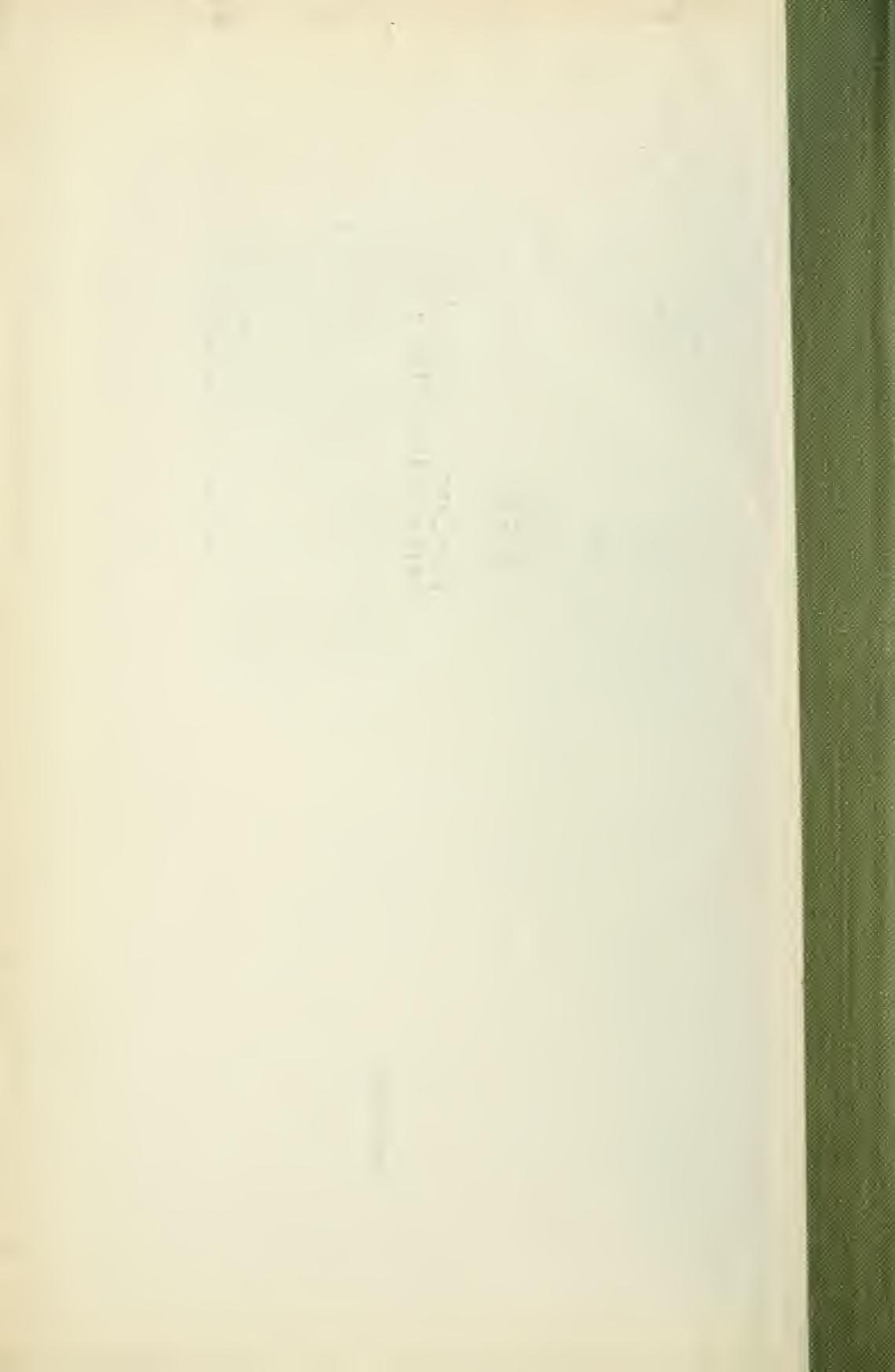


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# FINAL REPORT

ON

## Laws Relating to the Liability of Employers

To Make Compensation to their Employees for Injuries received in the course of their employment which are in force in other countries.

By

THE HON. SIR WILLIAM RALPH MEREDITH, C.J.O.,  
COMMISSIONER.

