



I assent.
Ernest S. Darnley

Governor.
26th February, 1934.

BRITISH GUIANA

ORDINANCE NO. 7 OF 1934.

AN ORDINANCE to provide for the payment of compensation to workmen for injuries suffered in the course of their employment. A.D. 1934.

BE it enacted by the Governor of British Guiana, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Workmen's Compensation Ordinance, 1934. Short Title.

PRELIMINARY.

2.—(1) In this Ordinance, unless the context otherwise requires:— Interpretation.

“Dependants” means such of the members of a workman's family as were wholly or in part dependent upon the wages of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his wages or, being an illegitimate child, leaves a parent or

grandparent so dependent upon his wages, shall include such an illegitimate child and parent or grandparent respectively : provided that a person shall not be deemed to be a partial dependant of another person unless he was dependent partially on contributions from that other person for the provision of the ordinary necessities of life suitable for persons in his class and position ;

“Employer” includes His Majesty in His Government of the Colony and any person or body of persons corporate or unincorporate and the heirs of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall for the purposes of this Ordinance, save as is provided in sub-section (1) of section eighteen, be deemed to continue to be the employer of the workman whilst he is working for that other person. In relation to a person, employed for the purposes of any game or recreation and engaged or paid by a club, the manager or members of the managing committee of the club shall, for the purposes of this Ordinance, be deemed to be the employer ;

“Medical practitioner” means a person registered to practise medicine and surgery under the Colonial Medical Service (Consolidation) Ordinance ;

“Member of a family” means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, halfbrother, halfsister ;

“Partial incapacity” means, where the incapacity is of a temporary nature, such incapacity as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the incapacity, and, where the incapacity is of a permanent nature, such incapacity as reduces his earning capacity in every employment which he was capable of undertaking at that time : provided that every injury specified in the Schedule shall be deemed to result in permanent partial incapacity ;

“Total incapacity” means such incapacity whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such incapacity : provided that permanent total incapacity shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in the Schedule where the aggregate percentage of the loss of earning capacity, as specified in the Schedule against those injuries, amounts to one hundred per centum ;

“Schedule” means the Schedule to this Ordinance ;

“Section” means a section of this Ordinance ;

“Wages” includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or

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Schedule.

Schedule.

Schedule.

provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment, or remuneration for overtime not habitually performed or remunerated at a special rate ;

“*Workman*” means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, or otherwise, whether the contract is express or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done : provided that the following persons shall not be regarded for the purposes in this Ordinance as workmen :—

- (a) persons whose remuneration exceeds nine hundred and sixty dollars a year ; or
- (b) persons employed to perform work of a casual nature not connected with the employer's trade or business not being persons employed for the purposes of any game or recreation and engaged and paid by a club ; or
- (c) outworkers, that is to say :—persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired or adapted for sale in their own homes or on other premises not under the control or management of the person who gave out the articles or materials ; or
- (d) a member of the employer's family dwelling in his house ; or
- (e) a police-constable, a constable of the rural constabulary, while acting as such, a town-constable ; or
- (f) persons employed in agriculture or animal husbandry or forestry, including the balata industry, unless such employment be in connection with any engine driven or machine worked by mechanical power ; or
- (g) domestic servants ; or
- (h) persons employed in mining, unless such employment be in connection with any engine driven or machine worked by mechanical power ; or
- (i) persons employed in any capacity on boats used for river traffic while outside the limits of any harbour ; or
- (j) persons employed as clerical workers or shop assistants or both ; or
- (k) persons who contract or sub-contract for the carrying out of work and themselves engage other persons, independently of the employer, to perform such work ; or
- (l) persons engaged in plying for hire with any vehicle or vessel, the use of which is obtained from the owner thereof under any contract of deposit, agency, loan or hire, in consideration of the payment of a fixed sum or a share in the earnings or otherwise ; or
- (m) persons employed as teachers ; or
- (n) persons in the civil employment of His Majesty otherwise than in His Government of the Colony ; or
- (o) persons in the naval or military or air service of the Crown.

(2) Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable.

(3) If on any proceedings for the recovery of compensation under this Ordinance it appears to the court by which the claim to compensation is to be settled that the contract of service or apprenticeship under which the injured person was working at the time when the accident causing the injury happened, was illegal, the court may, if having regard to all the circumstances of the case it thinks proper so to do, deal with the matter as if the injured person had at the time aforesaid been a person working under a valid contract of service or apprenticeship.

COMPENSATION.

