect 7
[5] *Ibid*, Sects 8, 9.
[6] *Provident Nominations and Small Intestacies Act*, 1883, Sect 10

to make good any deficiency in the union funds, but are liable only for monies actually received by them on account of the union.[1]

A registered trade union has the right of bringing or defending in the names of its trustees or other officer authorized by its rules any legal proceedings relating to property, right, or claim to property of the union, and the proceedings are not affected by the death, removal, or resignation of any such officer.[2]

A registered trade union is entitled to exemption from income tax under schedules A, C, and D in respect of interest and dividends applicable and applied solely for the purpose of provident benefits, if the union is precluded by its rules or by statute from assuring to any person a lump sum benefit of more than £300 or an annuity of more than £52. (Provident benefits in this connection include benefits authorized by the rules of the union payable to a member during sickness, incapacitation from personal injury or unemployment, to an aged member as superannuation, to a member who has met with an accident, or has lost his tools by fire or theft, and funeral benefit on the death of a member or member's wife, and provision for the children of a deceased member.)[3]

Every treasurer or other officer of a registered trade union has to render to the trustees or to the members at the times prescribed by the rules, or upon being required to do so, an account of all receipts and expenditure, of the balance in his hands, and of all bonds and securities. The trustees must have the accounts audited by a fit and proper person appointed by them, and after audit the treasurer must, if required, hand over the balance to the trustees and all other union property, books, and effects; otherwise the trustees may sue him for these and will be entitled to their full costs as between solicitor and client.[4] Further, any person obtaining by misrepresentation,

[1] *Trade Union Act*, 1871, Sect 10
[2] *Ibid*, Sect 9
[3] *Income Tax Act*, 1918, Sect 39.
[4] *Trade Union Act*, 1871, Sect 11.

wilfully withholding[1], fraudulently applying, or wilfully applying to purposes not authorized by the union rules, any property, books, or other effects of a registered trade union may be summarily ordered by a court of summary jurisdiction, on the complaint of the Registrar or of any person on behalf of the union, to make redelivery or repayment and to pay a penalty not exceeding £20, and costs not exceeding £1; in default he may be imprisoned for a period not exceeding three months, with or without hard labour.[2]

It will be clear from the above provisions that a registered trade union has a considerable number of advantages over an unregistered trade union. While it is not made clear in the Act of 1876 whether such provisions as those relating to dissolution and change of name apply to unregistered unions, the latter are definitely placed in a less favourable position as regards holding and transfer of property, income tax, control of funds, and punishment of offenders. A registered trade union is a statutory legal entity, which, although not a corporation, can own property and act by agent,[3] but an unregistered trade union has no corporate or quasi-corporate existence and is merely a collection of individuals.

Limitation of Powers. A trade union may not apply its funds to certain specified objects except under certain conditions. The specified objects are the following—

(*a*) The payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connection with his candidature or election;

(*b*) The holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate;

[1] This is a continuing offence. Best *v.* Butler, [1932] 2 K.B. 108.

[2] Trade Union Act, 1871, Sect. 12.

[3] Osborne *v.* Amalgamated Society of Railway Servants, [1900] Ch. 189. National Union of General & Municipal Workers *v.* Gillam, [1945] 2 All E.R. 593.

(*c*) The maintenance of any person who is a Member of Parliament or who holds a public office;

(*d*) The registration of electors or the selection of a candidate for Parliament or any public office;

(*e*) The holding of political meetings of any kind, or the distribution of political literature or political documents of any kind, unless the main purpose of the meetings or of the distribution of the literature or documents is the furtherance of statutory objects. (As to what are "statutory objects," see page 140.)

The conditions to be fulfilled before the union's funds can be applied to any of the above objects are—

1. A resolution approving the object as an object of the union must be passed on a ballot of the members by a majority of those voting. This ballot must be taken in accordance with the rules of the union which have to be approved for the purpose by the Registrar of Friendly Societies. Before approval the Registrar must be satisfied that every member has an equal right, and if reasonably possible a fair opportunity, of voting and that the secrecy of the ballot is properly secured.[1]

2. The rules of the union must contain rules approved by the Registrar, providing (*a*) that any payments in favour of the political objects above specified must be out of a separate fund, (*b*) that a member who has exemption from contributing to this fund shall not thereby be excluded from any benefits or placed under any disability or at any disadvantage as compared with other members except as far as the management of the political fund is concerned, and that contribution to the political fund shall not be a condition of admission to the union.[2]

[1] *Trade Union Act*, 1913, Sects. 3, 4.

[2] *Ibid.*, Sect. 3. Any member aggrieved by breach of any of these rules may complain to the Registrar who, after giving both sides an opportunity of being heard, may make an order which shall be binding and conclusive upon all parties and without appeal (*Trade Union Act*, 1913, Sect. 3 (2)). While it seems that it is optional to an aggrieved member to avail himself of this procedure, he will, once he elects to avail himself thereof, be unable to take other proceedings. (Forster *v.* National Amalgamated Union of Shop Assistants (1927), 43 T.L.R. 199).

Every member of a trade union is exempt from contributing to the political fund if he has delivered a notice in the following terms—

Name of Trade Union.....

POLITICAL FUND (EXEMPTION NOTICE)

I hereby give notice that I object to contribute to the Political Fund of the .. .. .. Union and am exempt in manner provided by the Trade Union Act, 1913, from contributing to that Fund

The above restrictions on the powers of trade unions in respect of the political objects above specified apply not only to the direct application of funds for those objects, but to their indirect application, and not only to their application by a union acting by itself, but also if it is acting in conjunction with any other body. A union may not, therefore, contribute to another body which has any of the above specified political objects unless it complies with each of the above provisions.

Strikes, Lock-outs, and Trade Disputes. An act done by a trade union to further a trade dispute is not a conspiracy if the act itself is not a criminal one (i.e. if it would not be a crime when done by one person).[1]

A trade dispute is "any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of any person," and the expression "workmen" means "all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises."[2]

In general the legality or illegality of strikes and lock-outs depends on their objects and the means by which they are enforced.[3]

"It may be criminal, as if it be part of a combination for the purpose of injuring or molesting either masters

[1] *Trade Disputes Act*, 1906.
[2] *Ibid*, Sect 5 (3).
[3] Farrer *v* Close (1869,) 4 Q B. 602

or men; or it may be simply illegal, as if it be the result of an agreement depriving those engaged in it of their liberty of action, similar to that by which the employers bound themselves in the case of *Hilton* v. *Eckersley* (1856), 6 E. & B. 47, 66, or it may be perfectly innocent, as if it be the result of the voluntary combination of the men for the purpose only of benefiting themselves by raising their wages, or for the purpose of compelling the fulfilment of an engagement entered into between employers and employed, or any other lawful purpose."[1] Again, the legality "depends on the nature and mode of the concerted cessation of labour. If this concerted cessation is in breach of contract, then it could not be said to be within the law any more than could a breach of contract by a single workman. If, on the other hand, a strike be a cessation of labour on the expiry of contract, there is no necessary illegality then any more than in the case of an individual workman completing his current bargain, and then choosing to remain idle."[2]

A strike or lock-out which is illegal on such grounds, will ordinarily amount to a conspiracy.

Conspiracy. The liability of trade unions to be proceeded against for conspiracy,[3] has been defined by statute, and the Common Law rules can, therefore, be applied only subject to the statutory provisions.

Under the Common Law, three principles can be distinguished—

(*a*) A lawful act done by one person is still lawful, even if done with the intention of injuring another.[4]

(*b*) A lawful act done by two or more persons is still lawful if done to forward or defend the trade of those persons, although damage to another is thereby caused.[5]

(*c*) A lawful act done by two or more persons becomes

[1] Farrer *v* Close (1869), 4 Q B 602

[2] Russel *v* Amalgamated Society of Carpenters and Joiners, [1912 A C 421

[3] Conspiracy can be proceeded against civilly or criminally To maintain a civil action damage must be proved

[4] Ware & de Freville *v* Motor Trade Association, [1921] 3 K B 40

[5] Sorrell *v* Smith, [1925] A C. 700.

unlawful if done by those persons in combination with the intention of injuring another.[1]

In distinguishing whether a particular case in which a trade union is concerned, falls into the second or the third of these classes, the test is—

Was protection of the interests of their trade the motive of the union's interference? This is a question of fact.[2] Thus, the *bona fide* publication by an employers' association of a firm's name in a "stop-list" in the protection of the trade interests of the members of the association,[3] and the issuing to employers by an employers' insurance association of a list of workmen not to be employed by insuring employers,[4] were held not to be actionable. On the other hand, a "black list" published maliciously for the purpose of compelling employers to dismiss their employees in breach of contract was held to be actionable.[5] Again, interference, the object of which was to compel a person to pay a debt [6] or to pay a fine,[7] was held actionable.

As has been pointed out (page 142), members of a trade union are not liable to criminal prosecution for conspiracy by reason merely that the purposes of the union are in restraint of trade.[8] Further, a combination of persons in doing an act in contemplation or furtherance of a trade dispute [9] between employers and workmen or between workmen and workmen is not indictable as a conspiracy if the act committed by one person would not be a crime.[10]

This rule, however, does not apply to any kind of

[1] Sorrell *v* Smith, 1925 A C 700 Crofter Harris Tweed, Ltd *v* Veitch, 1942 A C 435

[2] South Wales Miners' Federation *v* Glamorgan Coal Co, [1905] A C 239

[3] Ware & de Freville, Ltd *v* Motor Trade Association, [1921] 3 K B. 40

[4] Mackenzie *v* Iron Trades Employers' Insurance Association, Ltd, 1910] S C 79

[5] Trollope *v* London Building Trades Federation (1896), 12 T.L R 373

[6] Gibbon *v* National Amalgamated Labourers' Union, [1903] 2 K B. 600

[7] Conway *v* Wade, [1903] A C 506

[8] *Trade Union Act*, 1871, Sect 2

[9] For definition of trade dispute see p 154

[10] *Conspiracy and Protection of Property Act*, 1875, Sect. 3; *Trade Disputes Act*, 1906, Sect. 5 (3)

conspiracy for which a punishment has been laid down by statute nor to offences coming under the law of riot, unlawful assembly, breach of the peace, or sedition, or offences against the State or Sovereign.[1]

Certain actions are declared to be offences for each of which the maximum penalty is £20 or three months imprisonment with or without hard labour—

1. Wilfully and maliciously breaking a contract of service with an employer whose duty it is to supply any place with gas, water, or electricity by a person having reasonable cause to believe that the inhabitants would, as a probable consequence of his so doing either alone or with others, be to a great extent deprived of gas, water, or electricity.[2]

2. Wilfully and maliciously breaking a contract of service by a person having reasonable cause to believe that a probable consequence of his so doing alone or with others would be the endangering of human life or the causing of serious bodily injury and the exposing of valuable property to destruction or serious injury.[3]

3. Wrongfully and without legal authority doing any of the following with a view to compelling another to abstain from doing something he may legally do, or to do something he may legally abstain from doing

(*a*) using violence to, or intimidating, the other or his wife or children, or injuring his property;

(*b*) persistently following the other person about from place to place;

(*c*) hiding any tools, clothes, or other property owned or used by the other person, or depriving him thereof or hindering him in the use thereof;

(*d*) watching or besetting the house or other place where the other person resides, or works, or carries on

[1] *Conspiracy and Protection of Property Act*, 1875, Sect. 3.

[2] *Conspiracy and Protection of Property Act*, 1875, Sect 4, and *Electricity Supply Act* 1919, Sect. 31. Every such employer is bound to keep a copy of the section posted up at his works. (Continuing penalty for default, £5 per day.)

[3] *Conspiracy and Protection of Property Act*, 1875, Sect. 5.

business, or happens to be, or the approach to such house or place;

(*e*) following the other person with two or more persons in a disorderly manner in or through any street or road.

Where an employer was told by trade union secretaries that they would call off all their members in his employment if he continued to employ non-unionists, and where A, a workman, told B, a fellow workman, who belonged to a different union, that A's union would strike unless B joined that union, it was held that there was no intimidation in either case, there being no violence or threat of violence.[1]

As regards the offence of "persistently following" in (*b*) above, violence or the following in a disorderly manner are not material.[2]

What constitutes the offence "watching and besetting" – (*d*) above – has been further declared by the Act of 1906. As far as persons acting in contemplation or furtherance of a trade dispute (see page 154) are concerned, they may attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.[3]

[1] Gibson *v* Lawson, 1892, 2 Q B 545, Curran *v* Tulearan, [1891] 2 Q B 545.
[2] McQueen *v*. McKenzie, [1892] 2 Q.B 570
[3] *Trade Disputes Act* 1906, Sect 2

CHAPTER VIII

NATIONAL INSURANCE OF EMPLOYEES

THERE are three schemes of compulsory insurance in industry, viz. the National Health Insurance scheme, the Widows', Orphans', and Old Age Contributory Pensions scheme, and the Unemployment Insurance scheme. The first two are administered together by the Ministry of Health and the third by the Ministry of Labour. The schemes will remain in force as here outlined until the "appointed day" for the coming into operation of the National Insurance Act, 1946, announced to be 5th July, 1948

HEALTH AND PENSIONS INSURANCE

Both these schemes are contributory and in return for the joint contributions of the employer and employee, the latter is guaranteed certain health benefits, including free medical attendance, and money benefit, and pensions benefits, including provision for his widow and children in the event of his death. As regards the money benefit paid during sickness, there is nothing in the National Health Insurance Acts nor, as we have seen above (Chapter III), in the Truck Acts, to prevent the employer and employee agreeing that the amount of money benefit should be deducted from the wages payable.

Which Classes of Employees are Insurable. In general, every employee of 14 or over (including temporary employees, part-time employees, apprentices, married women and aliens), who is a manual worker or whose wages do not exceed £420 a year has to be insured under the Health and Pensions schemes.[1]

Apprentices are insurable if they are entitled to receive

[1] *National Health Insurance Act*, 1936, Sects. 1 and 2, Schedule I Part I *National Health Insurance, Contributory Pensions and Workmen's Compensation Act*, 1941.

a money payment for their services. Such money payments need not be paid at regular intervals; the fact that the payment is made once a year, or that it comprises sums of varying amount based, say, on commission on sales does not affect the liability, if it is a payment to which the apprentice has a legal claim. On the other hand, if the payment is merely in the nature of a bonus or gratuity, there is no liability to insurance.[1]

The answer to the question whether a particular employee is a "manual worker" depends upon the real and substantial character of the employment in question. The phrase is familiar from its use in the Employers and Workmen Act, 1875, and the decisions thereunder are relevant to the present case (see pages 39-40 above). An employee whose principal duties, even though they involve manual labour to a certain extent, are of a non-manual kind, is not a manual worker, e.g. if he is mainly engaged in clerical or accounting work, or if his work calls for the exercise of mental or artistic ability as distinct from manual dexterity. The following have been held to be manual workers: A linotype operator, a shirt-cutter (engaged mainly in cutting), a watch repairer, a tackler or loom jobber in a textile weaving mill, a chauffeur (whose duties include cleaning the car and doing small repairs), a foreman (with substantial manual duties). The following have been held to be non-manual: An engraver,[2] a lithographic artist,[3] a trained sick nurse, a tailor's cutter (who also manages the department and designs patterns),[4] a foreman (whose main duties are supervisory).[5]

Non-manual workers whose wages exceed £420 are not insurable. The question to be decided is whether the particular employment is remunerated at a rate exceeding in value £420 a year for whole-time service. In the case of a person with two or more employments,

[1] *National Health Insurance Act*, 1936, Sects 1 and 3, Schedule I, Part I.
[2] *Re* Lithographic Artists; *Re* Engravers (1912), 108 L.T. 894.
[3] *Ibid*
[4] *Re* Dauyman's Foreman; *Re* Tailors' Cutters (1912), 107 L.T. 342.
[5] *Ibid.*

each employment must be considered separately. In the case of a person employed part-time, the rate for full-time employment in that work has to be estimated. Questions arising as to whether a person is insurable or not are determinable by the Minister of Health (subject to appeal on questions of law), and the Minister is competent to determine questions as to the value of remuneration from part-time employment; it is, therefore, important to note the principles upon which the Ministry act in estimating rates of remuneration about which there may be a doubt or dispute. Where, as in the case of an agent employed by a number of firms on commission, it is not possible to ascertain what amount of time is spent in a week on the work of each employer respectively, the Ministry in the absence of other indications apportion the time according to the amount of remuneration received from the respective employments, and where on this assumption the rate of remuneration received from the principal employer is more than the equivalent of £420 as the full-time annual rate, the employee if paid solely by commission is regarded as not subject to compulsory insurance. Further, in estimating remuneration from any kind of employment, account is to be taken of all the emoluments received in addition to the regular fixed salary or wages, if they are payments of which the employee has a reasonable expectation (such as commission, bonus, regular overtime payments, but not a gratuity given by the employer at his direction; in case of such emoluments which are in kind, like board and lodging, free meals, etc., the criterion as to the amount of remuneration they represent is their value to the employee rather than their cost to the employer). Deductions should be made from the gross earnings on account of expenses necessarily incurred in earning the remuneration and which would not be incurred otherwise, like travelling expenses or postage. Where there is an allowance for hotel or other expenses, its net value to the employee, i.e. the saving it effects in his normal personal expenses, is regarded as remuneration,

the balance being deductible from the gross payments as necessary expenditure.