WITH  
APPENDICES

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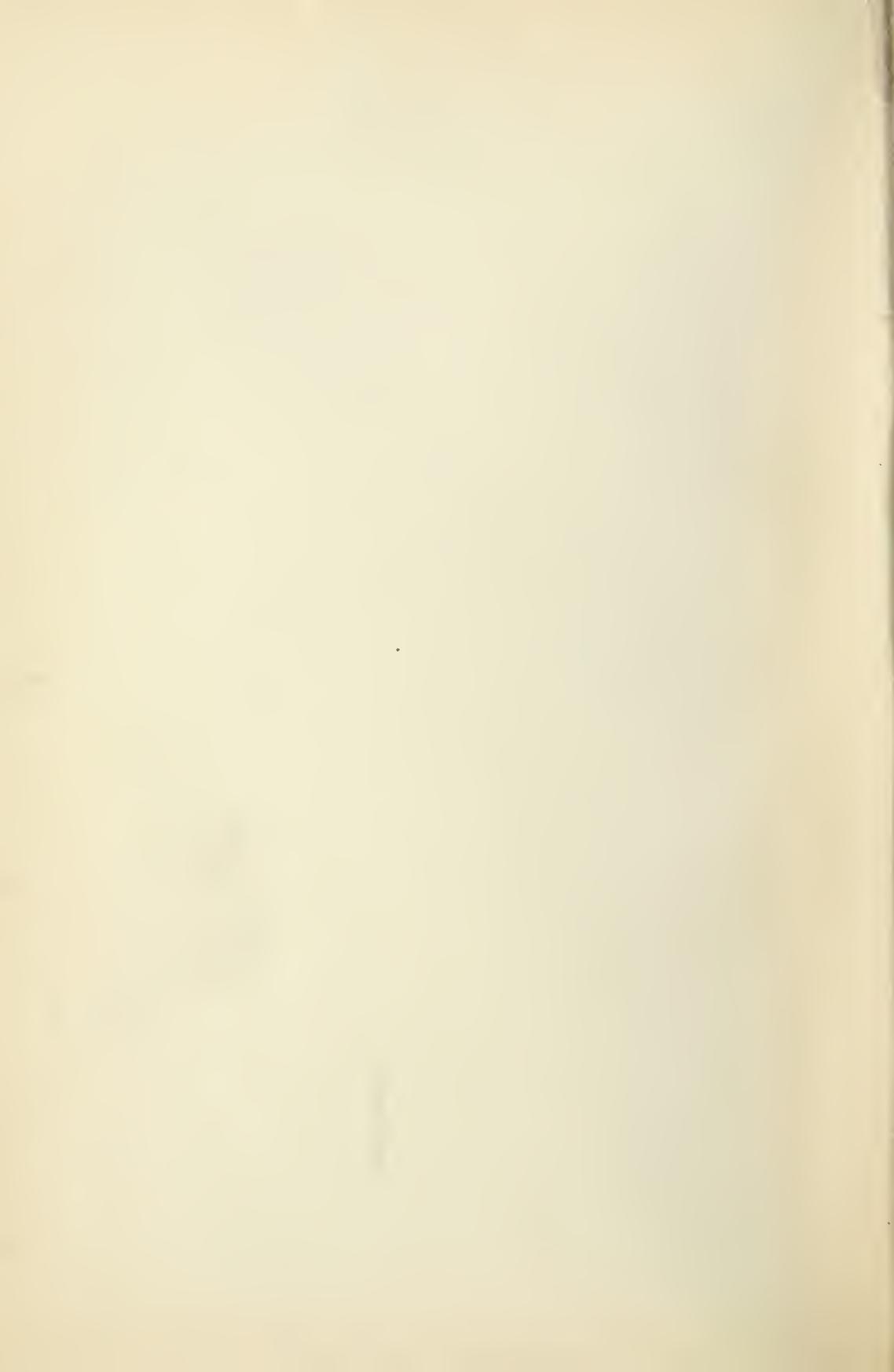
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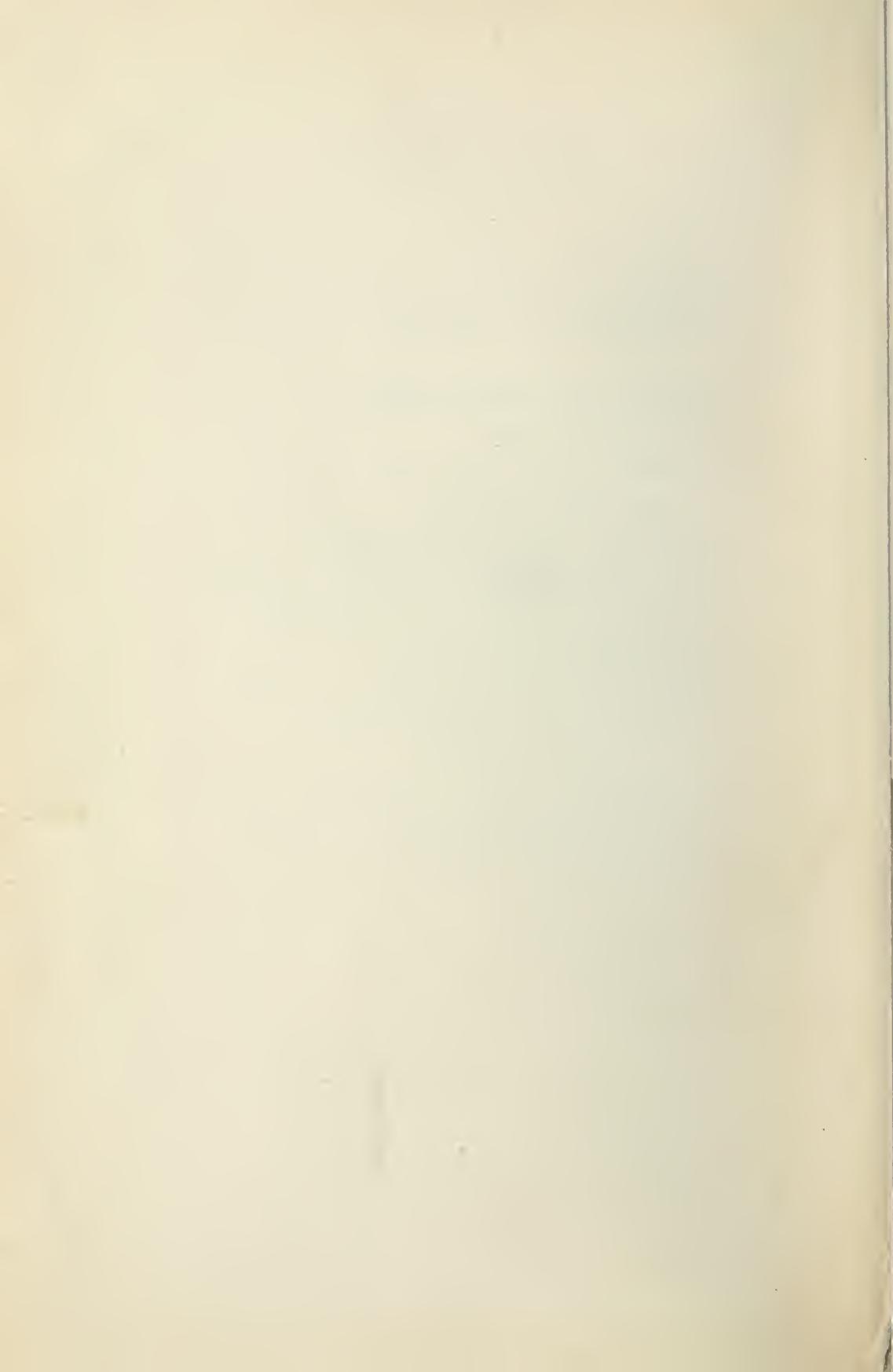
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## TABLE OF CONTENTS

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	PAGE
THE COMMISSIONER'S FINAL REPORT.....	v-xx
List of Persons Appearing Before the Commission.....	1
Appendixes :	
I.—Minutes of Evidence (12th-27th Sittings).....	5
II.—Mr. P. T. Sherman's Brief.....	620
III.—Mr. Wegenast's Answer to Mr. Wolfe.....	638
IV.—Mr. Wolfe's Reply to Mr. Wegenast .....	666
V.—Memorandum of The Bell Telephone Company.....	674
VI.—Memorandum of Manufacturers and Employers of Waterloo County, Ontario.....	677
VII.—Memorandum of Locomotive Firemen and Enginemen .....	680
VIII.—Memorandum of Locomotive Engineers.....	682
IX.—Memorandum of The Canadian Pacific Railway Company .....	682
X.—Memorandum of Casualty Insurance Companies.....	688
XI.—Mr. F. W. Hinsdale's Suggestions .....	691
XII.—Memorandum of The Trades and Labor Congress of Canada.....	694
XIII.—Draft Bill of The Canadian Manufacturers Association.....	697
XIV.—Letters filed by Mr. F. W. Hinsdale .....	721
Index.....	729
Errata.....	733



# Final Report

ON

LAWS RELATING TO THE LIABILITY OF EMPLOYERS TO MAKE COMPENSATION TO THEIR EMPLOYEES FOR INJURIES RECEIVED IN THE COURSE OF THEIR EMPLOYMENT WHICH ARE IN FORCE IN OTHER COUNTRIES, AND AS TO HOW FAR SUCH LAWS ARE FOUND TO WORK SATISFACTORILY.