Employers' liability for compensation.

3. If in any employment a workman suffers personal injury by accident arising out of and in the course of such employment his employer shall be liable to pay compensation in accordance with the provisions of this Ordinance: provided that the employer shall not be so liable (under this Ordinance) for such compensation should—

- (a) the injury incapacitate the workman whether totally or partially for a period of less than eleven consecutive calendar days;
- (b) the accident be proved to be attributable to the workman's own serious and wilful misconduct which shall include:—
 - (i) his being in any degree under the influence of drugs or intoxicating drink; or
 - (ii) a contravention of any law, regulation or order, whether statutory or otherwise, expressly made for the purpose of ensuring the safety or health of workmen, or of preventing accidents to workmen, if the contravention was committed deliberately or with a reckless disregard of the terms of such law, regulation or order; or
 - (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen; or
 - (iv) any other act or omission which the court may, having regard to all the circumstances of an accident, declare to be serious and wilful misconduct;
- (c) it be proved that the accident would not have occurred, or in so far as the incapacity or death would not have been caused, but for a pre-existing diseased condition of the workman;
- (d) death be caused, or if and so far as incapacity be caused continued or aggravated, by an unreasonable refusal to submit to medical or surgical treatment;
- (e) death or incapacity result from personal injury if the workman has at any time represented to the employer that he was

not suffering or had not previously suffered from that or a similar injury, knowing that the representation was false ;

- (f) any workman who has met with an accident, as the result of which there is materially increased risk of a further accident happening to him or of an aggravation of an injury caused by such accident and has thereby become permanently incapacitated for work and received compensation in respect thereof, subsequently resume work similar to that at which he was employed at the time of such accident, whether with the same or another employer, and meet with a further accident which is in any way attributable to the said permanent incapacity, even although such further accident is caused by a subsequent happening.

4.—(1) The compensation shall be payable to or for the benefit of the workman, or where death results from the injury to or for the benefit of his dependants, as provided by this Ordinance. To whom compensation payable

(2) Where there are both total and partial dependants nothing in this Ordinance shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants.

5.—(1) Subject to the provisions of this Ordinance, the amount of compensation shall be as follows, namely :— Amount of compensation.

- (a) where death results from the injury, a sum equal to thirty months' wages or twelve hundred dollars whichever is less ;
- (b) where permanent total incapacity results from the injury— Permanent total incapacity.
- (i) in the case of an adult, a sum equal to forty-two months' wages or one thousand six hundred and eighty dollars, whichever is less ; and,
- (ii) in the case of a minor, a sum equal to eighty-four months' wages or one thousand six hundred and eighty dollars, whichever is less ;
- (c) where permanent partial incapacity results from the injury ; Permanent partial incapacity.
- (i) in the case of an injury specified in the Schedule, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and Schedule.
- (ii) in the case of an injury not specified in the Schedule, such percentage of the compensation payable in the case of permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury ; Schedule.

Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated, but not so in any case as to exceed the amount which would have been payable if permanent total incapacity had resulted from the injuries ;

Temporary incapacity.

(d) where temporary incapacity, whether total or partial, results from the injury, a half-monthly payment payable on the sixteenth day from the date of the incapacity, and thereafter half-monthly during the incapacity or during a period of five years, whichever period is shorter—

(i) in the case of an adult, or a minor over the age of seventeen years of a sum equal to one-fourth of his monthly wages, and

(ii) in the case of a minor under the age of seventeen years, of a sum equal to one-third of his monthly wages.

(2) In fixing the amount of any compensation the court shall have regard to any payment, allowance or benefit which the workman may have received from the employer after the date of the accident, and no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages as he is earning or is able to earn in some suitable employment or business after the accident.

(3) On the ceasing of the incapacity before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the incapacity in that half-month.

Method of calculating wages.

6.—(1) For the purposes of section five the monthly wages of a workman shall be calculated as follows, namely:—

(a) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;

(b) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period:

Provided that if the amount of the monthly wages arrived at by a calculation under paragraph (a) or paragraph (b) is more than sixty dollars such monthly wages shall be assumed to be sixty dollars.

(2) A period of service shall, for the purposes of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

Review of half-monthly payment.

7.—(1) Any half-monthly payment payable under this Ordinance either under an agreement between the parties or under an order of a court, may be reviewed by a court on the application either of the employer or of the workman accompanied by the certificate of a medical practitioner that there has been a change in the condition of the workman or, subject to regulations made under this Ordinance, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Ordinance, be continued, increased, decreased or ended, or, if the accident is found to have resulted in permanent incapacity, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

8. Any liability for half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than twelve months, on the application of either party to the court, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the court, as the case may be: Provided that a half-monthly payment may by agreement be redeemed by a lump sum at any time.