Where the rate of remuneration is subject to fluctuations, an average is taken over a sufficiently long period, ordinarily three years. If, however, the rate of remuneration is continually increasing or the reverse, the position needs reviewing from time to time in order to ascertain whether estimated on an average from the facts available the earnings have reached a point definitely above or below £420 as the case may be.

An outworker is insurable, the employer being ordinarily the person responsible for giving out the articles or materials to be worked; where the materials are given out to an independent contractor who engages his own outworkers, the contractor is the "employer." Master tailors who make up and finish clothes on their own premises for merchant tailors or wholesale clothiers are "out-workers" and insurable.[1]

Excepted Employments. The following are the classes of industrial employees who are not compulsorily insurable—

1. Non-manual workers whose rate of remuneration is over £420 a year.

2. Apprentices employed without money payment.

3. An agent paid only by commission, fees, or share in profits, and who is either mainly dependent on his earnings from some other occupation or is employed as agent by two or more employers, and is not mainly dependent on his earnings from any one agency.

4. Persons whose employment has been specified by Special Order as subsidiary employment.

In addition to the above, persons in the following groups may also obtain special exception by certificate of the Ministry of Health, if by the terms of their employment they are assured equivalent sickness and disablement benefits to those under the National Health scheme. Where a certificate is granted, no Health Insurance contributions are payable. Pensions contributions remain

[1] *Re* Master Tailors as Outworkers (1913), 29 T.L R. 725.

still payable except in so far as the Minister has granted total or partial exception on the ground of the pension benefits to which their employment entitles them--

(*a*) Employees of the Crown or of a public authority.

(*b*) Clerks or salaried officials of a statutory company with rights in a statutory superannuation fund.

(*c*) Permanent employees of statutory public utility undertakings (gas companies, water companies, etc.), under certain conditions.[1]

Exempted Persons. A certificate of exemption can be obtained by any individual employee who is in an insurable employment, if he has either a pension or income of £26 or more not dependent on his personal exertions, or if he mainly depends upon others or on a non-insurable kind of employment, or if he is only intermittently employed. (The definition of "intermittent employment" is left to the Minister of Health, and as at present defined it means employment for less than 13 weeks in each of the last two contribution years.)[2]

A certificate of exemption affects the employee's, but not the employer's, contributions. A confusion sometimes arises between certificates of exemption and the certificates granting partial exception referred to in the previous paragraph headed "Excepted Employments" (page 162). In the case of exempted persons, the rates of contributions and the benefits are defined by the statute; in the case of certificates of partial exception, the Ministry of Health defines the contributions and benefits according to the balance to be made up between the two sets of benefits, and does not ordinarily treat the employer's contributions on a different footing from those of the employee.

Voluntary Contributors. Certain classes of non-insurable employees are entitled to become voluntary contributors, i.e. to undertake in return for the contracted benefits the payment of the total contributions payable in respect of themselves. This is, in view of the relatively

[1] *National Health Insurance Act*, 1936, Schedule I, Part II.
[2] *Ibid.*, Sect 5.

small cost, a valuable privilege and the advantages are not perhaps sufficiently well-known. While the legal provisions applicable to this class do not here call for treatment with equal precision to the obligatory parts of the scheme, their main features can usefully be set out as part of the rights of persons in employment.

The following are entitled to become voluntary contributors—

1. Any person, other than a married woman, who has been insured for at least 104 weeks since the last entry into insurance and has ceased to be in insurable employment (e.g. a non-manual worker whose salary is increased above £420).

2. Any person, other than a married woman, who is employed in an "excepted" employment (see page 162) and in whose case the Minister is satisfied that special circumstances justify his being allowed to become a voluntary contributor.

3. Any person who while insured as a voluntary contributor was placed in insurable employment which has since ceased.

4. An "exempt" man (see page 163), who ceases to be in insurable employment, and in respect of whom 104 contributions have been paid.

5. An uninsured man who marries an insured woman in respect of whom 104 contributions have been paid.

In each of the above cases, the option to become a voluntary contributor must be exercised within the time specified by Ministry of Health regulations.[1] Generally this means before the expiry of his period of insurance (but in the case of persons in class (5) above, within the first year after marriage or within 5 years during which the wife remains insured, whichever is the longer). The period of insurance of a person ceasing to be compulsorily insurable continues till 30th June or 31st December before the end of 2 years from the last contribution week. This "free period" of insurance then ceases, unless it is

[1] *National Health Insurance Act*, 1936, Sects. 3, 127

extended under certain conditions on account of illness or unemployment.

Contributions. The contributions payable respectively by employer and employee for combined Health Insurance and Pensions are as follows—

	Employer s d	*Employee* s d
Male over 16	2	2
Female over 16	1 8	1 8
Boys 16–17	1 6	1 6
Girls 16–17	1 2	1 2
Persons of 14–16 years	2	2

In the case of certain low wage earners over 18, who are not provided with board and lodging by their employers, the employee's contribution is reduced and the employer's correspondingly increased. Thus, if earning 3s. a day or less, the employee pays 1s. 6½d. (male), 1s. 3d. (female); if earning more than 3s. but not more than 4s. a day, 1s. 11d. (male), 1s. 7d. (female).

In the case of persons over 65 and exempt persons, only the employer's contribution is payable.

In the case of voluntary contributors, the total contribution has to be paid by the voluntary contributor alone. There is a decrease of 3d. in the case of those earning more than £420, since they are not entitled to medical benefit.

In the case of persons in employments which are specially excepted by certificate of the Ministry of Health (see

Contributions, Excepted Persons	*Men* Rate s d	Amount normally recoverable from worker s d	*Women* Rate s d	Amount normally recoverable from worker s d
(*a*) Fully insured for pensions—				
Age 16 and 17	2 1	1 0½	1 5½	9
,, 18 to 65 (women 60)	3 1	1 6½	2 5½	1 3
(*b*) Insured for widows' and orphans' pensions only				
Age 16 and 17	9	4½	—	—
,, 18 to 65	1 1	6½	—	—

page 162), there are special rates according to whether they are entitled to an equivalent pension by virtue of their employment (see table on page 165).

The Ministry of Health has power by special order to modify the provisions of the Act as to persons whose employment is casual or intermittent.[1]

The contributions of both employer and employee are payable by the employer in the first instance, those of the employee being deductible from his wages. They are not payable in regard to any week in which the worker was unable to work through illness or in which no wages were paid on account of no work having been done (e.g. holidays, where no wages are paid during holidays) Where an insured person is employed by more than one employer in any week, the employee's obligations have to be carried out by the employer who first employs him in that week, subject to any Order to the contrary. The employer cannot by contract or otherwise make arrangements to recover the employer's contribution from the employee. The rates of contribution from outworkers form the subject of special regulations.[2]

Benefits. The ordinary Health Insurance benefits are—

(*a*) Medical benefit (free medical attendance and medicine), insured persons become entitled to medical benefit immediately on entering into insurance

(*b*) Sickness benefit (payments during sickness): 18s a week for men and 15s (widows and spinsters), 13s (married women) after 104 weeks from entry into insurance and payment of 104 weekly contributions, 12s a week for men and 10s. 6d for women after 26 weeks from entry into insurance and payment of 26 contributions (these rates are applicable until the higher rates first mentioned become payable), the benefit commences on the fourth day of incapacity, and is given for a period or periods of sickness not exceeding 26 weeks This benefit ceases to be payable when age 65 is reached

(*c*) Disablement benefit (payments during sickness after 26 weeks' sickness benefit has been received) 10s 6d. a week (men), 9s. (spinsters and widows), 8s (married women), if 104 weeks

[1] *National Health Insurance Act*, 1936, Sect 28 The present rates of contribution are laid down in Regulations made under the transitional provisions of the *National Insurance Act*, 1946

[2] *Ibid*, Sects. 18, 24-5

have elapsed from entry into insurance and 104 weekly contributions have been paid This benefit also ceases to be payable when age 65 is reached.

(*d*) Maternity benefit (for a man a sum of 40s payable to his wife on her confinement and for a woman a sum of 40s on her confinement) · payable after 42 weeks from entry into insurance and payment of 42 weekly contributions A married woman who is an employed contributor and whose husband is not insured is entitled to a double maternity in respect of her own insurance

Benefit is inalienable. An insured person is not entitled to benefit during his absence from the United Kingdom.

Voluntary contributors with income exceeding £420 are not entitled to medical benefit, but exempt persons are, subject to certain conditions, entitled. The fact that a person is suspended by his society from sickness or disablement benefit on the ground of his sickness or disablement having been caused by his own misconduct does not disentitle him from medical benefit.

The title to maternity benefit arises after 42 weeks have elapsed since the person became insured, and a certain number of contributions, varying according to different classes, paid. Where both husband and wife are insured and entitled to maternity benefit, a second maternity benefit is payable.[1]

Persons entitled to compensation in respect of any injury or disease (including war injuries) are excluded from receiving sickness or disablement benefit in respect of the same injury or disease unless the compensation is less than the benefit in question, in which case the difference between the two amounts is payable. The weekly value of lump sum compensation has to be calculated for the purpose of this provision. If a person neglects to enforce a claim to compensation to which he appears to be entitled, benefit may be withheld or his approved society or insurance committee proceed to recover the compensation.[2]

Inmates of hospitals, asylums, workhouses, and other similar public or charitable institutions are not entitled

[1] *National Health Insurance Act*, 1936 Sects 44–9

[2] *Ibid*, Sects 51–3.

to sickness, or disablement benefit, nor is maternity benefit payable in respect of a woman who is an inmate of a public institution at the time of the confinement. If the insured has dependants, the insurance committee or approved society may, after consultation with him, pay the amount to the dependents, otherwise to the institution. Any amount not so applied is to be paid to the insured after he leaves the institution, or if he dies, it is, subject to a maximum of £50, to be paid to his estate.[1]

Where in the case of an insured person the doctor in attendance certifies that the levying of distress or execution, or proceedings for recovery of rent or ejectment. would endanger his life, and the certificate is recorded by the insurance committee, it becomes unlawful to continue the proceedings during the validity of the certificate.[2]

Voluntary Contributors for Old Age, Widows, and Orphans Pensions. The following persons may become voluntary contributors for widows, orphans and old age pensions on the same scales as those who are compulsorily insurable (see pages 174–7): Persons continuously resident in Great Britain for 10 years whose total income at the time of entry into insurance does not exceed £400 in the case of a man, or £250 in the case of a woman (of which not more than £200 in the case of a man, and not more than £125 in the case of a woman, may be unearned). The age limit is 40, but persons are entitled who apply before 3rd January, 1939, if they were under 55 on 3rd January, 1938. (Those who are certified to be already protected under the terms of their employment for such benefits, or who have retired on superannuation from such employment, or their wives, are not entitled to admission.) The original rates of contributions in the case of those entering before 3rd January, 1939, were: Men, 1s. 3d. weekly (10d. if insured for widows and orphans pensions only). Women, 6d. weekly.

[1] *National Health Insurance Act*, 1936, Sect. 55.
[2] *Ibid*, Sect. 181.

In the case of those entering after 3rd January, 1939, the contributions are at varying rates according to age, the original rates being—

Age	Weekly Contribution	Age	Weekly Contribution
	s d		s d
21	1 3	31	2 0
22	1 4	32	2 1
23	1 4	33	2 2
24	1 5	34	2 3
25	1 6	35	2 4
26	1 7	36	2 5
27	1 8	37	2 6
28	1 9	38	2 7
29	1 10	39	2 9
30	1 11	40	2 11

As a result of the transitional provisions of the National Insurance Act, 1946, voluntary contributors of this class are individually notified by the Ministry of changes in their contribution rates.

Approved Societies. The health benefits are administered principally through the approved societies. Certain statutory conditions must be satisfied before approval of a society can be granted; thus the society is not to be carried on for profit; there must be control by the members, and exclusion of honorary members from voting on matters relating to National Health Insurance.[1]

The rules of every approved society must provide for the government of the society to the satisfaction of the Minister.

The rules of an approved society with branches must provide for (*a*) the government of the society and its branches; (*b*) determination of disputes between society and branch, or between branches; (*c*) administration of benefits by branches; (*d*) keeping of proper accounts by branches with separate accounts; (*e*) suspending branches from administration of benefits.[2]

[1] *National Health Insurance Act*, 1936, Sect 73
[2] *Ibid*, Sect 79.

The Minister has power to require the rules to be amended, and each society must give security against misappropriation by the society's officers except where the funds under the Act are confined to reimbursements of sums already expended by the society. Income from the security is the property of the society.[1] The Minister may make regulations against maladministration, and may withdraw approval from a society failing to comply with the requirements of the Act.[2] Regulations may also be made with respect to amalgamations of societies, and secession, expulsion or dissolution of branches.[3]

No approved society may be dissolved without the Minister's sanction.[4]

An approved society has power to reject applicants for membership, but not solely on account of age. Failing a notification from the society to an applicant within 3 months of the delivery of his application, that his application has been rejected, the applicant is deemed admitted as from the date of his application[5]. It is an offence to attempt to become a member of two approved societies, or a deposit contributor and a member of an approved society, for the purposes of the Act.

The right of a member of an approved society to terminate his membership by giving the requisite notice is subject to the following—

(*a*) The right of the society to lodge an objection to the Minister within 30 days, and the power of the Minister in such case to cancel the notice of termination.

(*b*) The right of a society with the Minister's consent to suspend the right of termination during 2 years from the result of a valuation.