By

THE HON. SIR WILLIAM RALPH MEREDITH, C.J.O., Commissioner

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*To His Honour Sir John Morison Gibson, K.C.M.G., K.C., LL.D., Lieutenant-Governor of the Province of Ontario.*

MAY IT PLEASE YOUR HONOUR:

I have the honour to report that I have concluded the enquiries which I was by Your Honour's Commission bearing date the 30th day of June, 1910, appointed to make "as to the laws relating to the liability of employers to make compensation to their employees for injuries received in the course of their employment which are in force in other countries, and as to how far such laws are found to work satisfactorily," and on the first day of April, 1913, I submitted to Your Honour a draft bill embodying such changes in the law as in my opinion should be adopted in this Province, and I now proceed to state my reasons for recommending that the draft bill should be passed into law.

At the outset of the enquiry it was contended by those who spoke on behalf of the workingmen: (1) That the law of Ontario is entirely inadequate in the conditions under which industries are now carried on to provide just compensation for those employed in them who meet with injuries, or suffer from industrial diseases contracted in the course of their employment; and (2) that under a just law the risks arising from these causes should be regarded as risks of the industries and that compensation for them should be paid by the industries.

With these two propositions those representing the employers expressed their agreement, though it is fair to say that it was probably not intended to agree that compensation should be paid in respect of industrial diseases.

Agreeing as I did with the contention of the workingmen there remained only to be considered in what form and by what means the compensation should be provided.

For the purpose of reaching a conclusion as to this, and in obedience to the directions of the Commission, I made enquiry as to the laws in force in the principal European countries, in the United States of America and in the Provinces of Canada. I also visited Belgium, England, France, and Germany, and consulted those concerned in administering the laws of those four countries, and others

qualified to judge as to whether they have been found to work satisfactorily. Much evidence has been taken bearing upon the general question, all of which appears in the appendix to my first interim report, dated the 27th day of March, 1912, and the appendix to this report.

Before referring to the different systems in operation it may be proper to say that most of these laws, and perhaps all of them except the German, have not been in force long enough to enable a conclusive opinion to be formed as to their merits or demerits.

There are two main types of compensation laws. By one of them the employer is individually liable for the payment of it, and that is the British system. By the other, which may be called the German system, the liability is not individual but collective, the industries being divided into groups, and the employers in the industries in each group being collectively liable for the payment of the compensation to the workmen employed in those industries—practically a system of compulsory mutual insurance under the management of the State. The laws of other countries are of one or other of these types, or modified forms of them, and in most, if not all of them, in which the principle of individual liability obtains, employers are required to insure against it.

Those representing the workingmen at the beginning of the enquiry appeared to favour the adoption of the British system. Mr. F. W. Wegenast, who represented the Canadian Manufacturers Association, strongly urged the adoption of the German system, and his view was supported by most of the other employers who appeared or were represented before me, and later on in the enquiry the representatives of the workingmen fell in with Mr. Wegenast's views.

There were, however, differences of opinion as to details. The employers insisted that a part of the assessments to provide for the payment of the compensation should be paid by the employees, and this was vigorously opposed by the representatives of the workingmen. The employers desired that no compensation should be payable where the injury to the workman did not disable him from earning full wages for at least seven days, and to this the representatives of the workingmen objected. The employers also desired that, as the British act provides, an employee should not be entitled to compensation if his injury was due to his own serious and wilful misconduct, but the representatives of the workingmen objected to any such limitation of the right to compensation.

As stated in my first interim report, I had then come to no conclusion as to these matters, or as to what system of compensation I should recommend for adoption, nor had I reached a conclusion as to the industries to which the law should be made applicable, nor as to certain other details which I enumerated in my report.

After the best consideration I was able to give to the important matters as to which I was commissioned by Your Honour to make recommendations, I came to the conclusion, to which I still adhere, that a compensation law framed on the main lines of the German law with the modifications I have embodied in my draft bill is better suited to the circumstances and conditions of this Province than the British compensation law, or the compensation law of any other country.

I have had the benefit of hearing the opinions of Mr. Miles M. Dawson, Mr. S. H. Wolfe, Mr. P. Tecumseh Sherman, and Mr. F. W. Wegenast, all of whom have given special attention to the subject of compensation laws and industrial accident insurance, as to the operation of those laws, and as to the best form of compensation law to be adopted under the conditions which obtain in this Province,

and also of hearing the opinions of Mr. James Harrington Boyd, who had a large part in framing the compensation law passed by the Legislature of the State of Ohio, and of Mr. F. W. Hinsdale, the chief auditor of the Industrial Insurance Board of the State of Washington, as to the operation of the compensation laws of those States, and also upon the general question as to the best form of compensation law for this Province.

These gentlemen differed widely in their opinions as to the best form of compensation law, as will be seen from their testimony and arguments which appear in the appendices to my report, and from the memoranda submitted by Mr. Wolfe and Mr. Sherman, although they are practically unanimous as to the industries bearing the burden of the compensation, and, with the exception of Mr. Wegenast, they are all of opinion that this burden should be borne equally by the employer and employed.

Mr. Sherman is opposed to the system of collective liability, which he characterizes as unjust because it imposes upon the individual employer the obligation of sharing the burden of accidents in other establishments than his own and, as he assumes, notwithstanding that by the introduction of the best machinery and appliances and safeguarding against accident he has reduced the number of accidents in his establishment to a minimum, he is placed as respects his liability to pay compensation on the same footing as an employer whose machinery and appliances are defective and who takes little or no precaution to guard against accidents in his establishment.

If a uniform rate were payable by all the employers in a class or sub-class, regardless of these considerations, I agree that there would be the injustice which Mr. Sherman points out, but I have in the draft bill which I have submitted introduced provisions (sec. 71, s.s. 2 and 4) which, in my opinion, will provide against that happening.

The arguments presented by Mr. Dawson and Mr. Wegenast, and perhaps those of Mr. Wolfe, in favour of the collective system are, I think, unanswerable if, as I believe, the true aim of a compensation law is to provide for the injured workman and his dependants and to prevent their becoming a charge upon their relatives or friends, or upon the community at large.

It is in my opinion essential that as far as is practicable there should be certainty that the injured workman and his dependants shall receive the compensation to which they are entitled, and it is also important that the small employer should not be ruined by having to pay compensation, it might be, for the death or permanent disability of his workmen caused by no fault of his. It is, I think, a serious objection to the British act that there is no security afforded to the workman and his dependants that the deferred payments of the compensation will be met, and that objection would be still more serious in a comparatively new country such as this, where many of the industries are small and conditions are much less stable than they are in the British Isles.

This objection could, of course, be met by making it obligatory upon the employer to insure his workmen against accident to the maximum amount to which they or their dependants would be entitled under the act, but if insurance is to be compulsory I see no reason why the cheapest form of it—mutual insurance—should not be prescribed.

I agree also with Mr. Dawson that the ultimate burden of paying the compensation under such a law as is proposed falls upon the community and that

whatever the employer has to pay, whether directly by way of compensation, or if he insures against his liability by paying insurance premiums, forms part of the cost of that which he produces and is added to the selling price.

Mr. Sherman's view is that insurance should be made compulsory "only if and when reasonably necessary in order to assure to the injured workmen the payment of their compensation," and that "in no event should those concerns that are amply able to carry their own insurance be required to buy insurance or contribute to a State scheme, for that," he says, "would be pure economic waste."