Payment of lump sum in lieu of half-monthly payments.

9. An employer shall not be entitled otherwise than in pursuance of an agreement or a judgment of the court to end or diminish a half-monthly payment except in the following cases:—

Cases in which employer may alter half-monthly payment.

(a) where the workman, to the prejudice and without the knowledge and consent of the employer, absents himself in such a manner that any notice under this Ordinance cannot be served upon him; or

(b) where the workman resumes work at the rate of wages which he was earning before the accident; or

(c) where a workman in receipt of a half-monthly payment in respect of total incapacity has actually returned to work; or

(d) where the monthly wages of a workman in receipt of a half-monthly payment in respect of partial incapacity have actually been increased; or

(e) where the workman dies.

10.—(1) Compensation payable where the death of a workman has resulted from an injury shall be paid into court, and any sum so paid in shall be apportioned among the dependants of the deceased workman or any of them in such proportion as the court thinks fit, or may, in the discretion of the court, be allotted to any one such dependant, and the sum so allotted to any dependant shall be paid to him or be invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit.

Distribution of compensation on death.

(2) Compensation payable where permanent incapacity has resulted from an injury and lump sums payable under the provisions of section eight where temporary incapacity has resulted from an injury shall be paid into court, and any sum so paid shall be paid to the person entitled thereto or be invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit.

Lump sums.

(3) Any other compensation payable under this Ordinance may be paid into court and, when so paid in, shall be paid by the court to the person entitled thereto.

Other cases.

(4) The receipt of the clerk of the court shall be a sufficient discharge in respect of any amount paid in under the provisions of this Ordinance.

Receipt.

Notice to dependants.

(5) On the payment in of any money under sub-section (1) the court may deduct therefrom the actual cost of the workman's funeral expenses, to an amount not exceeding thirty-eight dollars and forty cents, and pay the same to the person by whom such expenses were incurred, and shall, if it thinks necessary, cause notice to be published or to be served on each dependant in such manner as it thinks fit calling upon the dependants to appear before it on such date as it may fix for determining the distribution of the compensation. If the court is satisfied, after any inquiry which it may deem necessary, that no dependant exists, the court shall repay the balance of the money to the employer by whom it was paid. The court shall, on application by the employer, furnish a statement showing in detail all disbursements made.

Workman under disability.

(6) Where a half-monthly payment is payable under this Ordinance to a workman under any legal disability, the court may, of its own motion or on application made to it in this behalf, order that the half-monthly payment be paid during the disability to any dependant of the workman or to any other person whom it thinks best fitted to provide for the welfare of the workman.

Variation of order.

(7) Where, on application made to the court in this behalf or otherwise, the court is satisfied that, on account of neglect of children on the part of a parent, or on account of the variation of the circumstances of any dependant, or for any other sufficient cause, an order of the court as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order as it thinks just in the circumstances of the case: Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

Deductions for costs.

(8) The solicitor or agent of a person claiming compensation under this Ordinance shall not be entitled to recover from him any costs in respect of such claim or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by a court, subject to regulations made under this Ordinance, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of the costs to be paid to the solicitor or agent.

Compensation not to be assigned, attached or charged.

11. Save as provided by this Ordinance, no lump sum or half-monthly payment payable under this Ordinance shall be capable of being assigned, charged or attached or shall pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

CONDITIONS OF COMPENSATION.

Requirements as to notice of accident and claim for compensation.

12.—(1) Proceedings for the recovery under this Ordinance of compensation for an injury shall not be maintainable unless:—

(a) written or oral notice of the accident has been given as soon as practicable after the happening thereof;

- (b) written or oral notice of the accident has been given before the workman has voluntarily left the employment in which he was injured ;
- (c) the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury ;
- (d) in the case of death the claim for compensation has been made within six months after the date of death or within six months after the date of the accident ;
- (e) in the case of death occurring more than six months after the accident causing injury, a claim for compensation has been made by the workman within six months of the accident :

Provided that :—

- (i) any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if an amended notice were then given and the hearing postponed, be prejudiced in his defence by the defect or inaccuracy or that such defect or inaccuracy was occasioned by mistake, absence from the Colony or other reasonable cause :
- (ii) the failure to make a claim within the period specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by absence from the Colony or other reasonable cause :
- (iii) the failure to give such notice or make a claim within the period specified shall not be a bar to the maintenance of such proceedings if there be an acknowledgment in writing, signed by the employer or his authorized agent, that he waives compliance with the provisions of this section and the said provisions shall be deemed to be waived to the extent set out in such acknowledgment :
- (iv) if the employer or his authorized agent admit liability to pay compensation, it shall not be necessary for the workman to give any such notice, and the claim for compensation may be made within three months after the date of the admission of liability.