(*c*) The power of the Minister to suspend the right of termination.[6]

[1] *National Health Insurance Act*, 1936, Sects. 80–1.
[2] *Ibid.*, Sects 82–3.
[3] *Ibid.* Sects 85–6.
[4] *Ibid.* Sect. 84.
[5] *Ibid.* Sect. 87.
[6] *Ibid.* Sect. 89 (1)

Transfer fees are payable except in cases where a person has not been two years insured and not transferred previously, and it is an offence punishable by fine for any officer of a society to pay this fee directly or indirectly. Any member of an approved society has to cease his membership on his obtaining exemption or ceasing to be insured.[1]

Approved societies with surpluses are also able to draw up schemes for paying out additional benefits and to act upon such schemes with the Minister's sanction. Such additional benefits may be one or more of the following[2]—

1. An increase of sickness benefit and disablement benefit.
2. The payment of sickness benefit from the first day of incapacity.
3. An increase of maternity benefit.
4. Allowances to a member during convalescence from some disease or disablement
5. Payments to or on behalf of members who are in want or distress.
6. Payments to members not allowed to attend work on account of infection.
7. Repayment of the whole or any part of contributions by members of the society or any class thereof.
8. The payment of the whole or any part of the cost of medical or surgical advice or treatment by any registered medical practitioner, not being advice or treatment within the scope of any other additional benefit or of medical benefit, under a special scheme approved by the Minister for the purpose.
9. The payment of the whole or any part of the cost of the provision of dental treatment.
10. Payments to hospitals in respect of the maintenance and treatment therein of members, and the payment of the whole or any part of the travelling expenses incurred by or in respect of members in travelling to and from hospitals.
11. The payment of the whole or any part of the cost of maintenance and treatment of members in convalescent homes, and the payment of the whole or any part of the travelling expenses incurred by or in respect of members in travelling to and from convalescent homes.
12. The provision of premises suitable for convalescent homes and the maintenance of such homes.
13. The payment of the whole or any part of the cost of medical and surgical appliances, other than dental and optical appliances and those provided as part of medical benefit.

[1] *National Health Insurance Act*, 1936, Sect. 89.
[2] *Ibid* Sect. 104. Schedule III.

14. The payment of the whole or any part of the cost of the provision of ophthalmic treatment (other than as provided as part of medical benefit), and the whole or any part of the cost of optical appliances.

15. The payment of the whole or any part of the cost of the provision of nurses for members.

16. Payments to approved charitable institutions in respect of any treatment of members required for the prevention or cure of disease, not being treatment within the scope of any other additional benefit or of medical benefit.

17. Such other additional benefits, being of a character similar to that of any of those hereinbefore mentioned, as may be prescribed.

Only those members of the approved society who have been members for a prescribed period, at present 3 years for treatment benefits, 5 years for cash benefits, are entitled to the benefit. The Minister may restrict the entry of new members into a society providing additional benefits.[1]

Where an approved society has a deficiency disclosed on valuation, it may, under certain circumstances, obtain approval for increasing the contribution or reducing the benefits (except as far as affects members over 70, or new members entering after the date of the valuation), or the administration of the society may be taken over by the Ministry of Health. Persons wishing to be transferred from a society in deficiency have to make a corresponding payment to the loss incurred by any continuing member.[2]

Insurance Committees.[3] An Insurance Committee is set up in each county and county borough composed *inter alia* of persons representing the insured population, the local authority, and the medical profession. They administer the benefits in the case of deposit contributors, i.e. those who do not belong to approved societies. (In addition, they have to make reports to the Ministry of Health on the local insured population and make provision for health lectures.)

Deposit contributors are those who have not joined an

[1] *National Health Insurance Act*, 1936, Sect. 106.
[2] *Ibid.*, Sects. 113–14.
[3] *Ibid.*, Sects. 91–100.

approved society within the prescribed time. In the case of a deposit contributor, sickness, disablement, and maternity benefit is payable for so long as there are sums standing to his credit in the Deposit Contributors' Fund, and these sums have also to bear the sums payable to him for medical benefit and towards administration cost. Deposit contributors who are unable to obtain admission to an approved society on account of their health may, subject to certain conditions, join the deposit contributors' insurance section, which assures to them the possibility of obtaining benefits similar to those of approved societies.[1]

Disputes and Questions. The Minister is the determining authority in questions as to whether a person is insurable, as to rates of contribution, and employers liable to contribute, subject to appeal to the High Court. The Minister by regulation may decide that questions as to the rate of contribution be left to the approved society to determine.

Disputes between an approved society and one of its members or branches or ex-members, etc., are determinable in accordance with the rules of that society, subject to an appeal to the Minister of Health.

Disputes between approved societies or between insurance committees or between an approved society and an insurance committee or between an insurance committee and an insured person are determinable by the Minister of Health.[2]

An inspector under the Act has power to enter work places, and to examine anyone there or anyone whom he has reason to believe is or was an employed contributor. The occupier, any employee, and any employed contributor are obliged to supply him with such information as he can reasonably require. The inspector can, however, be challenged by the occupier to produce his certificate of appointment as inspector.[3]

[1] *National Health Insurance Act*, 1936, Sect 122-5
[2] *Ibid*, Sects 163
[3] *Ibid*, Sect. 105.

The Minister of Health has power to issue regulations and special orders for the purpose of the Act.

Penalties. Making false statements to obtain a benefit or to avoid a payment, whether for oneself or another—three months, with or without hard labour.

Failing to pay contributions or trying to deduct or deducting any part of the employer's contribution from the employee's wages and any other contravention of the Act—£10 fine for each. (When the defaulting employer is a company, each of the directors in their individual capacity may be held liable for any sums unpaid.)

Buying, selling, exchanging, pawning, or taking in pawn insurance cards, books, or stamps—£20 fine.[1] Obstructing inspection and failing to give information- £5 [2]

The time for instituting proceedings is one year, or three months from the time when sufficient evidence is available, whichever is the longer.[3]

The employee who suffers loss through the employer's failure to pay contributions may within a year from the date on which he would have been entitled to receive the benefit thereby lost proceed to recover the amount summarily, or his Society may, in the event of his refusal or neglect to enforce his claim.[4]

Old Age Pensions. The amount of the old age pension is 10s. a week. The wife of a man who is entitled to a pension is also entitled to a pension of 10s. on reaching 60.

Insured persons are entitled on attaining 65, if they have been continuously insured for five years immediately before their sixty-fifth birthday, if not less than 104 contributions have been paid since last entry into insurance, and if on an average 39 contributions[5] have been paid during each of the last three contribution years.

[1] *National Health Insurance Act* 1936 Sect 170.
[2] *Ibid*, Sect 170
[3] *Ibid*, Sect 171
[4] *Ibid*, Sect 174
[5] Weeks of sickness and genuine unemployment count as contributions

If, on attaining 65, they have not been insured for five years, they become entitled to an old age pension on the expiration of five years from the date of entry into insurance, if not less than 104 contributions have been paid, and if on an average [1] 39 contributions have been paid during each of the last three contribution years comprised in the period of five years, contributions paid by an employer for an employed contributor over 65 being taken into account. (Health insurance contributions paid before the commencement of the pensions scheme count for qualifying purposes if paid since last entry into insurance.)[2]

Except in certain special circumstances, the insured person must have resided in Great Britain for two years immediately prior to the date on which the pension becomes payable, and must have been last employed in Great Britain.

Increase in Old Age Pensions on Retirement. Upon actual retirement from regular employment the pension is 26s. instead of 10s. The same amount is payable irrespective of retirement to an insured man on reaching 70 or an insured woman on reaching 65. If more than £1 is earned in any week by the pensioner there is a corresponding reduction in the pension.

Where the husband's pension is 26s. as above, his wife is entitled at age 60 to 16s. per week, unless she is still in regular employment.[3]

Widows' Pensions. A widow's pension of 10s per week

[1] This condition does not apply in the case of a person who was insured on reaching 60 and had been continuously insured for 10 years (or where that age was reached before 15th July, 1922, since 15th July, 1912) Weeks of sickness and of genuine unemployment count as contributions

[2] *Persons who reached 65 before 2nd January*, 1928, are entitled, if they have been insured for five years immediately prior to that date, if not less than 104 contributions have been paid since last entry into insurance, and if on an average 39 contributions (see footnote (1) above, have been paid during each of the two contribution years ending 4th July, 1926, the conditions being modified similarly to the above where the person was not insured for the 5-years' period

[3] Regulations made under the *National Insurance Act*, 1946

is payable to the widow of an insured man, subject to the following conditions[1]—

1. The husband must be an insured person at the time of his death, and must have been insured for 104 weeks and have had 104 contributions paid in respect of him since his last entry into insurance.

2. If four years or more have elapsed since the husband's last entry into insurance, an average of 26 contributions must have been paid for each of the three contribution years preceding his death.[2]

Weeks of sickness and of genuine unemployment count as contributions. Health insurance contributions paid before the commencement of the pensions scheme count for qualifying purposes if paid since last entry into insurance.

3. The husband must, except in special circumstances, have resided in Great Britain for two years immediately prior to his death, and his last employment must have been in Great Britain.

An additional allowance is payable, together with a widow's pension, for each child under 14 (or 16 if in full time attendance at a day school) at the rate of 5s. for the eldest child, and 3s. for each other child. Where there is more than one child, when the eldest passes the specified age or dies, the next in order of age succeeds to the 5s.

[1] In the case of a man who was over 70 on 4th January, 1926, the widow is entitled to a pension of 10s. a week if—

(*a*) There is at least one child of the marriage or of a former marriage of either parent under 14 years of age

(*b*) The husband was an insured person from 29th April, 1925, to 2nd July, 1926 (or the date of his death, if before 2nd July, 1926)

(*c*) The husband resided in Great Britain for two years immediately before his death and was last employed in Great Britain.

The pension is payable till the youngest child attains the age of 16, or the 31st July following the 16th birthday if the child remains at school

[2] This condition does not apply in the case of a person who was insured on reaching 60, and had then been continuously insured for 10 years (or, where that age was reached before 15th July, 1922, since 15th July, 1912), nor does it apply when at the date of death the person on whose insurance the claim is based was entitled to a contributory old age pension or, if he survived the age of 70, was entitled to such a pension immediately before reaching that age.

allowance. "Child" includes a step-child, and in relation to a man, an illegitimate child whether his or his wife's, who was living with him at the time of his death.

Further, if a child is adopted under the provisions of the Adoption of Children Act, 1926, by a married couple, the child is treated as the child of the couple unless an allowance or orphan's pension was already in payment for the child at the date of the adoption or at 2nd January, 1930.

The widow's pension ceases on remarriage, but the existing children's allowances continue to be paid while the children are under the specified age. If the widow dies, the children's allowances are replaced by orphan's pensions.

Orphan's Pensions. In the case of a child who has lost both parents, either of whom was insured, an orphan's pension of 7s. 6d. per week is payable till the child reaches 14, or the 31st July following the sixteenth birthday if the child is at school. This is subject to the same qualifying conditions as to the insured parent as set out above in the case of widow's pensions (pages 175–6).[1] (Where the pension is claimed by virtue of the father's insurance,[2] it is necessary that he should have been a married man or a widower. "Child" includes in relation to a man, an illegitimate child, whether his or his wife's, who was living with him at the time of his death, and in relation to a woman, includes her illegitimate child who was living with her at the time of her death.)

Service Dependants' Pensions. Where a pension is payable by a Government Department to any dependant of a man whose death was attributable to or connected with service, or where a pension is payable out of public funds

[1] An orphan's pension in respect of a child of a man who was over 70 at 4th January, 1926, is payable on the following conditions—

1. The father must have been an insured person from 29th April, 1925, to 2nd July, 1926 (or the date of his death, if before 2nd July, 1926).

2. The father must, except in certain special circumstances, have resided in Great Britain for two years immediately prior to his death, and must also have been employed last in Great Britain.

to a dependant of any other person whose death was attributable to or connected with service in the Great War, the person entitled to that pension is not entitled to a pension under the Pensions Act, unless the "service dependents' pension" is at a rate lower than the rate to which he would have been entitled under the Pensions Act. If it is less, the difference is payable by way of addition to the "service dependants' pension." The following classes of war pension are excepted from this provision, namely (*a*) a pension payable in respect of the service of the pensioner's son or stepson during the late war, and (*b*) a need pension, the amount of which is variable and is determined by reference to the income of the pensioner. A "need pension" will not affect the amount of a pension under the Act, but the pension, by reducing the necessities of the pensioner, may lead to the Service Dependents' Pension being reduced.

Disqualifications. A person is disqualified from receiving or continuing to receive a pension while he or she—

(i) Is an inmate of any workhouse, poor-house or other Poor Law institution; but a person who has become an inmate for the purpose of obtaining medical or surgical treatment is not disqualified so long as he or she continues to require such treatment.

(ii) Is being maintained in any place as a criminal lunatic.

(iii) Is undergoing a term of imprisonment, without the option of a fine; or,

(iv) In the case of a widow pensioner, is cohabiting with a man as his wife.

The allowance for a child will continue to be payable unless the child itself is an inmate of a workhouse, etc., as in (i) and (ii).

(There is a further disqualification, viz. of pauper lunatics and those in lunatic asylums—in the case of

(*a*) Widows in receipt of pensions in respect of men who died or have attained age 70 before 4th January, 1926;

(*b*) Persons who were over 70 on 2nd January, 1928, and the wives of men in this class entitled to pensions in right of their husbands' insurance)

UNEMPLOYMENT INSURANCE

The same persons as are compulsorily insurable for Health and Pensions (see pages 159–162) are compulsorily insurable for Unemployment Insurance, subject, however, to the following further exceptions in addition to those specified on pages 162–163, viz. any persons engaged—

(*a*) In private indoor domestic service.

(*b*) As a female professional nurse for the sick or as a female probationer undergoing training for employment as such a nurse.

With regard to (*b*), the test as to whether a person employed in cleaning offices and places of work is insurable or not is the extent to which the cleaning is done during the ordinary work hours. Persons employed on the premises for 48 hours a week for cleaning and dusting were held to be employed in domestic service in the business and therefore insurable,[1] while a female cleaner employed part-time only and almost wholly outside business hours was held not insurable,[2] and, similarly, a daily charwoman employed to clean an office before and after office hours.[3] As to the insurability or otherwise under this provision of certain persons employed in connection with firm's welfare schemes, see page 220.

There is a further variation to the classes of persons in groups entitled to special exception by certificate (page 162), the provision in this case being that the following is excepted employment—

Employment in the service of a railway, gas, water, hydraulic power, or electricity company, or of a dock, canal, or tramway undertaking; or employment in which the persons employed are entitled to rights in a statutory superannuation fund, but only if the Ministry of Labour certifies that the employment is permanent in character, that the employed person has completed three years' service in the employment, and that the other circumstances of the employment in his opinion make it unnecessary that the employed person should be insured under the Acts.[4]

[1] *Re* Selfridge & Co. (1922), 67 S.J. 33.
[2] *Ibid.*
[3] *Re* Wilkinson's Application; *Re* Randall, [1922] 1 K.B 584
[4] *Unemployment Insurance Act*, 1935, Schedule I, Part III.

Exemptions. Individual persons in insurable employment are entitled to be exempted on the same conditions as those applicable to exemptions under the Health and Pensions schemes (page 163), except that for the class of persons in intermittent employment is substituted that of persons employed in a seasonal occupation which does not ordinarily last for more than 18 weeks in any year, and not ordinarily engaged in other insurable employment.[1]

Contributions[2]—

	Males		*Females*	
	Employer	Employee	Employer	Employee
	d	*d*	*d*	*d*
Aged 21 but under 65	10	10	9	9
Aged 18 but under 21	9	9	8	8
Aged 16 but under 18	5	5	4½	4½
Under 16 . .	2	2	2	2

Contributions in respect of exempt persons and persons of the age of 65 and over are payable by employers only, at the employer's rate.

A contribution is not payable for any calendar week if an insured contributor neither renders any service to the employer during any part of that week nor receives any remuneration[3] from him for any part of that week.[4]

Thus, contribution is payable, even though no services are rendered, if the employer makes to the insured contributor a payment which is either expressly provided for in the terms of employment, or can be regarded as an understood term of the employment, e.g. owing to the fact that such payment is customarily paid by the employer or in the district.