I do not understand the latter argument or how there can be said to be economic waste if the "concerns" he mentions are not required to do more than contribute with other employers to the payment of compensation according to the hazard of their respective businesses. I could understand that there might be economic waste if it were incumbent on such an employer to insure with a joint stock company which would require him to pay a premium sufficient to provide for the cost of securing the business and a reasonable dividend to its shareholders as well as to indemnify against the risk undertaken.

There was much discussion as to the basis on which the assessments to provide the compensation should be made. The German law provides for assessing only for the amounts required to meet the payments of compensation which fall due during the year next preceding that in which the assessments are made, with an added percentage to provide a reserve fund to meet deficiencies in the accident fund in the event of an unusual catastrophe or a depression in trade, but no assessment is made beyond that to meet the deferred payments of compensation, i.e., the payments which are to become due in future years. This plan, popularly called the current cost plan, is that proposed by the Canadian Manufacturers Association, and Mr. Dawson favours it as not only expedient because it does not involve making the heavy assessments which would have to be made at the outset if the capitalized value of the deferred payments had to be provided for by the assessments, but also as "not unfair to the employers in future years, or economically unsound."

On the other hand the current cost plan is vigorously denounced by Mr. Sherman, who contends that it is manifestly unfair to the employer of the future because it shifts upon his shoulders part of the burden of compensating for accidents which have happened before he became an employer, and that it results in low assessments in the early years of the operation of the law, and necessarily increases in the later years, until in a measurable period of time they become a burden too oppressive for the employer of the future to bear.

In support of his view Mr. Sherman referred to the rates in Germany, which he said, "now average about double what they were at the beginning," and he added that "it is calculated that they will not reach their stable maximum for some twenty years more. How much more they will then be no one knows, but the majority guess is they will then double."

Mr. Wolfe is equally emphatic in his condemnation of the current cost plan, and in addition to his oral testimony presented a table which appears on page 147 of the appendix to this report, and which he contended demonstrates the accuracy of his conclusions.

The views of Mr. Sherman and Mr. Wolfe were controverted by Mr. Wegenast, who contended that statistics prove that in some instances the stable maximum has already been reached and that there is nothing to justify the gloomy forebodings of Mr. Sherman as to the future.

Mr. Wegenast's contention is hardly supported by Mr. Dawson, whose opinion (page 452, appendix to first interim report) is that there will be an increasing rate "which is estimated to increase pretty rapidly for about ten years and then rather slowly and with increasing slowness for at least fifteen years longer, and if there is no improvement in the conditions relating to trade and industry, it will still very slowly increase for twenty-five years beyond that."

I am not convinced that the German plan affords an adequate safeguard against the dangers which Mr. Sherman anticipates, nor am I satisfied that it does not do so. I have, therefore, concluded that the act should not lay down any hard and fast rule as to the amount which shall be raised to provide a reserve fund and that it is better to leave that to be determined by the Board which is to have the collection and administration of the accident fund as experience and further investigations may dictate. I have therefore made provision in the draft bill to that end, by making it "the duty of the Board at all times to maintain the accident fund so that with the reserves it shall be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have previously happened," (sec. 70), and by authorizing the Lieutenant-Governor in Council if in his opinion the Board has not performed that duty to require the Board to make a supplementary assessment of such sum as in his opinion is necessary to be added to the fund, (sec. 90), and these provisions I deem essential to the safety and adequacy of the scheme of compensation for which the draft bill provides.

I may here point out that the act of the State of Washington upon which the draft bill submitted by the Canadian Manufacturers Association, to which I shall afterwards refer, is modeled, requires that for every case of injury resulting in death or permanent total disability there shall be set apart out of the accident fund the estimated present value of the monthly payments to which the workman or his dependants are entitled, the total in no case to exceed \$4,000.

Mr. Sherman also takes strong grounds against the administration of the act being committed to a Board appointed by the State, his view being that such a Board will be influenced by partisan political considerations in practically all its doings. I have no such fear. Whatever else may be doubtful as to the workings of the act there is no doubt, I think, that the members of the Board appointed by the Crown will impartially and according to the best of their ability discharge the important duties which will devolve upon them in the event of the draft bill becoming law. Whatever may be the experience of other countries the experience of Canada does not justify the view which Mr. Sherman entertains. There are now two Provincial Commissions appointed by the Crown discharging very important duties—the Ontario Railway and Municipal Board and the Hydro-Electric Power Commission—and one appointed by the Governor-General also discharging very important duties—the Railway Commission of Canada. Whatever criticisms there may have been of the action of these Boards, no one, as far as I have heard, has ever charged or even suggested that any member of them has been actuated or influenced by partisan political considerations in any action that has been taken by him and I know of no reason why the Board which is provided for by the draft bill may not be expected to be as free from political partisanship as either of the Boards I have mentioned.

I proceed now to state the general plan upon which the bill has been drafted. The bill is divided into Parts. In Part I the liability of employers to contribute to the accident fund or to pay the compensation individually is dealt with.

The bill does not provide for making all employers liable to pay compensation, but only those in the industries enumerated in schedules 1 and 2, and provision is made for industries enumerated in schedule 2 being added to schedule 1 whenever the Board deems it expedient to add them. Schedule 1 includes all the industries which it is proposed by the draft bill of the Canadian Manufacturers Association to bring within the scope of the act, except those enumerated in schedule 2.

The inclusion of railways in schedule 1 was opposed by the three principal steam railway companies and by some of the other railway companies, and I saw no reason why their wishes should not be met if by meeting them the act would not be rendered less beneficial to the employees and no injustice would be done to the employers in the industries included in the schedule. The draft bill has been framed so as, in my opinion, to work no injustice to anyone and not less beneficially to the employees owing to railways being excluded from the schedule.

The only difference between the operation of the act as to industries in schedule 1 and those in schedule 2 is that employers in the former contribute to the accident fund and in that way pay collectively the compensation, while employers in the latter do not contribute to the accident fund but are liable individually for the compensation payable to their employees. In other respects the operation of the act is the same in both cases. The Board determines the amount of the compensation in both cases and its orders when filed in a County or District Court become orders of the court and may be enforced as judgments of it.

The reasons for adopting the collective system have practically no application to railways, especially when, as has already been done in Ontario and will, I do not doubt, be done when the Parliament of Canada meets, provision is made that all sums payable for compensation shall form part of the working expenditure of the railway company, which is a first charge upon its revenues.

It is manifest, I think, that schedule 1 should not include industries of Municipal Corporations or Commissions, Public Utilities Commissions, Trustees of Police Villages and School Boards, and they have therefore been included in schedule 2.

Schedule 2 also includes the industries of telephone companies and navigation companies. These industries, like those of railway companies, are exceptional in their character, and the reasons for adopting the collective system have no application to them.

In order that additional security may be afforded that the compensation to which employees in the industries in schedule 2 and their dependants may become entitled will be paid, provisions are embodied in the draft bill enabling the Board to require an employer in any industry included in the schedule to commute the weekly or other periodical payments of compensation, (secs. 27 and 28), and also to insure his workmen and keep them insured against accidents in a company approved of by the Board for such sum as the Board may direct.