(2) Notice in respect of an injury under this Ordinance may be given to the employer (or if there is more than one employer to one of such employers) or to any foreman or other official under whose supervision the workman is employed, or to any person designated for the purpose by the employer, and shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened.

(3) The notice, if in writing, may be given by delivering the same at or sending it by post in a registered letter addressed to the residence or place of business of the person to whom it is to be given.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice, if in writing, may also be given by delivering it or by sending it by post in a registered letter addressed to the employer, at the office, or, if there be more than one office, any one of the offices, of such body.

(5) The workman shall, if required by his employer, supply to him such further particulars of the accident and of the injury as the employer may reasonably require.

Half-monthly payments to cease on workman ceasing to reside in the Colony.

13.—(1) If a workman receiving a half-monthly payment ceases to reside in the Colony, he shall thereupon cease to be entitled to receive any half-monthly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature.

(2) If the medical referee so certifies, and the injury is likely to result in a diminished earning capacity then the half-monthly payments shall be redeemed by a lump sum which shall be subject to the provisions of this Ordinance and which, in default of agreement, shall be settled by the court.

Medical examination after notice of accident.

14.—(1) Where a workman has given notice of an accident or where an accident has occurred in respect of which the necessity of giving notice under this Ordinance is dispensed with, he shall if so required by the employer submit himself for examination by a medical practitioner provided and paid by the employer.

(2) The workman shall, when required, attend upon that medical practitioner at the time and place notified to the workman by the employer, provided such time and place is reasonable.

(3) In the event of the workman being, in the opinion of any medical practitioner whatever, unable or not in a fit state to attend on the medical practitioner named by the employer, that fact shall be notified to the employer, and the medical practitioner so named shall fix a time and place for a personal examination of the workman and shall send him notice accordingly.

(4) If the workman refuses or wilfully neglects to submit himself to such examination, or in any way wilfully obstructs or unnecessarily delays such examination, his right to compensation and to take or prosecute any proceedings under this Ordinance in relation to compensation, shall be suspended until such examination has taken place.

(5) The workman shall be entitled to have his own medical practitioner present at such examination, but at his own expense.

Medical examination of workman receiving payments.

15. Any workman receiving half-monthly payments under this Ordinance shall, if so required by the employer, from time to time but at reasonable intervals, submit himself for examination by a medical practitioner provided and paid by the employer and the provisions of section fourteen shall apply to any such examination.

No compensation payable for period of suspension of right.

16. Where under this Ordinance a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

17.—(1) The employer and the workman may, after the injury in respect of which the claim to compensation has arisen, agree in writing as to an amount to be paid by the employer as compensation in respect of the permanent partial incapacity or permanent total incapacity of the workman resulting from that injury.

Agreements
for payment
of compensa-
tion.

(2) Where an amount of compensation has been agreed under sub-section (1) of this section, or where the amounts of any half-monthly payment have been agreed or have been varied, suspended, or ended or where any other matter under this Ordinance has been determined by agreement, the court, may, if application be made by any person interested within three months after the date of the agreement, cancel it and may make such order (including an order as to any sum already paid under the agreement) as in the circumstances may be thought just, if it is proved:—

(a) that the sum paid or to be paid was or is grossly inadequate or excessive; or

(b) that the agreement was obtained by such fraud, undue influence, misrepresentation or other improper means, as would in law be sufficient ground for avoiding an agreement; or

(c) that the agreement was entered into in ignorance of, or under a mistake as to the true nature of the injury.

(3) Any such agreement may on application to the court be made a judgment of the court under this Ordinance.

(4) Where it is desired to have an agreement made a judgment of the court, a memorandum thereof shall be sent by any interested party to the clerk of the court who shall, subject to the provisions hereinafter contained, on being satisfied as to its genuineness, record such memorandum in a special register, and thereupon the memorandum shall for all purposes be enforceable as a judgment of the court: Provided that:—

(a) no such memorandum shall be recorded before fourteen days after the despatch, by registered post, by the clerk of notice to the parties interested; and

(b) where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Ordinance and the employer proves by affidavit that the workman has in fact returned to work and is earning wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the magistrate under the circumstances may think just.