[1] *Unemployment Insurance Act*, 1935, Sect 5
[2] The rates of contribution in *agriculture* are omitted
[3] Wages in lieu of notice are not regarded as remuneration
[4] *Unemployment Insurance Act*, 1935, Sect 8

A contribution is not payable for any calendar week during the whole of which the insured contributor is absent from work owing to holiday or sickness and—

1. Receives no payment at all from the employer for that week; or

2. Receives a purely gratuitous payment from the employer; or

3. Is absent owing to an accident and receives only the amount of compensation to which he is entitled under the Workmen's Compensation Acts.

Any payment made by the employer in excess of the amount legally payable under the Workmen's Compensation Acts falls under one or other of the above provisions, according to the circumstances of the case.

Disqualifications from Benefit. A person may become disqualified from benefit for a maximum period of six weeks on either of the following grounds—

1. That he has, without good cause, failed to apply for, or refused to accept, a suitable situation notified to him as vacant or about to become vacant; or

2. That he has neglected to avail himself of a reasonable opportunity of suitable employment.

3. That he without good cause refused or failed to carry out any written directions given to him by an officer of an Employment Exchange with a view to assisting him to find suitable employment. The directions must be reasonable, having regard both to the circumstances of the claimant and to the means of obtaining the employment in question usually adopted in the district in which the claimant resides.

Employment is not deemed to be suitable if it is—

1. Employment in a situation vacant in consequence of a stoppage of work due to a trade dispute; or

2. Employment in the claimant's usual occupation in the district where he was last ordinarily employed at a rate of wage lower or on conditions less favourable than those which he might reasonably have expected to obtain, having regard to those which he habitually obtained in

his usual occupation in that district or would have obtained had he continued to be so employed; or

3. Employment in the claimant's usual occupation in any other district at a rate of wage lower or on conditions less favourable than those generally observed in that district by agreement between associations of employers and of employees, or, failing any such agreement, than those generally recognized in that district by good employers.

After the lapse of a reasonable interval, employment is not deemed to be unsuitable by reason only that it is employment of a kind other than in the claimant's usual occupation, if it is employment at a rate of wage not lower, and on conditions not less favourable than, those generally observed by agreement between associations of employers and of employees or, failing any such agreement, than those generally recognized by good employers.[1]

Loss of employment through misconduct or through voluntarily leaving the employment without just cause are other grounds of disqualification (the maximum period of six weeks in these instances dating from the date of relinquishment of the employment).[2]

Further, a person is disqualified for receiving benefit while he is an inmate of any prison or any workhouse or other institution supported wholly or partly out of public funds;[3] or

While he is resident (temporarily or permanently) outside the United Kingdom; or

While he is in receipt of any sickness or disablement benefit or disablement allowance under the National Health Insurance Act.[4]

[1] *Unemployment Insurance Act*, 1935, Sect. 28

[2] *Ibid*., Sect 27

[3] This disqualification does not apply where the claimant is an inmate of an institution used as a place of residence for workers, and was an inmate of the institution immediately before he became unemployed and during the time when he was employed paid the whole or a substantial part of the cost of his maintenance as such inmate. (*Ibid.* Sect 29)

[4] *Unemployment Insurance Act*, 1935, Sect. 30

Lastly, a person who has lost employment by reason of a stoppage of work due to a trade dispute at his place of employment is disqualified for benefit so long as the stoppage of work continues, except in a case where he has, during the stoppage of work, become *bona fide* employed elsewhere.

(Where separate branches of work which are commonly carried on as separate businesses in separate premises are carried on in separate departments on the same premises, the latter may be treated as separate premises.)

The disqualification does not apply in cases where—

1. The insured person is not himself participating in or financing or directly interested in the trade dispute which caused the stoppage of work; and

2. The persons participating in or financing or directly interested in the trade dispute do not include any members of his own grade or class who immediately before the stoppage of work were employed at the premises in question.

Conditions for the Receipt of Benefit. 1. That not less than thirty contributions have been paid in respect of the two years immediately preceding the application. (A person who is at any time during the two years in receipt of a disability pension for a war disability need only prove payment of 10 contributions.)[1]

The period of two years may be extended by any period of sickness or of employment in excepted work occurring within the two years up to a maximum of four years.

No account is taken of any contributions paid for any period during which a person was not a *bona fide* employee.[2]

2. That he has made application for benefit in the prescribed manner, and since the date of the application has been continuously unemployed.[3]

3. That he is capable of and available for work.[4]

[1] *Unemployment Insurance Act*, 1935, Sect 22
[2] *Ibid.*, Sect. 22
[3] *Ibid*, Sect 23
[4] *Ibid*, Sect 24

4. That if so required he has duly attended an authorized course of instruction.[1]

Waiting Period. The first three days of each continuous period of unemployment are a waiting period for which no benefit is payable.

(Any three or more days of unemployment, whether consecutive or not, within a period of six consecutive days are treated as a continuous period of unemployment, while any two periods of three continuous days are treated as continuous with one another if they are separated by not more than ten weeks, Sundays being ignored.)[2]

Rates of Benefit[3]—

ORDINARY BENEFIT

The weekly rates of benefit are as follows—

	s.	d.
Men aged 21 and under 65	24	–
Young men aged 18 and under 21	19	–
Boys aged 17 and under 18	12	–
Boys aged 16 and under 17	7	–
Women aged 21 and under 65 —		
Single	22	
Married	20	–
Young women aged 18 and under 21	17	–
Girls aged 17 and under 18	10	6
Girls aged 16 and under 17	6	–

Young men and young women who receive an increase of benefit for a dependant receive also the same ordinary rates as men and women aged 21 and under 65.

Persons under 16 years and persons of 65 years and over are not entitled to receive benefit.

DEPENDANTS' BENEFIT [4]

Dependants' benefit is payable only to persons who are receiving ordinary benefit. The weekly rates are as follows—

	s.	d.
1. To a husband in respect of his wife living with him or wholly or mainly maintained by him.	16	–
2. To a man or woman in respect of a female person residing		

[1] *Unemployment Insurance Act*, 1935, Sect. 25.

[2] *Ibid.*, Sect. 35. After 18th January, 1940, the period is 20 weeks instead of 10 weeks (*Unemployment Insurance Act*, 1939, Sect. 3).

[3] The rates of benefit in *agriculture* are omitted.

[4] Dependants' benefit at 16s. a week is not payable for more than one dependant at a time; nor

In respect of any person if any other claimant is entitled to receive dependants' benefit in respect of that person; nor

In respect of a wife or female dependant who

	s.	d.
with the claimant and wholly or mainly maintained by the claimant and having the care of the claimant's dependent children ("resident housekeeper") . .	16	–
3. To a man or woman in respect of a female person who is not residing with the claimant but is employed by the claimant to assist in the care of the claimant's dependent children, and to whom the claimant pays not less than nine shillings a week for her services ("non-resident housekeeper")[1]	16	–
4. To a wife in respect of her husband if he is prevented by infirmity from supporting himself	16	
5. To a man or woman in respect of a father or stepfather who is unable by reason of infirmity to support himself, and who is residing with and wholly or mainly maintained by the claimant[2]	16	–
6. To a man or woman in respect of a widowed mother, widowed stepmother, mother who has never been married or mother whose husband is permanently disabled and unable to work (if the mother or stepmother is living with or wholly or mainly maintained by the claimant)[2]	16	–
7. To a man or woman in respect of dependent children (including step-children, adopted children, and illegitimate children), and dependent younger brothers and younger sisters (including half-brothers and step-brothers and half-sisters and step-sisters) under 14 years of age. This benefit is also payable in respect of such children and such younger brothers and younger sisters of the ages of 14 and 15 if they are under full-time instruction in a day school, or if they are unable to receive such instruction by reason of infirmity or if they are unemployed and fulfil the statutory conditions (except those relating to contributions and to making application for benefit in the prescribed manner) and are not disqualified. For each such child or younger brother or sister[3]–		
For each of the first two		
In respect of each other child		

(1) Is in receipt of unemployment benefit under the Unemployment Insurance Acts; or

(2) Is in regular wage-earning employment at 10s. a week or over otherwise than in the case of the claimant's dependent children.

(3) Is engaged in an occupation ordinarily carried on for profit (excluding work for payment at less than 10s. a week), or the provision of board and accommodation for more than one lodger.

[1] The claimant must previously to becoming unemployed have so employed a housekeeper, unless the necessity for employing a housekeeper did not arise until after unemployed.

[2] A person is not deemed to be wholly or mainly maintained by a claimant unless the claimant when unemployed contributes towards the maintenance of that person the amount received in respect of him or her by way of dependants' benefit, and when in employment (except when the dependance did not arise until the claimant became unemployed) contributed more than half the actual cost of that person's maintenance.

[3] *Unemployment Insurance Act*, 1935, Sects. 36–9.

8. To a man or woman in respect of a daughter or sister residing with the claimant and wholly or mainly maintained by the claimant, being over 18 and *either* unmarried *or* a widow *or* permanently separated from her husband *or* whose husband is permanently disabled and unable to work[1] . . . . . 10 –

Unemployment Pay from Other Sources. Where a trade union or other association pays unemployment benefit, it may make an arrangement with the Ministry of Labour for a refund of the amount which would have been due from the State Fund.[2]

Determination of Claims. On receipt and consideration of a claim, the insurance officer, if not satisfied that it should be allowed, must within 14 days refer it for decision to a Court of Referees (consisting of an independent chairman and representatives of employers and of insured contributors) or himself disallow the claim, but the insurance officer may not himself decide against the claimant on any of the following grounds, which he must refer for decision to the Court of Referees—

(*a*) That the claimant is not capable of or is not available for work.

(*b*) That the claimant is disqualified through having lost his employment as a result of misconduct, or through having left his employment voluntarily without just cause.

(*c*) That the claimant is disqualified because he has without good cause refused, or failed to apply for, or refused to accept, a suitable situation notified to him by an Employment Exchange (or other recognized agency or by or on behalf of an employer) as vacant or about to become vacant.

(*d*) That the claimant has without good cause refused to carry out written directions given to him by an officer of an Employment Exchange with a view to assisting him to find suitable employment or that the claimant has neglected to avail himself of a reasonable opportunity of suitable employment.

[1] *Unemployment Insurance Act*, 1939, Sect. 4.
[2] *Ibid.*, Sects 68 71

(*e*) That the claimant does not fulfil the special conditions or is subject to restrictions imposed by Regulations and Orders on seasonal workers, married women, etc. (see paragraphs 47–51).

(*f*) That the claimant has not duly attended an approved course of instruction after being required to do so (except that the insurance officer may himself disallow in the case of a person under the age of 18 years who has been required to discontinue his attendance at an authorized course for one day, because of his misbehaviour while attending the course).

(*g*) That the claimant is liable to have deductions made from future benefit.

Where a claim has been disallowed by the insurance officer, the claimant has a right of appeal to a Court of Referees within 21 days. The period of 21 days may be extended by the Minister for special reasons.

A final appeal from the decision of a Court of Referees may be made within six months to the Umpire appointed by the Crown by an insurance officer; or by an association of employed persons of which the claimant is a member; or by the claimant himself if leave to appeal has been granted by the Court of Referees or if the decision of the Court of Referees is not unanimous.[1]

Payment of Fares. Fares are, subject to certain conditions, advanced to insured persons for whom work at a distance is found through an Employment Exchange.

Penalties. If for the purpose of obtaining any benefit or payment either for himself or another any person knowingly makes any false statement, he is liable on summary conviction to imprisonment not exceeding three months with or without hard labour.[2]

[1] *Unemployment Insurance Act* 1935, Sects 40 49
[2] *Ibid*, Sect 86

CHAPTER IX

THE NEW SCHEME OF NATIONAL INSURANCE

THE National Insurance Act, 1946, is the outcome of the Beveridge scheme formulated during the war. It links up the Health, Pensions, and Unemployment Schemes, increases the amounts of the benefits, and adds Death Grants. In addition it brings within the scope of compulsory insurance persons who were hitherto outside, viz. employed persons above the £420 salary limit, self-employed persons and non-employed persons. The scheme is due to come into force on 5th July, 1948. The competent authority for administering the Act is the Ministry of National Insurance.

Who Must be Insured? There will be three classes of insured persons, namely—

(*a*) Employed persons, i.e. those who work under a contract of service.

(*b*) Self-employed persons, i.e. those who are gainfully occupied but not under a contract of service.

(*c*) Non-employed persons, i.e. those who are not gainfully occupied.

All persons employed under a contract of service are compulsorily insurable under the Act. For the meaning of Contract of Service, see pp. 7–9.

The Ministry has power to make exceptions by Regulations from this general rule in the following cases: casual employment; subsidiary or inconsiderable employments; employment by husband, wife, or relative.[1]

Contributions. The rates of contributions will be as shown on page 189.

Men aged 70 and over and women aged 65 and over will pay no contributions. Men aged 65 to 70 and women aged 60 to 65 will pay contributions only if they are working

[1] *National Insurance Act*, 1946, Sect. 1.

	Employed Person	*Employer of Employed Person*	*Self-employed Person*	*Non-employed Person*
	s. d.	*s. d.*	*s. d.*	*s. d.*
Men over 18	4 7	3 10	5 9	4 8
Women over 18	3 7	3 0	4 10	3 8
Boys under 18	2 8	2 3	3 4	2 9
Girls under 18	2 2	1 9	2 11	2 3

and have not retired from regular employment. These provisions will not affect the employer's liability to pay contributions.[1]

Insured persons will pay contributions according as they fall, week by week, into one or other of the above three classes.[2]

The employer is liable in the first instance to pay both his and the employee s contribution, but can recover the latter (subject to Regulations) by deduction from wages. He is not entitled to recover any part of the employer's, and any attempt to deduct it is a punishable offence.[3]

Benefits. Benefits are—

(*a*) unemployment benefit;
(*b*) sickness benefit;
(*c*) maternity benefit;
(*d*) widow's benefit;
(*e*) guardian's allowance;
(*f*) retirement pension;
(*g*) death grant.[4]

UNEMPLOYMENT AND SICKNESS BENEFIT

Employed persons can qualify for sickness and unemployment benefit. Self-employed persons can qualify for sickness benefit.

The weekly rate of sickness and unemployment benefit for a man or single woman over 18 will be 26s. The ordinary rate for a married woman over 18 will be 20s. for unemployment and 16s. for sickness. But a married

[1] *National Insurance Act*, 1946, 1st Schedule.
[2] *Ibid.*, Sect. 4.
[3] *Ibid.*, Sect. 6.
[4] *Ibid.*, Sect. 10.

woman over 18 will receive the same rate as a single woman, i.e. 26s. for benefit of either kind, if she is supporting an invalid husband, or if she is not living with her husband and cannot obtain any financial help from him. For persons under 18, the normal rate will be 15s.

An applicant who is maintaining a wife or husband or an adult dependant, will receive an extra 16s. a week. A child's allowance of 7s. 6d. will be paid for the first child in the family.[1]

After drawing unemployment benefit for 180 days a person cannot draw further benefit until he requalifies, i.e. after payment of 13 contributions.

The grounds of disqualification for receipt of unemployment benefit are generally speaking the same as those laid down in the present Act.[2]

Qualification for Benefit. To obtain benefit a person must have paid 26 contributions since entry into insurance, and 50 contributions must have been paid by him or credited to him in respect of the last contribution year.[3]

Contributions paid under the existing schemes count for benefit under the new scheme.

Waiting Periods. Odd days of sickness or unemployment may count for benefit, but only where two or more of them fall within a group of six consecutive days. An employed person will have a waiting period of three days at the beginning of a spell of sickness or unemployment, but he will be paid benefit for these three days if he is sick or unemployed on 12 days during the period of 13 weeks beginning with the first of these days. On a subsequent claim for benefit, he will not have to serve a new waiting period, unless more than 13 weeks have elapsed since the end of his last spell of sickness or unemployment. A self-employed person will receive no benefit for the first 24 days of sickness.