If it had been practicable to do so without impairing the efficiency of the collective system I should have preferred to include a larger number of industries in schedule 2 in order that with the two systems working side by side experience might demonstrate whether the collective system or that of individual liability was preferable, but I have not been able to satisfy myself that the exclusion from schedule 1 of any considerable number of the industries included in it would not impair the efficiency of the collective system, and I have therefore excluded from

it only the industries enumerated in schedule 2. Although but a small number of industries are included in that schedule the operation of the two systems will afford some evidence as to which is the better.

Another reason why it is not expedient to bring these omitted industries within the scope of the act is that by doing so the initial work of the Board would be very greatly augmented and the risk would be run that it would be so overburdened as practically to paralyze its operations. It is, in my opinion, much better that if these industries are to be brought in that should be done later on.

As what I have said has indicated, I have not thought it advisable at the outset to bring within the scope of Part I all employments. The principal industries excluded are the farming, wholesale and retail establishments, and domestic service. There is, I admit, no logical reason why, if any, all should not be included, but I greatly doubt whether the state of public opinion is such as to justify such a comprehensive scheme, and it is probable that when the question of bringing these industries within the scope of the act has to be considered, it will be found that provisions somewhat different from those which are applicable to the industries which it is proposed now to bring within it will be necessary.

I have however made provision for bringing any of these excluded industries within the scope of Part I if and when the Board deems it proper to do so, and its regulation or order bringing them in is approved by the Lieutenant-Governor in Council.

The bill would, in my opinion, fail to do justice to a large body of employees who will not be entitled to compensation under Part I, if it did not provide for a substantial modification of the common law as to the liability of the employer to answer in damages to an employee who is injured owing to the negligence of the employer or his servants.

According to the common law it is a term of the contract of service that the servant takes upon himself the risks incidental to his employment (popularly called the assumption of risk rule), and that this risk includes that of injury at the hands of fellow-servants, (popularly called the doctrine of common employment). The doctrine of common employment is an exception to the general rule that the master is responsible for the acts of his servants when engaged in his work, and has rightly, I think, often been declared unfair and inequitable. The reasoning upon which the exception was justified in the celebrated case of Priestley v Fowler does not commend itself to me as satisfactory, and I doubt whether if the question were to arise now for the first time the same conclusion would be reached. The case was decided at a time when very different views as to the respective rights and duties of employer and employed prevailed than are entertained at the present day, and at a time not far removed from that in which there was upon the Imperial statute book a law which made it a criminal offence punishable with imprisonment for "journeymen manufacturers or others" to agree together for obtaining an advance of the wages of themselves or of any one else, or for lessening or altering their usual hours or time of working.

The unfairness of this doctrine has been recognized by the Imperial Parliament and by the Legislature of this Province in the enactment of employers' liability acts which have modified it but to a very limited extent.

In referring to the legislation of this Province my reference is to the act called the Workmen's Compensation for Injuries Act, which is erroneously so styled, for it is really an employers' liability act.

In my opinion there is no reason why this objectionable doctrine should not, as one of the provisions of Part II of the draft bill provides, be entirely abrogated.

The draft bill also provides for the abrogation of the assumption of risk rule.

The rule is based upon the assumption that the wages which a workman receives include compensation for the risks incidental to his employment which he has to run. That is, in my judgment, a fallacy resting upon the erroneous assumption that the workman is free to work or not to work as he pleases and therefore to fix the wages for which he will work, and that in fixing them he will take into account the risk of being killed or injured which is incidental to the employment in which he engages.

Another rule of the common law is unfair to the workman. Although the employer has been guilty of negligence, if the workman has been guilty of what is called contributory negligence and his injury was occasioned by their joint negligence the employer is not liable. The injustice of this rule consists in this, that though the employer may have been guilty of the grossest negligence, if the workman has been guilty of contributory negligence, however slight it may have been; and his injury was occasioned by the joint negligence, the employer is not liable.

It is proposed by the draft bill to substitute for this rule that of comparative negligence as it is called, and provide that contributory negligence shall not be a bar to recovery by the workman or his dependants but shall be taken into account in the assessment of damages.

That in making these recommendations I am not advancing any novel proposition is shown by the fact that what I propose should be done in this Province has already been done in some of the States of the neighbouring Republic, and that the rules which it is proposed to abrogate or modify no longer meet the requirements of modern industrial conditions and are unjust as applied to the complex relations of master and servant as now existing, and to the use of complicated machinery and the great and dangerous forces of steam and electricity of to-day is the generally accepted view, and was the unanimous opinion of the Employers' Liability and Workmen's Compensation Commission of the United States (Report of Commission, Vol. I, pages 1,213 and 1,214).

Having outlined the provisions of the draft bill I have submitted to Your Honour and stated my reasons for recommending their adoption I proceed to a consideration of those provisions of the draft bill submitted on behalf of the Canadian Manufacturers Association and which, I assume, embodies its views as to the form which a proper compensation law should take, which differ from those of my draft bill, omitting such of the points of difference as I have already discussed.

The compulsory provisions of the draft bill of the Association apply only to industries in which three or more persons are regularly employed, but the option is given to employers in industries in which less than three persons are employed to come under the provisions of the act. The application of the act is not so limited in my draft bill, but provision is made (sec. 73) that the Board may withdraw or exclude from a class industries in which not more than a stated number of workmen are employed, and that an employer in any industry so withdrawn or excluded may nevertheless elect to become a member of the class to which but for the withdrawal or exclusion he would have belonged.

In my opinion it is most undesirable that there should be any such limitation of the application of the act as the Association proposes. As I have already pointed out, it is to industries in which a small number of workmen are employed that

the provisions of such an act are peculiarly applicable—as to the small employer, to prevent his being ruined as the result of an accident in his establishment, and as to his workman to insure that he will be compensated if he meets with an accident.

I am very doubtful whether it is desirable to adopt the provisions of section 73 of my draft bill. My object in introducing them was to make easier the work of the Board at the outset, and not with any idea that the power would be exercised except as a temporary expedient to lessen the work of the Board in the early stages of the administration of the act.

The proposition advanced on behalf of the Association in the early stages of my enquiry, that employees should be required to contribute to the accident fund, has apparently been abandoned, as I do not find in its draft bill any provision of that kind. I find in it, however, a provision (sec. 43) that the Board, if satisfied that in any employment the workmen are "desirous of an increase in the scale of compensation and are willing to pay the necessary increase in premiums, may by order sanction any such increased scale and may provide the method of collecting the increase in the premiums from the workmen in such employment."