18.—(1) Where any person (in this section referred to as the principal) in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall provided the notice of the accident required under section twelve is given to him be liable to pay to any workman employed in the execution of the work any compensation under this Ordinance which he would have been liable to pay if that workman had been immediately

Sub-con-
tracting.

employed by him; and where compensation is claimed from or proceedings are taken against the principal, then in the application of this Ordinance references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed: Provided that, where the contract relates to threshing, ploughing, or other agricultural work and the contractor provides and uses machinery driven by mechanical power for the purposes of such work, he and he alone shall be liable under this Ordinance to pay compensation to any workman employed by him on such work.

(2) Where the principal is liable to pay compensation under this section he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section.

(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this Ordinance from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

ALTERNATIVE REMEDIES.

Election
by workman
of remedy
against
employer.

19.—(1) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Ordinance shall affect any civil liability of the employer, but in that case the workman may at his option claim compensation under this Ordinance, or take proceedings independently of this Ordinance, but the employer shall not be liable to pay compensation under this Ordinance and damages.

(2) The workman may elect whether he will institute proceedings for damages against his employer or will institute proceedings for compensation under this Ordinance, and if he institute proceedings for damages he shall be debarred from instituting proceedings under this Ordinance in respect of the same accident or if he institute proceedings under this Ordinance he shall be debarred from instituting proceedings for damages against his employer in respect of the same accident. Any written application lodged by the workman with the clerk of court in pursuance of section twenty-eight shall be deemed to be an institution of proceedings under this Ordinance, and if the workman and the employer agree in writing as to the amount of compensation to be paid under this Ordinance, he shall be deemed to have elected to take proceedings and to recover compensation under this Ordinance, and the workman and his dependants shall be bound by the election.

Remedies
against em-
ployer and
stranger.

20. Where the injury for which compensation is payable under this Ordinance was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

- (a) the workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Ordinance but shall not be entitled to recover both damages and compensation ; and
- (b) if the workman has recovered compensation under this Ordinance, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under section eighteen (relating to liability in case of workmen employed by contractors), shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by the court.

INSOLVENCY OR BANKRUPTCY OF EMPLOYER.

21.—(1) Where the employer has entered into a contract with any insurers in respect of any liability under this Ordinance to any workman, then, in the event of the employer becoming insolvent or bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up or a receiver or manager of the company's business or undertaking having been duly appointed, or possession having been taken by or on behalf of the holders of debentures secured by a floating charge, of any property comprised in or subject to the charge, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to insolvency or bankruptcy and the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

Provisions as to cases of insolvency or bankruptcy of employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency or bankruptcy or liquidation, or, as the case may be, he may recover the balance from the receiver or manager.

(3) There shall be included among the debts which—

- (i) under section thirty-nine of the Insolvency Ordinance are, in the distribution of the property or assets of a bankrupt, to be paid in priority to all other debts ; Cap. 180.
- (ii) under section two hundred and thirteen of the Companies (Consolidation) Ordinance are, in the winding up of a company, to be paid in priority to all other debts ; and Cap. 178.
- (iii) under section one hundred and four of the Companies (Consolidation) Ordinance are to be paid in priority to any claim for principal or interest in respect of debentures Cap. 178.

the amount due in respect of any compensation or liability for compensation accrued before the following date, that is to say

- (a) in the first case the date of the receiving order ;

(b) in the second case the date of the commencement of the winding up of the company;

(c) in the third case the date of the appointment of the receiver or of possession being taken mentioned in the said section.

Lump sum in lieu of half monthly payments.

Where the compensation is a half-monthly payment the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed if the employer made an application for that purpose under this Ordinance, and a certificate of the court as to the amount of such sum shall be conclusive proof thereof.

No priority if insured.

(4) The provisions of this section with respect to preferences and priorities shall not apply where the insolvent or bankrupt or the company has entered into such a contract with insurers as aforesaid.

Voluntary liquidation.

(5) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

Employer liable for compensation to disclose insurer.

22.—(1) If the employer becomes insolvent or is ordered to pay compensation under this Ordinance, he shall, if requested disclose whether he is insured against personal injury to or death of the workman employed by him and, if so insured, the name and address of the insurer and the amount for which he is insured.