[1] *National Insurance Act*, 1946, 2nd Schedule
[2] *Ibid*, Sects 12–13.
[3] *Ibid*, Third Schedule

Two spells of absence from work link up and count as one spell, if they are not separated by more than 13 weeks. When an insured person has exhausted his right to benefit of either kind, he can re-qualify for that benefit when he has paid 13 more contributions.

MATERNITY BENEFIT

Maternity allowance (36s. per week) is payable to a woman who is ordinarily an employed person for 13 weeks from the 6th week prior to confinement.

Attendance allowance (20s. per week) is payable to other women during the 4 weeks after confinement. It is payable also to the wife of an insured man, as is also the £4 maternity grant.

To obtain maternity allowance the necessary conditions as to contributions must be satisfied, including the payment or credit of 45 contributions during the year immediately preceding. For attendance allowance or maternity grant 26 contributions must have been paid since entry into insurance and 26 contributions must be paid or credited in respect of the last contribution year.

WIDOW'S BENEFIT

A widow's allowance of 36s. per week is payable during the 13 weeks after the husband's death, if she was under 60 at that date or he was not receiving pension.

A widowed mother's allowance of 33s. 6d. per week is payable if the widow is not entitled to a widow's allowance and is maintaining a child of the husband.

A widow's pension of 26s. per week is payable to a widow whose husband dies after 10 years' marriage and who was then between 50 and 60 and who is not entitled to either of the two above allowances.

To obtain any of these allowances 156 contributions must have been paid since entry, and an average of 50 contributions per year must have been paid or credited.

Benefit is not payable if the widow remarries.

GUARDIAN'S ALLOWANCE

The guardian of an orphan child one or both of whose parents were insured is entitled to an allowance of 12s. per week.[1]

RETIREMENT PENSIONS

A retirement pension of 26s. per week is payable upon retirement from regular employment to a man of 65 or over and a woman of 60 or over. Upon a man reaching 70 or a woman reaching 65 the pension is payable irrespective of such retirement.

Men 65-70 and Women between 60-65 Working. If a person does not retire at the pensionable age (i.e. 65 for men and 60 for women) his pension is increased by 1s. for every 25 further contributions. If a person of such age has retired and has earnings in excess of 20s. in any week, his following week's pension is reduced accordingly.

The wife of a man on pension is entitled at 60 to a pension of 16s. unless still in employment.[2]

To obtain pension the same rules as to contributions apply as for widow's benefit (see above).

Persons who have already qualified for a 10s. contributory old age pension will have this converted, if they have retired, into a retirement pension at the new rates. If they have earnings, these will not reduce their pension below 10s. a week.

Persons who are insured under the existing scheme will qualify for retirement pensions, subject to the ordinary conditions of the new scheme, but the contribution conditions will be modified.

Men over 55 and women over 50 at the start of the new scheme, who are not then insured under the present scheme, will have to contribute for 10 years before they can qualify for retirement pensions. When they reach pension age, they will be asked to choose between—

[1] *National Insurance Act*, 1946, Sect. 19.
[2] *Ibid.*, Sects. 20–21.

(*a*) paying contributions as non-employed persons (except when employed) till they finish the 10 years' qualifying period, and

(*b*) claiming a refund with interest of the portion of their contributions paid towards retirement pension rights.

Firms' Private Pension Schemes. To enable employers or workers to meet the increased contributions under the new scheme, the provisions of private pension schemes may be modified and adjusted.

DEATH GRANT

Death grants are payable for expenses in connection with the death of an insured person or the wife, husband, child, or widow of an insured person as follows—

	£	s.	d.
For child under 3	6	–	–
For child between the ages of 3–6	10	–	–
For child between the ages of 6–17	15	–	–
For person over 18	20	–	–

No grant will be paid for the death of anyone who is over pension age when the scheme starts, and only £10 will be paid for the death of anyone who is within 10 years of pension age when the scheme starts.

For children born before the scheme starts and dying before the age of 10, there will be no grant.[1]

Twenty-six contributions must have been paid since entry into insurance, and 45 must have been paid or credited in the last contribution year as a yearly average.[2]

Married Women. The Minister may make Regulations providing that non-employed married women may be excepted from insurance, but that those already insured may remain so at their option (e.g. to maintain their pension rights), and that those who are employed or self-employed may be excepted from payment of contributions

[1] *National Insurance Act*, 1946, Sect 23.
[2] *Ibid.*, 3rd Schedule

but may continue to pay at their option (e.g. to maintain sickness benefit rights).[1]

Determination of Claims and Settlement of Disputes. Regulations made by the Minister will settle the procedure for settling claims and disputes. In particular they will provide that claims to benefit will generally be determined by independent statutory authorities, following the pattern of the present Unemployment Insurance scheme, i.e. Insurance Officers, Local Tribunals, and the National Insurance Commissioner (appointed by the Crown), whose decision will be final.

Other questions arising under the Act, e.g. liability to pay contributions, will be decided by the Minister. Appeals on points of law will lie from the Minister's decision to the High Court. The Minister, instead of deciding a question himself, may refer it, on a point of law, to the High Court.[2]

Regulations. Many other matters are left to be prescribed by Regulations to be made by the Minister and laid before Parliament.

These include, in addition to the matters already mentioned—

Exemption from payment of contributions under special circumstances.
Crediting of contributions.
Manner of payment of contributions.
Days of unemployment or incapacity of work.
Payment of benefits.
Overlapping benefits.
Maintenance.
Interim payments, arrears, and repayments.
Persons outside Great Britain.

[1] *National Insurance Act*, 1946, Sect. 59
[2] *Ibid*, Sect. 13

CHAPTER X

THE LAW CONCERNING SCHEMES OF CO-OPERATION AND VOLUNTARY WELFARE

IT is proposed in this chapter to deal with the legal points which arise in connection with the various schemes of co-operation between employers or employees in industrial establishments.

Powers of Limited Companies to Introduce Welfare Schemes. Unless it is expressly excluded by the Articles of Association, a limited company has an implied power to carry out schemes of this kind (subject, of course, to its not being exercised in an unreasonable manner), as being conducive and ancillary to the main objects of its business. Thus, there is no need for any express authority to pay gratuities or pensions to employees or even pensions to the families of deceased employees,[1] these matters being considered reasonable forms of exercising the powers of management conferred upon directors of companies by

[1] Henderson *v.* Bank of Australasia (1888), 40 Ch.D. 170; Hampson *v.* Price's Patent Candle Co (1876), 45 L.J. Ch 437. Cf. in particular, the following passage from the judgment of Mr. Justice North on the former case—

"The principle is this, that where there are directors of a trading company, those directors necessarily have incidentally the power of doing that which is ordinarily and reasonably done in every such business, with a view to getting either better work from their servants, or with a view to attract customers to them. In the present case the reason suggested is that it secures a better class of officials who are willing to take service with the company, an object of equal importance, of course, for carrying on legitimate business.

"Most businesses require liberal dealings. The test there again is not whether it is bona fide, but whether, as well as being bona fide, it is done within the ordinary scope of the company's business, and whether it is reasonably incidental to the carrying on of the company's business for the company's benefit. Take this sort of instance. A railway company, or the directors of the company, might send down all the porters at a railway station to have tea in the country at the expense of the company. Why should they not? It is for the directors to judge, provided it is a matter which is reasonably incidental to the carrying on of the business of the company. *The law does not say that there are to be no cakes and ale, but there are to be no cakes and ale except such as are required for the benefit of the company.*"

the Companies Acts. Similarly, with regard to other reasonable forms of benefiting employees, it may be assumed that they are covered by the wide powers a company has in dealing with its employees. This principle, however, does not extend to directors. Benefits to directors need express authorization.[1]

The subject can conveniently be treated under the following headings—

1. Taxation.
2. Rating.
3. Other duties, licences, etc.
4. Liability for accidents.
5. Works' funds and works' clubs.
6. Miscellaneous.

TAXATION.

Taxation under Schedule D. Which kind of expenditure can be deducted from the employer's return of profits assessable to Income Tax under Schedule D? In general, expenditure on welfare schemes is deductible, subject to the two following conditions—

(*a*) That no deduction shall be allowed in respect of expenses which are not wholly and exclusively laid out for the purposes of the business; and

(*b*) That no deduction shall be allowed in respect of expenditure of a capital nature.

The test whether any item of expenditure is capital expenditure or not is that capital expenditure satisfies a demand once and for all—non-capital expenditure is that which satisfies a continuous demand.

The following are examples of items of expenditure which are deductible from profit—

(*a*) The rent and other running expenses of recreation grounds, canteens, ambulance rooms, rest rooms, lavatories, etc.

(*b*) The provision of overalls, caps, etc.

[1] E g. see *Re* Lee, Behrens & Co, [1932] 2 Ch. 46.

(*c*) Salaries of welfare supervisors, gymnastic instructors, groundsmen.

(*d*) Contributions to recreation schemes approved by the Juvenile Organizations Committee of the Board of Education.

(*e*) Fees paid in respect of the attendance of young employees at technical and educational classes.

Examples of expenses which may not be deducted are—

(i) Cost of purchase of premises for use as works' club and institute.

(ii) Cost of converting land for use as a sports ground.

Non-capital expenditure on research is deductible if it bears a sufficiently definite relation to the earning power of the employer's business, i.e. if it is directly connected with the subject-matter of the business and is calculated to achieve results affecting its profits within a reasonable period. (Capital expenditure like the erection or equipment of a laboratory is not deductible.) Similar considerations govern the deductions or otherwise of contributions to an association of firms formed for the purpose of carrying out research jointly or of contributions to the research departments of universities.

Similar provisions apply to savings funds, profit sharing schemes, co-partnership schemes. The amount added to the individual employee's credit, whether by way of additional interest or bonus or share of profits, is allowed to be deducted as a trading expense in computing the employer's profits. So much of the investment income of a savings fund is allowed exemption from tax as is payable to the credit of employees below the taxable limit.

Where a co-partnership scheme, in the case of concerns carried on by companies, takes the form wholly or partly of shareholdings by or on behalf of the employees, the employing company may pass on the burden of the income tax applicable to the dividends. Where the employees would be entitled to claim repayment from the revenue of part or the whole of the tax deducted by the company from the dividends, the company may, instead of deducting

tax, obtain relief from tax in its assessment corresponding to the tax which it might have deducted; the individual employees, where liable, are then assessed directly in respect of the dividends.

Regular annual contributions by an employer to a works' pension fund, benevolent fund, or sports club, are deductible. With regard to pension funds (apart from the rules attaching to those funds which are approved under Sect. 32, Finance Act, 1921, as to which see later, pages 214–215), the practice of the Inland Revenue is to allow these contributions provided—

(*a*) That the payments are made under a *bona fide* scheme for the benefit of a substantial body of the employees.

(*b*) That where, as is usual, the employees have only a contingent right to benefits dependent upon completion of a specified period of service or attainment of a specified age, an undertaking is given by the employer to treat any sums which come back to him from forfeited surrender values, etc., as business receipts for income tax purposes.

On the other hand, those grants which are in the nature of initial grants would come under the heading of capital expenditure, and as such could not be deducted as expenses in assessing the company's profits under Schedule D.

Thus, a company set aside £50,000 for the alleviation of distress and misfortune. The commissioners found as facts: (1) That payments for the maintenance of the company's workpeople during invalidity constituted a continuous business demand on the business, having regard to the manner in which that business was conducted; (2) that the primary object of the payment to trustees of £50,000 was to establish a fund by setting aside a capital sum, the income of which would be available to meet this demand; (3) that the actual amounts to be paid away for invalidity had not been ascertained at the time when the payment was made, and were contingent and not capable of ascertainment. Held that the £50,000 was capital expenditure.[1]

[1] Rowntree & Co. Ltd. *v.* Curtis [1925] 1 K.B. 328, C.A.

The question might be asked: If regular annual contributions are deductible, would not a sum, which is, to use the phrase employed by Pollock, M.R., "apparently a capital sum, but which really comprises and compresses an annual charge," also be deductible? The phrase is applied to the class of cases represented by that of *Hancock* v. *General Reversionary and Investment Co.*,[1] where an employee was entitled to receive a pension yearly, but the company came to the conclusion that instead of paying him that sum from year to year, it would be commercially prudent to capitalize it and pay him in commutation a single amount calculated actuarially as its true equivalent. But the *Rowntree Case*[2] was specifically distinguished from this class of cases, since it was clearly wholly uncertain there what claims for invalidity would be made upon the company, and since the amount set aside had no real relation to the amount likely to be required for the object in view. Since the *Hancock Case*[3] we have the House of Lords' judgment in *British Insulated and Helsby Cables* v. *Atherton*,[4] which certainly does not lend it support, but, apart from that, it may be taken for granted in the majority of works' benevolent funds that the reasons which ruled out the lump sum payment in the *Rowntree Case*[2] will apply also to them.

The fact that a contribution made in a certain year is one of a series of annual contributions will not necessarily make it deductible; thus [5] where a firm had been in the habit of making a subscription of £5 to £50 annually to the Middlesex Hospital, but in 1919 and 1920 subscribed a thousand guineas in view of the accumulated liability they felt existed towards the hospital because of the use made of it during the War by their employees, the two subscriptions of a thousand guineas were held not to be deductible.

[1] [1919] 1 K B 25
[2] Rowntree & Co Ltd *v* Curtis, [1925] 1 K B 328, C A
[3] *Supra*
[4] [1926] A C 215
[5] Bourne & Hollingsworth *v* Ogden, Inspector of Taxes (*The Times* Newspaper, 30th January, 1929)

As to the contributions of employee members to such funds, apart from statutory exemption, e.g. that applying to approved pension funds (page 214), there is no provision enabling such employees who are liable to tax to deduct the amount of their contributions from their assessable income.

As regards *contribution income*, no part of this is subject to tax—see *New York Life Insurance Co.* v. *Styles*.[1] (Here a company with no shareholders but with members who held participatory policies, returned the surplus of the premiums and the expenditure to the members. It was held that no part of the premiums was assessable under Schedule D.) This applies, of course, equally whether the surpluses are distributed among the members or are carried over from year to year for the account of the fund.

If profits are, however, in fact made (i.e. if there is an excess of income from all sources including contribution income over expenditure), and part of the income represents receipts from non-members, e.g. in a works' athletic club, visitors' gate money, the portion of the income representing the latter will be taxable, but in assessing this a proportionate amount of expenditure will be deducted.[2] In fact, there are very few works' clubs which, under these circumstances, render themselves liable to tax on profits.

Taxation of Investment Income, Interest, etc. As to investment income, theoretically the first question that would fall to be considered is whether such a fund is a "charity," and, therefore, exempt from tax. Here must be noted the rule that an institution existing for the mutual benefit of funds subscribed by the members is not a "charity."[3] How far would the position be altered by the fact that in addition to the contributions of the members, the fund also received contributions from the firm? That circumstance

[1] (1889), App. Cas. 381.
[2] Carlisle & Silloth Golf Club *v* Smith, [1912] 2 K B. 177.
[3] Linen and Woollen Drapers' Institution *v.* The Commissioners of Inland Revenue (1887), 58 T.L.R. 949.

might *ceteris paribus* put a fund in the position to claim exemption, but there would then arise the difficulty that the firm's contribution, being a contribution to charity, would not be deductible in the firm's assessment. The choice does not fall to be decided as far as the vast majority of benevolent funds are concerned, thanks to the provision that unregistered friendly societies are exempt from tax if their investment income does not exceed £160,[1] while, as regards other works' funds, there is the possibility of registration under the Friendly Societies Acts, and thus escaping taxation.

As to the special exemption accorded to approved pension funds, see pages 214-215.

Taxation under Schedules A & B. The premises of the works' club (institute, sports ground, etc.) are liable to tax under Schedules A and B payable by the owner, whether the firm or the club, on the net annual value. The tax so paid, of course, forms part of the running expenses of the premises in question; consequently, where the firm is liable, it is entitled to deduct the amount so paid as trade expenses from its return of profits under Schedule D. (See page 196.)