— In my opinion it is not desirable to complicate the act by the introduction of any such provision. It would not, I think, be taken advantage of by workmen, and it is difficult for me to understand exactly what it means. Is it intended that it shall be applicable to a single establishment or only to a class? Are the workmen to be unanimous, or can the power which the section confers be exercised if a majority of them desires an increase in the scale of compensation on the prescribed condition? If the workmen must be unanimous, the section, I have no doubt, will be a dead letter. If it is intended that a majority shall suffice, the provision is, in my judgment, highly objectionable. Sub-section 2 of the section seems to be inconsistent with sub-section 1 or incomplete, in not providing that if the employer pays the increased premium he may deduct it from the wages of the workmen.

The mode in which the assessments are to be collected proposed by the Association differs somewhat from that provided for by my draft bill. The mode which I provide for is, I think, the simpler.

I do not like the term "premium" which is used in the Association's draft bill to designate the rate at which the employer is to be assessed. I prefer the terminology which I have used. What is levied by the Board is not a premium but an assessment.

The draft bill of the Association has but one schedule of industries to all of which the act applies, and it makes no provision for abrogating or modifying the rules of the common law as to employers who are not within the scope of the act. How my draft bill differs from this will be apparent from what I have said in dealing with the general plan upon which it has been drafted.

By my draft bill (sec. 60) the Board is given exclusive jurisdiction as to all matters and questions arising under Part I, and subject to its power to rescind, alter or amend any of its decisions or orders, its action or decision is final and is not subject to appeal.

It is difficult to understand from the Association's draft bill what the jurisdiction of the Board is intended to be. Section 21 provides that the Board shall have jurisdiction to enquire into, hear and determine all matters and questions of fact and law necessary to be determined in connection with compensation payments and the administration thereof and the collection and management of the funds thereof.

This language would confer on the Board a rather limited jurisdiction and probably, judging from the provisions of section 22, less than the draftsman intended it should have. The decisions and findings of the Board upon questions of fact are made final and conclusive, but on questions of law an appeal is allowed.

In my opinion it is most undesirable that there should be the appeal for which the draft bill provides. A compensation law should, in my opinion, render it impossible for a wealthy employer to harass an employee by compelling him to litigate his claim in a court of law after he has established it to the satisfaction of a Board such as that which is to be constituted, and which will be probably quite as competent to reach a proper conclusion as to the matters involved, whether of fact or law, as a court of law.

I may point out that section 23, which allows an appeal from the decision of the Board on "questions of law," appears to be inconsistent with section 22, for in the determination of the questions enumerated in that section which are to be deemed questions of fact it may be necessary to decide questions of law, and I confess that I do not quite understand what kind of questions, if those enumerated in section 22 are eliminated, it is intended to make appealable.

In a note to section 22 it is stated that "it is submitted that it would not be wise to entirely shut out appeals and place in the hands of the Board the sole right to interpret the act . . . and the right to define its own jurisdiction." What danger is to be apprehended from conferring these rights I do not understand, nor do I see what questions as to the construction of the act are likely to arise other than those enumerated in section 22.

In my judgment the furthest the Legislature should go in allowing the intervention of the courts should be to provide that the Lieutenant-Governor in Council may state a case for the opinion of a Divisional Court of the Appellate Division of the Supreme Court of Ontario, if any question of law of general importance arises and he deems it expedient it should be settled by a decision of a Divisional Court. Although I say this my judgment is against the introduction of any such provision, as it is probable that if any form of appeal to an appellate court is allowed, a defeated litigant will have the right to take his case to the Judicial Committee of His Majesty's Privy Council.

Section 10 of my draft bill, which deals with the case of sub-contractors and is applicable only to industries mentioned in schedule 2, is taken from the British Compensation Act. As the Association's draft bill does not provide for individual liability in any case, no provision corresponding to section 10 is found in it.

Sections 66, 67, and 68 of the Association's draft bill deal with the case of sub-contractors. They are, in my opinion, unnecessary and undesirable.

The draft bill of the Association is made to apply to the Crown. My draft bill is not. Apart from the question of the jurisdiction of a Provincial Legislature to affect the Crown as represented by the Dominion, it is in my opinion inexpedient that the act should apply to the Crown. It would be quite anomalous to group the Crown in respect of road-making, for instance, with other road-makers, and to make assessments upon the Crown as in the case of private persons.

I have no doubt that in case of injury to an employee of the Crown, for which if his employer were a private person he would be entitled to compensation, the Crown would make the like compensation to him and avail itself of the services of the Board for the determination of the amount and nature of the compensation.

The Association's draft bill (sec. 4) disentitles the workman and his dependants to compensation if his injury was, in the opinion of the Board, intentionally

caused by the workman, or was due wholly or principally to intoxication or serious and wilful misconduct on the part of the workman. My draft bill provides that compensation shall not be payable where the injury is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement.

The provisions of section 4 of the Association's bill are, in my opinion, objectionable. There is no need for the provision as to intentional injury as an injury purposely caused to himself by a workman is not an accident, and compensation is payable only in cases of accident and industrial diseases. In addition to this the definition of "accident" in the interpretation section of my draft bill (sec. 2) makes this abundantly clear: nor is there any reason for introducing a reference to intoxication, the provision as to serious and wilful misconduct being sufficient to cover any case in which drunkenness ought to bar the right to compensation. Section 4 applies whatever may be the result of the injury. The corresponding provision of my draft bill, following the British Compensation Act, does not apply where the injury results in death or serious disablement.

By my draft bill, following in this respect the British act, industrial diseases are put on the same footing as to the right of compensation as accidents. The Association's bill applies only to accidents. The diseases to which the act is to be made applicable are six in number and are enumerated in schedule 3 to my draft bill, but power is given to the Board by its regulations to add to the schedule. It would, in my opinion, be a blot on the act if a workman who suffers from an industrial disease contracted in the course of his employment is not to be entitled to compensation. The risk of contracting disease is inherent in the occupation he follows and he is practically powerless to guard against it. A workman may to some extent guard against accidents, and it would seem not only illogical but unreasonable to compensate him in the one case and to deny him the right to compensation in the other.

The last point of difference between the two draft bills to which I shall make any detailed reference is that as to the scale of compensation.

The scale of compensation proposed by the Association is in my opinion based upon a wrong principle and will not afford reasonable compensation to the injured workman and his dependants; and indeed I doubt whether, if it were adopted, the workingmen would upon the whole be in a much better position than they would be in without the act, especially if the changes in the common law which I recommend are made.

A just compensation law based upon a division between the employer and the workman of the loss occasioned by industrial accidents ought to provide that the compensation should continue to be paid as long as the disability caused by the accident lasts, and the amount of compensation should have relation to the earning power of the injured workman.

To limit the period during which the compensation is to be paid regardless of the duration of the disability, as is done by the laws of some countries, is, in my opinion, not only inconsistent with the principle upon which a true compensation law is based, but unjust to the injured workman for the reason that if the disability continues beyond the prescribed period he will be left with his impaired earning power or, if he is totally disabled without any earning power at a time when his need of receiving compensation will presumably be greater than at the time he was injured, to become a burden upon his relatives or friends or upon the community.

A uniform rate of compensation which has no relation to the earning power of the workman, except as the Association's bill provides, for the purpose of reducing the rate of 50 per cent. of his wages is, in my opinion, also inconsistent with the principle upon which a just compensation law is based, and unfair, and a most undesirable mode of fixing the amount of compensation.