(2) When the insurer indemnifies an employer against liability to pay compensation and has used or uses that employer's name or has acted on his behalf in any proceedings under this Ordinance, that insurer shall be bound by the decision given upon those proceedings in the same manner and to the same extent as the employer and the insurer shall indemnify the employer accordingly: Provided that the liability of the insurer shall be limited by the terms and conditions of the policy of insurance subsisting between him and the employer.

APPLICATION TO SPECIAL CLASSES OF PERSONS.

Application to workmen in the employment of the Crown.

23. In the application of this Ordinance to persons in the civil employment of His Majesty in His Government of the Colony whenever provision exists by law or regulation for the grant of a pension or gratuity to any member of the public service of the Colony in the case of injury received by him in the discharge of his duties, or to any person who, in the event of the death of any such member resulting from that injury, would be entitled as a dependant to compensation under this Ordinance, then in the assessment of compensation under this Ordinance in respect of an injury arising out of and in the course of the work of such member, the amount contributed out of public funds towards such pension or gratuity under any such law or regulation shall be taken into consideration and corresponding reductions shall be made in the amount which such member or dependant would otherwise have been awarded as compensation under this Ordinance.

Application to workmen in the em-

24.—(1) In the application of this Ordinance to workmen in the employment of a local authority, the exercise and performance by it

of its powers and duties conferred and imposed by law, or by by-law or regulation, shall be regarded as the trade, business, or undertaking of that authority.

ployment
of a local
authority.

(2) The provisions of the last preceding section shall, *mutatis mutandis*, apply in respect of a workman in the employment of any local authority where provision exists by law or by by-law or regulation for the grant of a pension or gratuity to such workman in the case of an injury received by him in the discharge of his duties, or to any other person in the event of the workman's death resulting from that injury.

25.—(1) This Ordinance shall apply to masters, seamen, and apprentices to the sea service, provided that such persons are workmen within the meaning of this Ordinance, and are members of the crew of any ship registered in the Colony, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in the Colony, subject to the following modifications:—

Application
to persons
employed
on ships.

(a) the notice of accident and the claim for compensation may, except where the person injured is the master, be given to the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident;

(b) in the case of the death of the master, seaman or apprentice, the application for compensation shall be made within three months after news of the death has been received by the claimant;

(c) where the injured master, seaman or apprentice is discharged or left behind in a British possession or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any Judge or Magistrate in the British possession, and by any British consular officer in the foreign country, and if so taken shall be transmitted by the person by whom they were taken to the Governor, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided in sections six hundred and ninety-one and six hundred and ninety-five of the Merchant Shipping Act, 1894, and those sections shall apply accordingly;

57 and 58
Vict. C. 60.

(d) in case of the death of a master, seaman or apprentice leaving no dependants, no compensation shall be payable, if the owner of the ship is under the Merchant Shipping Act, 1894, liable to pay expenses of burial;

57 and 58
Vict. C. 60.

(e) the half-monthly payment shall not be payable in respect of the period during which the owner of the ship is, under any law in force for the time being in the Colony relating to Merchant Shipping, liable to defray the expenses of maintenance of the injured master or seaman or apprentice;

(f) any sum payable by way of compensation by the owner of a ship under this Ordinance shall be paid in full notwithstanding anything in section five hundred and three of the Mer-

57 and 58
Vict. C. 60.

Merchant Shipping Act, 1894, (which relates to the limitation of shipowner's liability in certain cases of loss of life, injury or damage), but the limitation of the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under section twenty (relating to remedies both against employer and stranger) as if the indemnity were damages for loss of life or personal injury;

57 and 58
Vict. C. 60.

(g) sub-sections (2) and (3) of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependants of masters, seamen and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the application is made within six months of the date at which the ship is deemed to have been lost with all hands.

(2) This Ordinance shall also apply to any person not being a master, seaman or apprentice to the sea service, employed on board any such ship as is mentioned in this section, if he is so employed for the purpose of the ship or of any passengers or cargo or mails carried by the ship, and if he is otherwise a workman within the meaning of this Ordinance.

(3) In this Ordinance unless the context otherwise requires —

“Ship,” “vessel,” “seaman” and “port” shall have the same meaning as in the Merchant Shipping Act, 1894;

“Manager” in relation to a ship means the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner.

57 and 58
Vict. C. 60.

PROCEDURE.

Workman's
right to ap-
ply for com-
pensation if
no amount
agreed in
four weeks.