Schedule E. Pensions are taxable in the hands of the recipient. This rule applies both to contributory pensions and to voluntary and non-contributory pensions.[2]

CORPORATION DUTY

Corporation Duty is levied under Sect. 11, Customs and Inland Revenue Act, 1885.

It is levied on both unincorporate and corporate bodies, the reason being that both escape the liability to estate duty on the passing of the property on death. The basis is the "annual value, income, or profits" of the property. "Profits" and "income" in this phrase mean the same as "annual value" and such items of

[1] *Income Tax Act*, 1918, Sect. 39 (1)
[2] *Finance Act*, 1932, Sect. 15

income as gate-money receipts are not to be taken into account.[1]

The statute allows certain deductions from the annual value, namely, necessary outgoings, including the receiver's remuneration, and expenses incurred in the management of the property. Such deductions include the rent paid for the use of the property (where the person charged with the duty is the tenant), insurance, etc. It will be seen that in the case of a tenant paying an economic rent, there could be little or no duty payable. Under the same heading the Inland Revenue allow the cost of realizing the annual value, and, for practical purposes, where this cost is not otherwise ascertainable, reckon this on the basis of one-fifth of the secretary's salary.

The body chargeable with the duty is the body which owns the annual value, i.e. the body need not be the actual owner of the property, but may be the tenant.

Exemption is given by the statute to property legally appropriated and applied for the benefit of the public. In certain cases, this exemption might apply where a firm's schemes are the centre of the social and recreational activity, of the locality, provided the property is both legally appropriated *and* used for the benefit of the public.

Further statutory exemption is given in respect of property acquired with funds voluntarily contributed to a body within the preceding thirty years. Property which is given outright by a firm to its welfare or sports club would not be regarded by the Inland Revenue as entitled to this exemption. There must be the intermediate operation of actual voluntary contributions to a body. This would be the case, e.g. where the property is acquired by a fund outside the firm's sole control to which the firm, or the firm and the employees, make contributions. Where, in the latter case, the employees' contributions included some return in the way of membership privileges or benefits, there might be a case for an apportionment.

[1] *Re* Surrey County Cricket Club, [1901] 2 K.B. 400

Statutory exemption is also given in the case of (*a*) property of a friendly society; (*b*) property of a body established for business; (*c*) property acquired by a body within the preceding thirty years on which estate duty was paid; (*d*) property legally appropriated and applied for a charitable purpose or for the promotion of education. As regards the meaning of "charitable purpose," the purposes of a mutual benefit society, i.e. a society the funds of which are contributed by members who receive benefits in return from the society, are not charitable purposes. Such mutual benefit societies would include many firms' sports clubs and welfare clubs.[1]

RATING

The fact that some schemes may be regarded as serving charitable or benevolent purposes is no ground for exempting property comprised in such schemes from the principles of rating applicable to other properties. Such property is *prima facie* rateable as long as it is *capable* of yielding a net annual value, the question whether it *actually* yields such value or not being immaterial.[2]

While the basis of assessment is the extent of beneficial value to the occupier,[3] yet the circumstances attaching to works' institutes and sports grounds (apart from any claim they may have to be derated according to the particular facts of each case) may affect the rateable value, e.g. where premises are properly to be regarded as available for letting only for the particular purpose of a scheme for one special group of workers, the consequent restriction of user, and the number of possible purchasers would be factors to be taken into account, and, in general, the proper basis of assessment of welfare premises like canteens, works' institutes, and sports grounds is the rent which may

[1] The Linen and Woollen Drapers' Institution *v* The Commissioners of Inland Revenue (1887), 58 L T 949

[2] Mersey Docks *v* Cameron (1864), 1 H L Cas 443, Greig *v* Edinburgh University (1868), L R 1 Sc & Div 348

[3] See e g L C C *v* Erith [1893] A C 562, Jones *v* Mersey Docks (1865) 11 H L C 443

reasonably be expected therefrom on the assumption that it is to be let solely for the purpose for which it is actually equipped and occupied.[1] Any other basis, e.g. value as a building site, cannot be applied.

"Occasional user" and "public user" are two possible grounds of exemption in the case of works' recreation grounds. As regards "occasional user," land which is "kept or preserved mainly or exclusively for purposes of sport or recreation"[2] is excluded from the definition of "agricultural land," and is, therefore, not entitled to the exemption granted to that class of property;[3] on the other hand, land which would ordinarily be described as arable, meadow, or pasture ground, but which is occasionally used for sport or recreation (e.g. ground used for grazing during the greater part of the week, but on Saturday afternoons, holidays, and occasionally in the evenings used for cricket or football) would, it appears, be entitled to be classed as "agricultural land." As regards "public user," where a works' sports ground is vested in trustees under the Recreation Grounds Acts, 1859, and is sufficiently open to the public to satisfy the conditions of the Act and the regulations of the Charity Commissioners made thereunder, a title to exemption arises.

Certain premises are derateable[4] if they form part of industrial hereditaments and are used for "industrial purposes." For the full definitions of these phrases, see Sects. 3–4, Rating and Valuation (Apportionment) Act, 1928. Here it may be stated that the definitions proceed by reference to the meanings of "factory" and "workshop"[5] in the Factory and Workshop Act, 1901, an industrial hereditament being deemed to be occupied and used for

[1] *Rating and Valuation Act*, 1925, Sect 22, and see e g Resolutions 54–55, Fourth Series of *Representations of the Central Valuation Committee* (1928)

[2] *Agricultural Rates Act*, 1896, Sect. 9

[3] *Rating and Valuation Act*, 1925, Schedule II.

[4] *Rating and Valuation (Apportionment) Act*, 1928; *Local Government Act*, 1929, Sect 67.

[5] The distinction between "factory" and "workshop" is abolished by the *Factories Act*, 1937.

industrial purposes, "except in so far as any part . . . is deemed neither to be nor to form part of a mine, factory or workshop." [1]

The following are, therefore, entitled to be derated—

Lavatories, cloakrooms, rest rooms, factory canteens,[2] surgeries, dental clinics situate within the curtilage of the factory. If the factory canteen employs manual labour in the preparation of food, the canteen is *per se* a factory and entitled to derating as an industrial hereditament.[3]

With regard to questions as to what falls within the curtilage of the factory, see page 55. It has, however, to be noted that an additional qualification arises under the Rating and Valuation (Apportionment) Act, 1928, to that of being "within the same curtilage," namely, that of being contiguous, it being provided that "where two or more properties within the same curtilage, or contiguous to one another, are in the same occupation and, though treated as two or more hereditaments for the purposes of rating and valuation by reason of being situate in different parishes or of having been valued at different times or for any other reason, are used as parts of a single mine, mineral railway, factory or workshop, then, for the purposes of determining whether the several hereditaments are several hereditaments they shall be treated as if they formed parts of a single hereditament comprising all such hereditaments."[4] If the canteen faces the factory proper, being separated therefrom by a road, it would appear to satisfy the definition of contiguity.

OTHER DUTIES AND LICENCES

Vehicle Tax. A vehicle used exclusively for ambulance purposes is exempt from vehicle tax,[5] but there is no

[1] *Rating and Valuation (Apportionment) Act*, 1928, Sect. 4 (2) (*a*).

[2] Revenue Officer for Cardiff *v.* Western Mail, [1931] 1 K.B. 47 London Co-operative Society *v.* S. Essex Assessment Committee, 1942] 1 K.B. 53

[3] Simmonds Aerocessories (Western), Ltd *v.* Pontypridd Area Assessment Committee, [1944] 1 All E.R. 264

[4] *Rating and Valuation (Apportionment) Act*, 1928, Sect. 3 (3).

[5] *Finance Act*, 1920, Sect. 13

exemption attached to vehicles used for purposes classed under some such general heading as "welfare." Further, the occasional user of a vehicle for a purpose which even for the time brings it within a description of the vehicle liable to a higher rate, makes the licence chargeable at the higher rate.[1] Thus, if a commercial goods vehicle is taxed as such at a lower rate than it would be taxed as a private car and is used, say, on a Saturday afternoon to convey employees to a sports ground, tax at the private car rate is payable (although it would be otherwise if the employees were being carried in the course of their employment).[2] The penalty for breach is three times the difference between the lower and higher rate, or £20, whichever is the greater.[3]

Performing Rights. The question whether it is an infringement of copyright to perform a play or piece of music at a works' concert or dance or social function turns on the point whether it is a performance in public. This is a question of fact to be determined according to the circumstances of each case. It is clear that a performance given in a dancing or social club may upon the facts be "public," although no charge for admission be made, since "members together with their guests may constitute a body of persons who would otherwise pay to hear a performance of the piece at a theatre, concert hall, or the like place of entertainment." [4]

There is no direct authority on the position of a works' club performance in this respect. The case presenting circumstances most analogous is that of *Duck* v. *Bates*[5] There a dramatic performance given to the staff of a hospital consisting of about 170 persons was held not to

[1] *Finance Act*, 1922, Sect 14

[2] *Roads Act*, 1920, Sect 8 (2)

[3] *Ibid* There is, of course, no question of a hackney carriage licence being required in connection with a firm's welfare activities, where employees are carried free A "hackney carriage" is "any carriage standing or plying for hire" (*Customs and Inland Revenue Act*, 1888) Sect 14

[4] Messager *v.* British Broadcasting Corporation, [1927] 2 K.B 543, *per* McCardie, J , at p 547

[5] (1884), 13 Q B D 843

be "public," although friends were also admitted and the members of the audience had paid for admission. It was held that to constitute a performance "public," there must be present a sufficient part of the public who would also go to a performance licensed by the author as a commercial transaction. The tests *inter alia* to be applied to the question are the following—

1. Has there been an injury to the author, profit being here an important element?

2. Has any portion of the public been admitted with or without payment, i.e. any portion of that class of persons who would be likely to go to a performance if there was a performance at a public theatre for profit? [1]

A distinction was drawn in *Jennings* v. *Stephens*[2] (in which an injunction was given against a women's institute) between *Duck* v. *Bates* (*supra*) on the one hand and *Harms* (*Incorporated*) v. *Embassy Club* (*supra*) on the other—

> "In the former the audience was limited to a class, more or less living under one roof, whereas in the latter the audience consisted of any members of the public who had accepted the invitation to attend, by becoming members of the club. The invitation to attend was held to be to the public, or rather, to a portion of the public, though the public concerned was definitely limited to the maximum membership of the club, and to the size of the club room."

The performance in public of copyright music or plays by wireless is subject to the same rules as ordinary performance and can in proper cases be restrained by injunction.[3] The performance by a factory employer of gramophone records and the diffusion of broadcast programmes for the benefit of his employees have been held to be "public performances."[4]

If music is played in public by copyright gramophone records, the owner of the copyright in the record has a

[1] Harms (Incorporated) *v.* Embassy Club, [1927] 1 Ch. 526.
[2] [1936] Ch. 469.
[3] Performing Right Society *v.* Hammond's Bradford Brewery Co. Ltd., [1934] Ch. 121.
[4] Performing Right Society, Ltd *v.* Gillette Industries, Ltd, [1943] 1 All E.R. 413

special right to restrain public performance additional to that of the owner of the copyright in the music itself.[1]

Music and Dancing Licences. In areas where music and dancing licences are required for public musical entertainments and public dancing,[2] the question whether a licence is required for works' functions has to be considered. A licence will only be required if members of the general public are admitted to the functions otherwise than only occasionally.[3] If the admission of persons other than the employees themselves is merely confined to special occasions and is not habitual, a licence is not required even if tickets of admission are issued and charged for. No licence is required for the holding of a dancing class.

Drink Licences. If a works' club supplies its members with intoxicants, registration under the Licensing Acts, 1910, is necessary. This step need not, however, be taken if the drinks are supplied on one or two special occasions throughout the year, like an annual dinner or smoking concert. Application for registration has to be made to the Clerk to the Justices. A form has to be completed, giving the requisite particulars and declaration as to the posting of the names and addresses of members and payment of their subscriptions.

The supply of drinks in a registered club is regulated by the provisions of the Licensing Acts. The supply must be controlled by the committee and the drinks must be paid for at the time of supply and can only be supplied in "permitted" hours. Non-members may not be supplied, and the purchase of a ticket to attend functions at the club does not make them temporary members so as to entitle them to be supplied. Persons must not be

[1] Gramophone Co Ltd *v* Stephen Carwardine, [1944] 1 Ch 450.

[2] Such areas are, e g those where the *Public Health (Amendment) Act*, 1890, is in force, those where such licences are necessary by virtue of a local Act, the London area

[3] Syers *v* Conquest (1873), 28 L T 402

habitually admitted as members without an interval of at least 48 hours between the nomination and admission.[1]

Entertainments Tax. Under certain circumstances entertainments given to employees may, if otherwise liable to entertainment tax,[2] be entitled to exemption on the ground of their being charitable. Thus, a non-profit-making entertainment given entirely by the firm for the benefit of the employees, or given by a works' club, the activities of which the firm mainly controls (as distinct from a self-governing club), may claim exemption on this ground. Further, application for repayment of duty in respect of an entertainment may be made where the whole of the expenses involved do not exceed 50 per cent of the receipts and the entertainment is promoted by the welfare institution in aid of its own funds.

Where it is not possible to claim exemption from tax in respect of works' entertainments and the employee's subscription to a club or society represents payment for admission to such entertainments *inter alia*, tax is chargeable upon that proportion of the subscription which covers such right of admission.[3]

[1] *Licensing Consolidation Act*, 1910, Sect. 95. A suitable rule is therefore necessary if on special occasions like the visit of another team for a football match it is desired to supply drinks to persons other than regular members. Examples of such rules are as follows: "Any Member of a Club playing against this Club in any indoor or outdoor game shall have all the privileges of, and be deemed to be a member of, this Club for the day or days upon which he so plays, provided that a Nomination Form containing the names of the players and signed by the Secretary of the visiting Club shall have been received by the Secretary of the Club at least forty-eight hours previously," or "Each member shall have the privilege of introducing a gentleman visitor, but such visitor cannot be again introduced by any member within a period of one calendar month from the previous visit. The name of the visitor, together with the name of the member introducing him, and the date, shall be entered in the Visitor's Book provided. No payment is to be received from any person not a member of the Club. A copy of this rule shall be prominently displayed in every room in which excisable articles are consumed."

[2] A works' dance, a works' whist drive, or a works' social (which did not include a concert) would not in any case be liable as they are not "entertainments," nor would a dancing class.

[3] Attorney-General *v.* Valentia (1925), 41 T.L.R. 78.