Not only is the scale of compensation proposed by the Association open to these objections, but the amount of the compensation is so small that only the lowest paid workman would be compensated to the extent of 50 per cent. of the loss of his earning power.

The case of an unmarried locomotive engineer earning \$150 a month, not an unusual wage for the engineer of a passenger train, may be taken to illustrate the effect of the Association's proposition. All that he would be entitled to if permanent disability resulted from his injury would be \$20 a month, or less than 14 per cent. of the loss of his earning power, except in the rare case of his being rendered completely helpless and requiring constant personal attendance, and in that case his compensation would be double that amount.

There are other provisions which in my judgment are still more objectionable. The limitation to \$1,500 of the amount of compensation in case of permanent partial disability is, I think, unreasonable, as is manifest from the illustration just given.

The payment of lump sums is contrary to the principle upon which compensation acts are based and is calculated to defeat one of the main purposes of such laws—the prevention of the injured workman becoming a burden on his relatives or friends or on the community—and has been generally deprecated by judges in working out the provisions of the British act, and was condemned by the Association itself in the memorandum which it submitted, and which appears in the appendix to my first interim report (pp. 67-69).

The proposition that the maximum compensation in case of the loss of a major arm shall be \$1,500 besides being open to the objection I have just mentioned would be most unfair in the case of a labourer, to say nothing of the skilled artisan.

A more unjust and, as it appears to me, extraordinary proposition is that contained in clause (c) of section 31, which provides that in the case of temporary disability no compensation shall be payable unless it results "in the diminution of daily earnings to the extent of at least fifty per cent"; and as far as I am aware, and as I should expect, there is no precedent for it in the legislation of any country. As far as I have been able to ascertain, the furthest that any country has gone in that direction is to provide, as do the Washington act (s. 5, clause d) and the law of Norway of July 23rd, 1894, amended by acts of December 23rd, 1899, and June 12th, 1906 (art. 4, par. 2b), that no compensation shall be payable unless the loss of earning exceeds five per cent. In my opinion there is no justification for any such exception even if it is limited as in the Washington and Norway laws.

The scale of compensation which I propose was strongly objected to by the Association as being unfair to the manufacturer, and as imposing upon him a burden that would handicap him in his competition with the manufacturers of the other Provinces and of other countries, and would tend to divert manufacturing from this Province to other Provinces in which less onerous laws are in force. It was also urged that the scale of compensation is higher than that of any other country. The last objection, if a valid one, means that there can be no progress

beyond the point which has now been reached by the country which has provided the highest scale of compensation, for if the objection is valid as to the proposed legislation it would be an equally valid objection to any increase in the compensation proposed for the country which now provides for the highest scale. The question, in my opinion, is not what other countries have done, but what does justice demand should be done. I have no fear that if the bill should become law it will handicap the manufacturers of this Province as the Association appears to think that it will, or that it will divert manufacturing from the Province. There has been in force for some years in the adjoining Province of Quebec a compensation law which imposes upon employers greater burdens than they are subjected to by the law of this Province, and yet it has not been suggested that any such results as are prophesied by the Association have followed from the enactment of the Quebec law.

In order that it may be seen whether the division of the burden between the employer and workman is unfair, it may be well to point out how it will be divided under the provisions of the proposed law. The workman will bear (1) the loss of all his wages for seven days if his disability does not last longer than that, (2) the pain and suffering consequent upon his injury, (3) his outlay for medical or surgical treatment, nursing and other necessaries, (4) the loss of 45 per cent. of his wages while his disability lasts; and if his injury results in his being maimed or disfigured he must go through life bearing that burden also, while all that the employer will bear will be the payment of 55 per cent. of the injured workman's wages while the disability lasts.

The burden which the workman is required to bear he cannot shift upon the shoulders of any one else, but the employer may and no doubt will shift his burden upon the shoulders of the community, or if he has any difficulty in doing that will by reducing the wages of his workmen compel them to bear part of it.

It is contended that it is unfair to require the employer to pay compensation during the lifetime of the workman because in many cases it will mean that the workman will receive compensation for a period during which if he had not been injured he would have been unable to earn wages. No doubt that will be the result in some cases, but on the other hand the workman loses any advantage he would have derived had he not been injured from an increase in his wages owing to an improvement in his position, or to an increase of his earning power, or to a rise in wages from any other cause because, except in the one case of a workman who is under the age of twenty-one years when injured, the compensation is based on the wages the workman was earning at the time of his injury.

It must also be borne in mind that the workman is required, as the price of the compensation he is to receive, to surrender his right to damages under the common law, if his injury happens under circumstances entitling him by the common law to recover or, if he would be entitled to recover only under the Workmen's Compensation for Injuries Act, his right to the like damages as he would be entitled to at common law limited, however, to an amount not exceeding three years' wages or \$1,500, whichever is the larger sum.

According to the testimony of Mr. Wolfe (page 111), and there is no reason to doubt the accuracy of his statement, in Germany no less than 84 per cent. of the accidents incapacitate the workmen for less than fourteen weeks.

The nineteenth session of the Minister of Labour of France shows that the number of declared mitigants in that country in the year 1910, after deducting those which occasion the incapacity of four days or less, and omitting those

which happened in mines, mining and quarries, was 412,278, and that of these 1,650, or a little more than one third of one per cent., were fatal; 5,452, or about one and one third per cent., resulted in permanent disability, and 399,769, or about 97 per cent., resulted in temporary incapacity lasting for more than four days, and that in the remaining 5,407 cases, or about one and one third per cent., the results of the accidents were unknown.

In Great Britain the duration of disability in the cases terminating in 1908 was as follows:

Less than two weeks .....	11.2 per cent.
From two to three weeks .....	27.3 per cent.
From three to four weeks .....	18.4 per cent.
From four to thirteen weeks .....	37.7 per cent.
From thirteen to twenty-six weeks .....	4.1 per cent.
Over twenty-six weeks .....	1.3 per cent.

(24th Annual Report of the United States Commissioner of Labour, Vol. II, pp. 1,525-6).

Similar statistics for Ontario are not available, but it may, I think, fairly be assumed that the great bulk of the accidents for which compensation would be payable under the proposed law will incapacitate the workman for short periods—84 per cent. probably for less than fourteen weeks—and that the fatal accidents and those causing permanent disability, total and partial, will be comparatively few. If this assumption is warranted there would appear to be not only no reasonable ground for the apprehension of the Association that the employers will be unduly burdened with payments for compensation continuing during the lives of permanently injured workmen, but it is certain that under the proposed law as to the vast majority of accidents in every case in which there could be recovery at common law or under the Workmen's Compensation for Injuries Act, the workman will be worse off than he is at present, and his loss will be a direct gain to the employer, amounting annually to a very large sum.

My conclusion is that for all these reasons there is no valid ground for the objections of the Association to the scale of compensation which I have proposed.