26 If an employer on whom notice of the accident has been served as aforesaid do not within four weeks after the receipt of the notice agree in writing with the workman as to the amount of compensation to be paid, the workman may make such application as in this Ordinance is provided for enforcing his claim to compensation.

All claims
to be deter-
mined by
magistrate.

27. All claims for compensation under this Ordinance and any matter arising out of proceedings thereunder shall be determined by the magistrate's court of the district in which there occurred the accident in respect of which the claim for compensation arose whatever may be the amount involved. All such questions shall be determined upon application made to such magistrate in manner provided by this Ordinance:

Provided that where an accident occurs within the jurisdiction of a travelling magistrate any proceedings in respects of a claim for compensation shall be had and taken in the magistrate's court for the Georgetown Judicial District:

Provided further that the Governor in Council from time to time may for the convenience of parties and the saving of expense by order direct in what magistrate's court proceedings for compensation may be taken in respect of accidents occurring in any area specified in the order.

28.—(1) A workman or an employer (hereinafter called the applicant) who desires the determination of any question arising out of an accident in which compensation is or might be claimed shall lodge with the clerk of the magistrate's court, a written application in the prescribed form accompanied by particulars containing:—

Application for compensation to be lodged with clerk accompanied by particulars.

(a) a concise statement of the circumstances under which the application is made and the relief or order which the applicant claims, or the question which he desires to have determined;

(b) the full name and address of the applicant and of his attorney or agent and the name and address of the respondent.

(2) If the application be made by an employer it shall be accompanied by a statement whether he admits his liability to pay compensation, or denies such liability and whether the admission or denial is total or partial, and if he admit or deny liability partially, a statement of the extent to which he admits or denies liability. In the case of a denial of liability the grounds shall be stated.

(3) If the clerk of the court be satisfied that the applicant is, owing to illiteracy, blindness or any other physical cause, unable to furnish the information required, he shall himself fill in the application and particulars on the prescribed form.

29.—(1) As soon as an application, together with the accompanying particulars and statement herein prescribed, has been lodged the clerk of the court shall forthwith cause a copy thereof to be served upon the respondent in manner prescribed by regulation, together with a notice requiring the respondent to lodge with the clerk of the court such answer as is prescribed in sub-section (2) within the period therein prescribed and that in default of his complying with that or of his appearing at a time and place fixed in the notice, such order may be made under this Ordinance as the magistrate thinks just and expedient. Except with the written consent of the respondent communicated to the clerk of the court, not less than fourteen clear days shall elapse between the date of the service of the notice upon the respondent and the date fixed for hearing the application.

Copy of application and particulars to be served on respondent.

(2) If the respondent intends to oppose an application he shall, within seven days after service of notice, or within such extended period as the magistrate may upon special request allow, lodge with the clerk a written answer containing a concise statement of the extent and grounds of his opposition.

(3) The magistrate may, at any time before the determination of the question in dispute and upon such terms as to adjournment or as to costs as he deems just, allow an application, or any particulars or

statement accompanying the same, or any answer thereto, to be amended. Any such amendment shall be lodged with the clerk of the court who shall forthwith cause it to be served upon the opposite party in manner prescribed by regulation.

Onus on employer to prove incapacity exceeding twelve months not permanent

30. If a workman is incapacitated for more than twelve months after the date of the accident the burden shall be upon the employer of showing that the incapacity is not permanent.

Magistrate to have power and jurisdiction of magistrate's court.

31. Save as is specially provided in this Ordinance a magistrate's court shall, upon or in connection with any question to be determined thereunder, have all the powers and jurisdictions exercisable and be subject to all the duties and obligations to be performed by a magistrate's court of the district in or in connection with civil actions in such court and the law, rules and practice in such civil actions shall *mutatis mutandis* apply; and any order made by a magistrate under this Ordinance may be enforced as if it were a judgment or order of such court.

Magistrate may adjourn hearing for twelve months where there is doubt as to degree of incapacity.

32.—(1) If the workman at the hearing of an application be incapacitated by reason of the injury in respect of which the application is made and if further it be uncertain whether the incapacity is temporary or permanent, or if permanent, whether it is partial or total, the magistrate may, if he is satisfied that the workman is entitled to compensation in the event of the incapacity being permanent, adjourn the hearing for a period or periods not exceeding twelve months in all, reckoned from the date of the accident causing the injury and may make an interim order that the employer shall, in the meantime, pay such compensation to the workman as is provided by the Schedule in the case of temporary incapacity for work or permanent partial incapacity for work, as the case may be.