LIABILITY FOR ACCIDENTS

The liability for accidents occurring to employees when being conveyed by the firm or in vehicles belonging to the firm varies according to the circumstances

If a function is arranged to take place in the firm's time and the employees attend as part of their day's work, the provisions of the Employers' Liability and Workmen's Compensation Acts would apply in the case of accidents to the manual and other workers who come within their scope.[1] Where, however, there is no direction of the firm to the employee, so that the latter has no duty under his contract of service to attend the function, there is no liability on the firm in the case of accident. Instances of the former kind might conceivably occur in, e g. works' visits, and instances of the latter are visits to the theatre or to witness a game of football The above is the position in the case of accidents arising in connection with vehicles available to the public. If, on the other hand, vehicles belonging to or hired by the firm are used, there would be an additional liability if accidents arose through the vehicle being unsafe or through the negligence of the driver provided by them (except in so far as the firm contract out of such risk),[2] irrespective of whether the Workmen's Compensation Act applies to the case in

[1] See now Lucas *v* Postmaster General (1939), T.L R 977

[2] An example of such a contracting-out agreement is the following—

THIS Agreement made the day of 19 , between whose registered office is at (hereinafter referred to as "the Company") of the one part, and the Social Club Committee being the persons for the time being authorized by the Company and the employees of the Company to conduct the social and recreational matters of the Company (hereinafter called "the Committee") of the other part

1 The Company agrees (1) to lend the motor lorry No to the Committee for the sole purpose of conveying employees of the firm from time to time to and from recreation grounds, (2) to supply oil and petrol in sufficient quantity for the said purpose, (3) to insure and keep insured the said lorry against fire, theft and damage thereto from whatsoever cause arising and against all claims arising in connection therewith on the part of persons other than persons conveyed in such lorry with the exception of such claims as may arise under the fourth paragraph of Clause 2 hereto, (4) in the event of the said lorry becoming temporarily or permanently unavailable for the said purposes (as to which the Company shall be the sole judge) to substitute

question or not. When an employee is allowed under the terms of his employment to take his dinner in the employer's canteen, and suffers injury while so doing, he is entitled to compensation under the Workmen's Compensation Acts.[1]

With regard to accidents to employees occurring in a firm's playing fields or in works' club rooms, gymnasia, etc., the question of liability depends upon the nature of the arrangement between the firm and the committee controlling the sports or clubroom activities. If the club is in entire control of the premises (e.g. if they pay the firm a rent for the use of the premises and are in the position of tenants) the firm would not be liable for accidents arising out of the state of the premises except in so far as it has expressly or by implication undertaken to keep the premises in proper condition, and has not contracted out of the liability with the individual members and guests resorting to the premises. Where the club is liable for such accidents, an injured member of the club cannot maintain an action against it for damages,[2] and an injured guest would be in the same position unless there is any relation established by ticket of admission

for the loan to the Committee such other lorry as the Company may deem suitable subject to all the terms and conditions hereof.

2 The Committee agrees (1) not to use the said lorry otherwise than for the purpose aforesaid; (2) to employ only a driver who shall be at the time in the regular service of the Company and not to permit the lorry to be driven by any other person whatsoever; (3) to keep the Company indemnified against all claims by any local or other authority, person or company in respect of any breach of any statute, by-law, or any other regulation lawfully made by any public or private body; (4) to insure and keep insured all persons to be conveyed in the said lorry with the Company or such other Insurance Company as with the Company's consent shall be substituted therefor for the payment of in the event of death, and such other benefits in such other events as the Committee shall deem adequate and the Company shall sanction; (5) not to permit more than persons to be conveyed in the said lorry at the same time; (6) to provide seating accommodation for all persons to be conveyed in the said lorry and not to permit any person to be conveyed therein standing.

[1] Knight *v.* Howard Wall, Ltd., [1938] All E.R. 667

[2] A member of a club cannot claim against the club in case of accident, but see Brown *v.* Lewis (1896), 12 T.L.R. 455.

or otherwise between the club and the guest which places liability upon the club.

The provisions of the Workmen's Compensation Acts will apply to accidents to a person employed for the purposes of a game or recreation, e.g. a groundsman of a works' cricket club. The question whether the firm or the club is the employer will be determinable according to the ordinary tests, viz. which of them pays the man for the services in question and under whose orders he works when performing those services and, in the case of a person who is also an employee of the firm, whether his contract of service with the firm includes the performance of the services in question. And the Workmen's Compensation Acts will also apply to persons employed by the firm for other social activities, like instructors in cooking, sewing, or dancing classes, to the same extent as they apply to other regular employees of the firm

How far a firm would be liable for injury caused during treatment of an employee in its clinic or surgery would depend on the facts of the case. If the injury is received during treatment by a works' surgeon, doctor, or nurse of an injury compensable under the Workmen's Compensation Act, the second injury would be compensable also. Again, negligence or incompetence on the part of a works' doctor, dentist, etc., would be a ground for damages against the firm, although if the latter could show that they appointed only persons with proper qualifications it would be sufficient answer.[1]

Incapacitation as distinct from actual injury resulting from treatment in the works' surgery must be judged on the same lines. Thus, if a firm make it a condition of the worker's continued employment that he should be vaccinated, the firm would be liable in the event referred to, an accident being considered to arise out of the employment

[1] On this point, see the important judgments on the liability of doctors, etc., for negligence in Smith *v* Martin, [1921] 2 K B 775, Hillyer *v* Governors of St Bartholomew's Hospital, [1929] 2 K B 820, and also the general principles as to employer's liability for servant's torts set out in Chapter II, page 26, *ante*

under the Workmen's Compensation Acts if it results from some special danger with which the workman is brought in contact by the conditions or obligations of his employment. (See also cases cited on pages 105–106.)

WORKS' FUNDS AND WORKS' CLUBS

Membership. Membership of a works' fund or club can be made a condition of employment subject to its being registered under the Shop Clubs Act, 1902 (page 44 above) As previously stated, many terms in the Act have not been defined and very few cases have risen to give the Courts an opportunity of interpreting the terms used in the Act. A "shop club" is, however, defined as "a club for providing benefits to workmen in connection with a workshop, factory, dock, shop, or warehouse." As regards the application of the Act to works' sports and recreation and social clubs, therefore, while "benefits" is a term more applicable to payments or attendance during sickness or in consequence of distress, and a question might be raised as to whether facilities for recreation and physical development could be considered as coming within the meaning of the term, it must, however, be remembered (*a*) that sports and social clubs are, in the main, a later development, and if the question came before the Courts they might well be brought within the definition, and (*b*) that the purpose of the Shop Clubs Act appears to be, on the one hand, to prohibit making membership of any firm's club a condition of employment and, on the other, to provide a single means of exemption from this by means of registration with the Registrar of Friendly Societies.

As regards Pension Funds, registration under the Shop Clubs Act would involve restriction on the amount of pension or lump sum benefit payable (see later, page 217, as to friendly societies). While the Act must still be regarded as operative in respect of pension funds, it is not the practice of the Inland Revenue to make their approval[1] of a fund, membership of which is made a

[1] Under Sect 32, *Finance Act*, 1921, see *infra*

condition of employment for any group of employees, conditional upon its being registered under the Act.

Deduction from Wages of Contributions to Works' Funds and Works' Clubs. Where deductions from wages or salary on account of the contributions are made, they are governed by Sects. 23-24 of the Truck Act, 1831 (see pages 46-47), and should be authorized specifically in writing by each employee concerned.[1] It should further be noted that this procedure compels the firm to pay the money over to the fund, and not merely credit it to the employee in the firm's books.[2]

Approval of Pension Funds. Pension funds can obtain Inland Revenue approval under Sect. 32, Finance Act, 1921, subject to the following conditions—

(*a*) That the fund is a fund *bona fide* established under irrevocable trusts in connection with some trade or undertaking carried on in the United Kingdom by a person residing therein.

(*b*) The fund has for its sole purpose the provision of annuities for persons employed in the trade or undertaking either on retirement at a specified age, or on becoming incapacitated at some earlier age.

(*c*) The employer in the trade or undertaking is a contributor to the fund.

(*d*) The fund is recognized by the employer and employed persons in the trade or undertaking.

Provided that the Commissioners may, if they think fit, and subject to such conditions, if any, as they think proper to attach to the approval, approve a fund or any part of a fund as a superannuation fund for the purposes of this section

(i) Notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund; or

(ii) If the main purpose of the fund is the provision of

[1] Hewlett *v* Allan, [1894] A.C 383; Phillips *v* London School Board, [1898] 2 Q B 447

[2] *Ex parte* Cooper (1884), 26 Ch D 693.

such annuities as aforesaid, notwithstanding that such provision is not its sole purpose;

(iii) Notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in the United Kingdom and by a person not residing therein.

The privileges granted to such approved funds are: (*a*) Complete exemption from tax of the investment income; (*b*) contributions made by the firm and the employee respectively may be deducted from their yearly returns of profits or earnings under Schedules D and E. The approved pension fund is thus in a better position than a friendly society formed to provide its members with pensions, since the latter, though enjoying exemption from tax, is restricted to granting a maximum pension of £52,[1] although there is no such limitation in the case of a society formed under the Industrial and Provident Societies Acts.

Regulations have been issued by the Inland Revenue authorities under Sect. 32, Finance Act, 1921, prescribing the mode of applying for approval, payment of tax on repaid contributions, returns to be made by employers, and defining the meaning of "ordinary annual contribution."[2]

Pension Funds and the Rule Against Perpetuities. A superannuation fund may be within the perpetuities rule,[3] but the Superannuation and Other Trust Funds (Validation) Act, 1928, provides pension funds (with certain other types of funds) with a statutory means of exemption from the perpetuities rule by registration. The conditions of registration are the following—

1. The fund must be established under trusts subject to English law.

[1] *Friendly Societies Act*, 1896, Sect 41, as amended by *Friendly Societies Act*, 1908, Sect 3.

[2] S.R. and O (1921), No. 1699; S R and O. (1931), No 638

[3] Lucas *v.* Telegraph Construction and Maintenance Co For an abstract of the case see *Pension and Superannuation Funds*, by Robertson and Samuels, 2nd Edition, Appendix, p 131. (Pitman)

2. It must be established in connection with an undertaking carried on wholly or partly in Great Britain.

3. The employer must be a contributor to the fund.

4. The rules must state the objects of the fund and provide for its vesting in the trustees, mode of appointing and removing trustees and secretary, and the manner of investment, but, with two exceptions, may not authorize deposit of trust moneys with the employers.

(These two exceptions are (*a*) funds which before 9th November, 1927, had a rule authorizing such deposit; (*b*) the fund of a body corporate which has during each of the ten years last past before the date of any deposit paid not less than 3 per cent dividend on its ordinary shares, the deposit to be secured by a charge on the firm's assets.)

5. The rules must state, further, the rates of contributions and pensions, and conditions of membership, and must provide for dissolution of the funds and distribution of the assets, amendment of the rules, and preparation of all necessary accounts and reports.

6. An annual statement of accounts and audited balance sheet, and a periodical actuarial report (quinquennial at longest) must be sent to the Registrar.

7. Every member must have a right to a copy of the rules and latest statement of accounts and periodical valuation.

The fees payable on registration are as follows—

	£	s	d
For the registration of a fund . . .	5		–
For the registration of an amendment of rules	1	–	
For the correction of the register in respect of a change in the address of a fund or in the names or addresses of its trustees . . .		5	–

Application for registration must be made to the Registrar of Friendly Societies.

Widows' Pensions. Widows' funds come within those to which the provisions of Sect. 32, Finance Act, 1921 (which grants the exemptions to approved funds), can be

applied, so that that part of a pension fund which is attributable to pensions for widows will be admitted by the Inland Revenue for purposes of tax exemption.[1] Widows' funds may also be registered under the Superannuation and Other Trust Funds (Validation) Act, 1928, for purposes of exemption from the rule against perpetuities.

Pension Schemes Operated through Life Offices. These schemes are not affected by Sect. 32, Finance Act, 1921. They are dealt with under Sect. 32, Income Tax Act, 1918, as amended by Sect. 26, Finance Act, 1920.[2]

Registration under the Friendly Societies Acts. A works' fund or club if registered as a friendly society is entitled to exemption from income tax.[3] On the other hand, an unregistered friendly society, whose investment income does not exceed £160, is entitled to exemption.[4]

Provision of Death Benefits in Works' Funds. A registered friendly society may include in its rules a power to its members to nominate recipients of death benefits.

The right of nomination is also given to societies registered under the Industrial and Provident Societies Acts.

If an unregistered society includes a rule as to nomination, the nominations would have no validity should another person than the nominee prefer a claim to the death benefit; but—

(*a*) The money could by the rule be made payable to the personal representatives. Very often, however, apart from the death benefit, there is little or no estate, and it is, therefore, desirable if possible to render application for letters of administration unnecessary. Besides, the grant of probate or letters of administration takes time and the money payable from the sick fund is often needed at once for the payment of funeral expenses.

[1] *Finance Act*, 1930 Sect 19

[2] For a fuller treatment of the legal aspect of Pension Funds see Chapters VI–VIII, *Pension and Superannuation Funds*, by Robertson and Samuels (Pitman)

[3] Schedules A, C, and D, Sect. 39 (1), *Income Tax Act*, 1918

[4] *Ibid.*

(*b*) The rule could provide for the next-of-kin to receive the money.

This method, it is true, avoids the objections to (*a*), but has its own difficulties. There may be possible claimants living abroad, in which event troublesome questions like presumption of death, necessity of advertisements, and so on, might arise. Or there are cases where there is no traceable next-of-kin. There is no method of winding up a claim in such a case before the expiration of the statutory period, and even then the money as *bona vacantia* could not legally revert to the fund. It would also appear that a rule limiting the period during which claims may be made under such circumstances might be held invalid.

(*c*) The rule may specify the persons entitled and prescribe their order of priority. This method is legally unobjectionable.[1] It would seem that the rule could properly provide for the committee to have a discretion to pass over any particular person claiming, or failing to claim, under such a rule establishing the priority of respective claimants.[2]

As regards an unregistered works' savings fund in particular, an employee who desires power to nominate a person to receive the balance after his death is able to open the savings account in the joint names of himself and the person whom he proposes to nominate. On the death of the employee, the bank is entitled to allow the survivor to draw any balance. With regard to withdrawals during the employee's lifetime, these would have to be made against the requisition of both parties, unless the person joined agreed to give instructions for payments to be made on the requisition of the employee alone.

MISCELLANEOUS

Works' Dental Schemes. A firm which institutes a dental scheme for the benefit of its employees does not "carry on the business of dentistry" so as to come within Sect. 5 of the Dentists Act, 1921 (which provides that

[1] Ashby *v* Costin (1888), 21 Q B D 401
[2] See also Re Davis, [1892] 3 Ch. 69.

a body corporate may not carry on the business of dentistry unless (1) it carries on no other business, (2) a majority of the directors are registered dentists).

Rest Pauses. The prohibition against the partaking of meals in certain parts of factories (see e.g. page 76) would not, it is submitted, extend to refreshments which consist only of drinks (such as are served round to workers in the intervals known as "rest pauses"). If light refreshments, like sandwiches or biscuits, are added, it would be a question of fact in each case whether what was partaken of amounted to a "meal."

Canteen Refuse. Refuse from a works' canteen is in the category of "domestic refuse," not "trade refuse," for the purposes of the Public Health Acts.[1]

Works' Lotteries. The rules under which a works' club may arrange a lottery or draw should be borne in mind. Lotteries generally are illegal, but private lotteries are allowed. A private lottery may be a works' lottery, i.e. one confined to persons working on the same premises, or a society lottery, i.e. one confined to members of one society or club. Briefly, the conditions are—

(*a*) The whole proceeds after deduction of printing and stationery expenses, to be devoted to the members or to the purposes of the society.

(*b*) No written notice to be posted or distributed outside the firm's or the society's premises.

(*c*) All tickets to be at a single price to be stated on the ticket.

(*d*) Tickets must bear the names and addresses of the promoters and state the persons to whom they may be sold.

(*e*) No tickets may be sent through the post.[2]

Application of Statutory Provisions to Persons Employed under Welfare Schemes. In general, persons employed by

[1] Westminster Corporation *v* Gordon Hotels, [1906] 2 K.B. 39, Lyons & Co. Ltd v London Corporation, [1909] 2 K B 588

[2] *Betting and Lotteries Act*, 1934, Sect. 24 See also Sect 23 (exemption of small lotteries incidental to certain entertainments)

firms in connection with welfare schemes are not "employed" within the meaning of the Factories Act. It would, therefore, for example, be legal, under normal circumstances, to employ a first-aid nurse for the whole day on Saturday, or a boy on the works' sports ground on Sunday. But a factory canteen may be a factory *per se* (see above, page 205); consequently women and young persons' hours are, in such a canteen, subject to the Factories Act restrictions.

Employees of a works' club are exempt from unemployment insurance as "domestic servants,"[1] although it would be otherwise if their duties included those of a profit-making concern, e g. the taking of money at the gates, the meaning of "domestic servants" being "servants whose main or general practice it is to be about their employers' persons or their establishments for the purpose of ministering to their needs or the needs of members of their establishments, or of those resorting thereto, including guests."[2]

A groundsman, whether employed by the club or by the firm, is exempt from unemployment insurance as an "agricultural worker."[3]

A golf caddie in a club is, however, insurable, the employment being of a casual nature for the purposes of a game under the Unemployment Insurance Act, 1935, First Schedule, Part II, para 10[4]

[1] *Re* Junior Carlton Club, [1922] 1 K B 166
[2] *Ibid*
[3] *Re* Vellacott, [1922] 1 K B 466.
[4] *Re* King (de Webber), [1923] 1 K.B 210

CHAPTER XI

CONCILIATION AND THE SETTLEMENT OF DISPUTES

THERE are three principal statutes which deal exclusively with machinery for the settlement of differences between employers and workmen and which are of general scope and are not confined to any particular trade in their application. They are—

(*a*) Employers and Workmen Act, 1875.
(*b*) Conciliation Act, 1896.
(*c*) Industrial Courts Act, 1919.

THE EMPLOYERS AND WORKMEN ACT, 1875

In any County Court proceedings in relation to a dispute between an employer and workmen arising out of the contract of service, the Court may (1) set off claims of both parties the one against the other, whether the claims are liquidated or unliquidated; (2) rescind the contract conditionally or absolutely; (3) accept security from the defendant in lieu wholly or partly of awarding damages, if the plaintiff consents.[1]

Any court of summary jurisdiction may decide a dispute under the Act, provided that (1) the claim does not exceed £10; (2) no order is made for a sum exceeding £10 exclusive of costs; (3) the defendant is not required to provide security exceeding £10.[2] The Court has, however, no jurisdiction if proceedings have already been taken in a County Court and the subject-matter of the dispute is the same,[3] and *vice versa*.[4] A valid arbitration clause may effectively exclude the Court's jurisdiction.[5] The Court has power to deal not only with the strict and

[1] *Employers and Workmen Act*, 1875 Sect 3
[2] *Ibid*, Sect 4
[3] Hindley *v.* Hasburn (1878), 3 Q B D, 481
[4] Millett *v* Coleman (1875), 44 L J Q B, 194
[5] London Tramways Co. *v* Bailey (1877), 3 Q B D, 217.

technical claim which one side or the other makes in the dispute, but to deal with all claims which in the course of the hearing it may turn out have been made by one side against the other.[1] Nor does an employer who continues to employ a workman after breach waive his right to recover damages for the breach.[2] The Court has the same powers in relation to any dispute between any apprentice and his master, and in addition (*a*) may order the apprentice to perform his duties under the apprenticeship, and in the event of disobedience send him to prison for 14 days; (*b*) may, if it rescinds the apprenticeship instrument, order whole or part of the premium to be repaid,[3] (*c*) may order any surety of the apprentice under the instrument of apprenticeship to pay damages for breach of the contract within the limit of his liability under the instrument; (*d*) may accept security from a friend of the apprentice in lieu or mitigation of punishment.[4]

The "workmen" to whom the Act applies are persons (other than domestic or menial servants) engaged in manual labour, under contracts with employers,[5] and the "apprentices" to whom the Act applies are apprentices to the business of such workmen upon whose binding the premium does not exceed £25, and apprentices bound under the Poor Law Acts.[6]

In the case of women and young persons employed in factories and workshops within the meaning of the Factory Acts, no forfeiture for absence or leaving work may be set off against a claim in respect of work already done except to the amount of the damage sustained by the employer by reason of the absence from work.[7]

CONCILIATION ACT, 1896

Any Board formed for the purpose of settling disputes between employers and workmen by conciliation or

[1] Hanley *v* Pease and Partners, Ltd., [1915] 1 K B 698, and cf. Keates *v* Lewis Merthyr Consolidated Collieries, Ltd, [1911] A C 641
[2] Wynnstay Collieries *v* Edwards (1898), 79 L T 378.
[3] *Employers and Workmen Act*, 1875, Sects 5, 6
[4] *Ibid*, Sect 7
[5] *Ibid*, Sect 10
[6] *Ibid*, Sect 12.
[7] *Ibid*, Sect 11

arbitration, and any association or body authorized in writing by employers and workmen to deal with such disputes, may apply to the Ministry of Labour[1] for registration as a Conciliation Board. Conciliation Boards are bound to furnish from time to time returns, reports of proceedings, etc., to the Ministry of Labour.[2]

The Ministry of Labour have the following powers in relation to any differences between employers and workmen, or between workmen: (*a*) inquiry; (*b*) arranging a conference between both sides under a chairman agreed by both or nominated by the Ministry of Labour or by some other person or body; (*c*) appointment, on application of either party and after considering local facilities for conciliation, of a conciliator or board of conciliation; (*d*) appointment, on the application of both sides, of an arbitrator. A copy of the terms of any settlement arrived at must be delivered to and kept by the Ministry of Labour.[3]

Further, if the Ministry are of opinion that in any district or trade adequate means do not exist for the submission of disputes to a conciliation board, the Ministry may institute an inquiry as to the establishment of a conciliation board for the district or trade.[4]

INDUSTRIAL COURTS ACT, 1919

The Industrial Court is set up as a standing body for the settlement of trade disputes. The members have to be appointed by the Minister of Labour, and must comprise employers' and employees' representatives, independent persons, and one or more women, the duration of the appointment in each case being fixed by the Minister. The Minister alone has the right of appointing the President of the Court, and the chairman of any division of the Court, and must appoint these from among the independent members.[5]

[1] The Ministry of Labour was substituted for the Board of Trade by *New Ministries and Secretaries Act*, 1916, Sect. 2.
[2] *Conciliation Act*, 1896, Sect. 17
[3] *Ibid*, Sect. 2.
[4] *Ibid*, Sect. 4
[5] *Industrial Courts Act*, 1919, Sect 1.

In the event of any trade dispute, existing or apprehended, being reported to him by or for either of the parties, the Minister may, with the consent of both parties, refer the matter for settlement to the Industrial Court or to an arbitrator or arbitrators appointed by him, or to a board of arbitrators consisting of an equal number of nominees of the employers and employees concerned and an independent chairman nominated by the Minister. (The latter has also the duty of forming panels of men and women suitable to act as arbitrators.) The Minister may also refer other matters to the Industrial Court for advice. Where, however, there are existing arrangements in the trade for conciliation or arbitration, the Minister may take any of these steps only after these arrangements have failed to produce a settlement and with the consent of both parties.[1]

When the members of the Industrial Court are unable to agree on an award, the chairman has the powers of an umpire to decide the matter. No award may be made as to conditions of employment which is inconsistent with any Act dealing with those conditions.[2]

Power is also given to the Minister of Labour to set up a Court of Inquiry into any trade dispute, existing or apprehended, with power to summon witnesses, call for documents, and take evidence on oath.[3] The reports of any such Court must be laid before Parliament and may be published at the discretion of the Minister. No private information as to any trade union or individual business may be disclosed without the consent of that union or business.[4]

The right to appear by counsel or solicitor before the Industrial Court, arbitrator under the Act, or Court of Inquiry, is subject to the rules made by the Minister of Labour under the Act.[5]

[1] *Industrial Courts Act*, 1919, Sect 2.
[2] *Ibid*, Sect 3
[3] *Ibid*, Sect 4
[4] *Ibid*, Sect. 5
[5] *Ibid.*, Sect. 9. For rules as to procedure see S R & O. 1924 No 554

THE NATIONAL ARBITRATION TRIBUNAL

The National Arbitration Tribunal was set up in 1940. It was a war-time emergency creation, due to the necessity of reducing stoppages of work to a minimum. It provides that any lock-out or strike is illegal unless the dispute has been reported to the Minister and the Minister has not, during the ensuing 21 days, referred the dispute for settlement (as described below) either to the collective joint machinery suitable for settling the dispute or, failing that, to the Tribunal.

The Tribunal consists of five members. Three members are appointed by the Minister and one of these is Chairman. The two other members are selected by the Minister from each of two panels of Representative Members constituted in consultation with the T.U.C. and the British Employers' Confederation. Either party to an industrial dispute may report the dispute to the Minister. If there is collective joint machinery in the trade which is suitable for settling the dispute, the Minister must refer the dispute to that machinery. If there is failure to reach a settlement or a settlement is unduly delayed, he may cancel the reference and refer the dispute to the National Arbitration Tribunal. In other cases the Minister may forthwith refer the dispute for settlement to the National Arbitration Tribunal. If the dispute has not been disposed of by these means the Minister must refer the dispute to the National Arbitration Tribunal within 21 days from the date on which the dispute has been reported to him. Any agreement, decision, or award which results from such references by the Minister, whether to existing joint machinery, or to the National Arbitration Tribunal, is binding upon the parties, and the terms of the settlement become an implied term of the contract between the employers and workers to whom the agreement or award relates.[1]

[1] Conditions of Employment and National Arbitration Order, S R & O, 1940, No 1305.

RAILWAYS

In addition to the above enactments of general scope, certain machinery exists for settling disputes affecting conditions of employment on the railways.

The Board of Trade has power to inquire into any representations as to excessive hours worked by any workers on railways, and may order a railway company to submit a more reasonable schedule of hours with respect to such workers; if the railway company makes default, the Railway and Canal Commission then has jurisdiction.[1]

Questions relating to wages, hours, and other conditions of employment are, in default of agreement between the railway companies and the trade unions, to be referred to the Central Wages Board or, on appeal, the National Wages Board.[2] The Central Wages Board consists of eight representatives of the railway companies and eight representatives of the railway employees, four of these latter being appointed by the National Union of Railwaymen, two by the Associated Society of Locomotive Engineers and Firemen, and two by the Railway Clerks Association. The National Wages Board is composed of six representatives of each of the following two classes. the railway companies, and the railway employees (two by each of the three trade unions just named), and in addition four representatives of the users of railways, with a chairman nominated by the Minister of Labour.

Joint Councils have to be established for each railway company, consisting of officers of the company and elected representatives of the employees, the functions of these councils to be generally those referred to in paragraph (16), " Report of the Reconstruction Committee on the Relation between Employers and Employed " (8th March, 1917).[3]

[1] *Railway Regulations Act*, 1893
[2] *Railways Act*, 1921 Sect 62
[3] *Ibid*, Sects 62 64

MINES, ELECTRICITY, TRANSPORT, ETC.

Conciliation machinery is also set up in the industries which have been brought under national control—see the respective Acts (Mines Nationalization Act, 1946, Electricity Act, 1947, Transport Act, 1947).

APPENDIX

EMERGENCY LEGISLATION

Reinstatement after National Service

THE employer has the duty of reinstating an employee who has been called up for whole-time service in the Armed Forces, Civil Defence Forces, W.R.N.S., A.T.S., W.A.A.F., or the recognized medical and nursing services attached to the Armed Forces, in an occupation and under conditions not less favourable than would have applied if the employee had not been called up (or if this is not reasonable and practicable, the most favourable conditions that are possible), and to continue to employ him for 26 weeks, or where the previous employment lasted for a year or more, for 52 weeks. There are certain defences open to the employer, e.g. that the employee did not apply for reinstatement before the 5th Monday after his discharge, or that he did not present himself for employment when and where notified, or that it is unreasonable or impracticable to continue the re-employment. It is a good defence that the re-employment would involve the dismissal of another employee senior to, and no less permanent than, the employee in question.

The period for applying for reinstatement and the time of starting work may be extended on the ground of the employee's sickness or other reasonable cause. The employer's obligation to reinstate ceases when a period of six months has passed after the end of the present emergency. (This date has still to be prescribed by the Government).

Disputes are settled by the local Reinstatement Committee (consisting of a chairman, an employers' representative, and a workers' representative). An appeal lies to the Umpire, (1) where the Committee's decision is not unanimous, or (2) by leave of the Committee or Umpire,

or (3) at the instance of the employers' organization or Trade Union to which the employer or worker respectively belonged.[1]

In addition to the class of employees mentioned above as being covered by the Reinstatement in Civil Employment Act, 1944, the above provisions also apply to persons who, after 18th July, 1947, enter into whole-time service in the armed forces by presenting themselves in pursuance of an enlistment notice In these cases the employer's obligation to reinstate a person ceases six months after the end of the person's whole time service in the forces.[2]

Control of Engagement [3]

An employer may not engage an employee except by giving notice of the vacancy to the Employment Exchange or approved employment agency and obtaining the name of the person from that quarter. No person may obtain employment except by applying to the same quarter.

The above provisions do not apply to persons employed in a managerial, professional, administrative, or executive capacity, coal miners, dock workers, part-time workers, employees without pay.

The provisions also do not apply to persons under 18 or over 50 (men) or 40 (women); mothers of children under 15; holders of exemption permits from the Ministry of Labour; persons employed or applying for employment to employers holding exemption certificates of the Ministry.

Exception from the provisions is also made in the case of re-engagement of employees after sickness, strikes, or within a fortnight after leaving. (The last exception does not apply to the building or civil engineering trades.)

Hours of Employment in Factories using Electricity

The District Inspector of Factories may give a permit for working "staggered" hours to factories in which electricity generated outside the factory is used for any

[1] *Reinstatement in Civil Employment Act*, 1944.
[2] *National Service Act*, 1947, Sect 12.
[3] Control of Engagement Order, 1947, S R. & O., No 2021

purpose other than lighting or ventilation. This makes it possible for double day shift working by women and young persons over 16; day and night shift working or three shift working by youths over 16 and women.

Earlier Start or Later Finish for Day Work. 1. The period of employment may begin at 6 a.m. (instead of 7 a.m.) for persons aged 16 or over, and at 6.30 for those under 16; or alternatively.

2. Except on the weekly short day, the period of employment may end at 11 p.m. (instead of 8 p.m.) for persons aged 16 or over and at 7.15 p.m. (instead of 6 p.m.) for those under 16; or alternatively

3. The women and young persons may be divided into three sets, in which case the period of employment may begin as in (1) above for the first set and may end as in (2) above for the second set.

Different Periods of Employment in Different Weeks. The periods of employment and intervals for meals and rest may be different in different weeks, and where this is permitted the total working hours for persons aged 16 or over may be more than 48 in a week (but not more than a number specified by the District Inspector), provided that they do not average more than 48 a week over two consecutive weeks or over a period which appears reasonable to the Inspector.

Long Afternoon Spell. Where a period of employment ends not later than 7.15 p.m. an afternoon spell of work may be as long as six hours, provided there is a break of at least a quarter of an hour during the spell and the District Inspector is satisfied with the arrangements for refreshment during the break.

Work on Saturday Afternoon (i.e. after 1 p.m.) or on Sunday may be allowed, provided another day is substituted as the weekly short day or day of rest as the case may be.

Night Work may be permitted (for women aged 18 or over and *male* young persons aged 16 or over) subject to the following limitations.

1. Not more than six nights in a week.

2. Maximum of 48 hours work a week and nine hours work a night (or 10 hours a night if only five nights a week are worked).

3. Period of employment not to exceed 11 hours (or 12 hours if only five nights a week are worked) on any night.

4. Not to begin before 7 p.m. or end after 8 a.m.[1]

There are special variations in the case of five-day week and four-day week factories.

Registration for Employment

Men between 18 and 50 and women between 18 and 40 may be required by the Minister of Labour to register particulars about themselves. (There are certain classes of exceptions, including married women living with their husbands, and women with children under 15.) Employers (other than those engaged in essential work) may also be required to register particulars about themselves and persons employed by them [2]

[1] Factories (Hours of Employment in Factories Using Electricity) Order, 1947, S R & O, 1947, No 1870 as amended

[2] Registration for Employment Order S R & O (1947) No 2409

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