(2) If the workman at the hearing of an application be not incapacitated but there is reason to believe that the injury sustained by him may ultimately result in his permanent or total incapacity for work or in his death, the magistrate may adjourn the hearing for a period or periods not exceeding twelve months in all, reckoned from the date of the accident causing the injury, so that the workman may retain his right to recover compensation in the case of permanent incapacity, partial or total, resulting ultimately from the injury, or the dependants retain their right to recover compensation in the event of the workman's death.

Power of magistrate to submit questions of law.

33. A magistrate may, if he thinks fit, in such manner as may be prescribed by rules of court, submit any question of law for the decision of a Judge of the Supreme Court sitting in Chambers and, if he does so shall decide the question in conformity with such decision.

34.—(1) An appeal shall lie to the Full Court from any order of a magistrate where a question of law is involved in the appeal : Appeals to Full Court.

Provided that from the following orders of a magistrate, namely :—

- (a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum,
- (b) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such a dependant,
- (c) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section eighteen, or
- (d) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions,

no appeal shall lie against any such order unless the amount in dispute in the appeal is more than two hundred and forty dollars.

(2) Notwithstanding anything herein contained, no appeal shall lie in any case in which the parties have agreed to abide by the decision of the magistrate, or in which the order of the magistrate gives effect to an agreement come to by the parties.

MISCELLANEOUS.

35. Notwithstanding anything to the contrary in this Ordinance contained a person in respect of whom a medical practitioner has certified that, by reason of old age or serious physical infirmity or any previous injury he is specially liable to meet with an accident or to sustain a serious injury if employed as a workman at any work may, in entering into a contract of employment with an employer lawfully agree with the employer that the employer shall pay less than the amount payable under this Ordinance in respect of the injury or death of that person : But no such agreement shall be valid and effectual, unless the amount agreed to be paid in respect of the injury or death is at least one-half the amount that would otherwise be payable as compensation under this Ordinance. A person physically infirm may agree with employer to accept less than the prescribed compensation.

36. Save as is specially provided in section thirty-five in respect of agreements, any provision in a contract of employment existing at the commencement of this Ordinance, or thereafter entered into, whereby a workman or his dependants relinquish any right to compensation under this Ordinance or to damages independently of this Ordinance whether for the workman or for any dependant shall be null and void. No right to contract out of Ordinance.

37.—(1) The Governor may appoint such medical practitioners to be medical referees for the purposes of this Ordinance as he may determine. Medical referees.

(2) Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as medical referee in that case.

Employers
to make
returns of
injuries.

38. Every employer in any industry to which the Governor may direct that this section shall apply shall, on or before such day in every year as the Governor may direct, send to the Colonial Secretary a correct return specifying the number of injuries in respect of which compensation has been paid by him under this Ordinance during the previous year, and the amount of such compensation together with such other particulars as to the compensation as the Governor may direct, and in default of complying with this section shall be liable to a penalty not exceeding fifty dollars.

Regulations.

39.—(1) The Governor in Council shall have power to make regulations for—

- (a) prescribing the procedure and forms in respect of matters to be done under this Ordinance ;
- (b) matters which are specifically mentioned in this Ordinance as being matters which may be prescribed by regulation ; and
- (c) generally for carrying out the objects and provisions of this Ordinance.

(2) All such regulations shall be laid before the Legislative Council within ten days after the making thereof if the Council is then sitting, or if not then sitting, then within ten days from the then next assembly of the Council.

Commence-
ment.

40. This Ordinance shall come into operation on such day as the Governor shall fix by Proclamation published in the *Gazette*.

A.D. 1934.]

WORKMEN'S COMPENSATION

[No. 7 .

SCHEDULE.

Section 5.

LIST OF INJURIES DEEMED TO RESULT IN PERMANENT PARTIAL INCAPACITY.

INJURY.	Percentage of loss of earning capacity.
Loss of either arm above or at the elbow ...	70
Loss of either arm below the elbow ...	60
Loss of leg at or above the knee ...	60
Loss of leg below the knee ...	50
Permanent total loss of hearing ...	50
Loss of one eye ...	30
Loss of thumb ...	25
Loss of all toes of one foot ...	20
Loss of one phalanx of thumb ...	10
Loss of index finger ...	10
Loss of great toe ...	10
Loss of any finger other than index finger ...	5

Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent of the loss of that limb or member.

Passed by the Legislative Council this 15th day of February, 1934.



Clerk of the Council.

(M.P. 942/33).

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