I have, however, upon further consideration come to the conclusion that as the purpose of the proposed law is to protect the wage earner there is no reason why highly paid managers and superintendents of establishments, to which Part I is applicable, should be entitled to compensation out of the accident fund to an amount greater than the highest paid wage earner would be entitled to receive, and I therefore recommend that the draft bill be amended by adding the following to sub-section 1 of section 39:

“But not so as to exceed in any case the rate of \$2,000 per annum.”

If no such limit is prescribed the result would be that the small employer, in the case of an accident happening in another establishment to a highly paid official, would be unduly burdened. I propose \$2,000 as the limit because that sum is probably the maximum amount earned in a year by the highest paid wage earner.

The only remaining provision of the draft bill to ~~which~~ I shall refer is section 68, which provides for a contribution by the Province <sup>d t</sup> ~~higher~~ assist in defraying the expenses incurred in the administration of the act. ~~that the~~ <sup>at</sup> ventured to sug-

gest what this contribution should be but, in my judgment, it should be a substantial one. The effect of the proposed law will be to relieve the community from the burden of maintaining injured workmen and their dependants in cases in which under the operation of the existing law they are without remedy, and by the transfer from the courts to the Board of the determination of claims for compensation, which will lessen very much the cost of the administration of justice.

There is one matter which should be provided for for which provision has not been made in my draft bill. No provision is made for contribution by employers in the industries mentioned in schedule 2 towards defraying the cost of administration. This was an oversight, and I recommend that a section be added to the bill providing that "the employers in industries for the time being embraced in schedule 2 shall pay the Board such proportion of the expenses of the Board in the administration of this part as the Board may deem just and determine, and the sum payable by them shall be apportioned between such employers and assessed and levied upon them in like manner as in the case of assessments for contributions to the accident fund, and all the provisions of this part as to assessments shall apply *mutatis mutandis* to assessments made under the authority of this section."

It is the purpose of my draft bill to empower the Board in determining the proportions of the contributions to be made to the accident fund by employers to have regard to the hazard of each industry, and to fix the proportions of the assessments to be borne by the employer accordingly, and not to require that the proportions for each class or sub-class should be uniform; and also to permit the Board, if in its opinion the character of any class of industry justifies that being done, to require a larger contribution to the reserve fund by the employers in any such class than is required from employers in other classes.

The bill as drafted will, I think, accomplish this purpose, but if any doubt is entertained as to it, the bill can be amended by the addition of a section expressly so declaring.

I may be permitted to say, in conclusion, as the United States Commissioners said with reference to the bill drafted by them, that I submit the proposed law "not believing that it is the most perfect measure which could be devised nor the last word which can be said upon the subject, but as the result of careful investigation and the best thought of the Commission and as constituting at least a step in the direction of a just, reasonable, and practicable solution of the problem with which it deals."

I regret that some of its provisions do not commend themselves to the judgment of the Canadian Manufacturers Association, and on that account I have, since my last interim report, again carefully and anxiously considered those which are objected to and the objections that are urged against them, as well as the provisions of the Association's alternative proposition, but have seen no reason for doubting the correctness of the conclusion to which I had come, the results of which are embodied in the draft bill.

In these days of social and industrial unrest it is, in my judgment, of the gravest importance to the community that every proved injustice to any section or class resulting from bad or unfair laws should be promptly removed by the enactment of remedial legislation and I do not doubt that the country whose Legislature is quick to discern and prompt to remove injustice will enjoy, and that deservedly, the blessing of industrial peace and freedom from social unrest. Half measures which mitigate but do not remove injustice are, in my judgment, to be avoided. That the existing law inflicts injustice on the workingman is

admitted by all. From that injustice he has long suffered, and it would, in my judgment, be the gravest mistake if questions as to the scope and character of the proposed remedial legislation were to be determined, not by a consideration of what is just to the workingman, but of what is the least he can be put off with; or if the Legislature were to be deterred from passing a law designed to do full justice owing to groundless fears that disaster to the industries of the Province would follow from the enactment of it.

All of which is respectfully submitted.

W. R. MEREDITH,  
*Commissioner.*

Dated at Osgoode Hall, Toronto,  
the 31st day of October, 1913.

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## List of Persons Appearing before the Commission.

12th—27th Sittings.

	PAGE
Ballantyne, Mr. A. W.... Counsel for Casualty Assurance Companies, Toronto, 187, 208, 300, 304, 315, 384, 444, 527, 528, 532	
Bancroft, Mr. Fred.... Vice-Pres. Trades & Labour Cong. of Canada, Toronto, 47, 48, 68, 83, 93, 238=245, 256=275, 297=315, 344, 360=366, 375, 389=406, 446=469, 491=505, 511, 516=521, 525=536	
Best, Mr. W. L.....Legislative Representative Brotherhood Locomotive Firemen and Engineers, Ottawa, 348=362, 376, 377, 536, 611	
Britnell, Mr. A. E.....Britnell & Co., Stone & Builders' Supplies, Toronto ....515=519	
Burgess, Mr. J. W.....Ex-Pres. Trades & Labour Council, Galt .....	20
Burke, Mr. J. T.....Chief Inspector of Factories, Ontario, Toronto..... 481, 482	
Carter, Mr. F. C.....Counsel for the T. Eaton Co., Ltd., Toronto.... ...533, 587, 588, 610	
Cease, Mr. D. L.....Editor "The Railroad Trainman," Cleveland, Ohio ... 376=402	
Clarke, Mr. Charles....C.P.R. Engineer, London.....	251
Detwiler, Mr. D. W.....The Oberholtzer Shoe Co., Berlin .....	31
Dilworth, Mr. .....The T. Eaton Co., Ltd., Toronto .....	30
Doggett, Mr. J. W.....Representative Amalgamated Society Carpenters and Joiners, Toronto....61, 63, 118, 489, 513, 514	
Dolph, Mr. C. .....Mgr. Metal Roof Sheetng Co., Preston.....	22
Gallagher, Mr. W. E...Vice-Pres. Trades & Labour Council, Berlin.....	16, 17
Gander, Mr. George ....Pres. Builders' Exchange, Toronto ....499, 512=519, 592=597	
Gibbons, Mr. Joseph...Representative Trades & Labour Congress of Canada, Toronto ....48, 108=121, 143, 150, 163=165, 181=187, 246, 252, 256, 257, 387=389, 457, 463, 489, 500, 503, 521=536, 565=589, 593=618	
Gofton, Mr. Samuel....Pres. Trades & Labour Council, Berlin .....	18
Goldie, Mr. A. R.....Goldie, McCulloch & Co., Galt .....	13-15
Greutzner, Mr. Adolph..Furniture Co., Preston.....	24

## LIST OF PERSONS BEFORE COMMISSION:

	PAGE	
Halford, Mr. H. J.....Rep. Trades & Labour Council, Hamilton.....	47	
Hall, Mr. J. Harvey ....Rep. Order of Railway Conductors, Toronto .....	245, 247, 263-273, 364=374, 403, 423, 467, 530=537, 571=587	
Hall, Mr. Z. A .....Manufacturer, Preston.....	25	
Harris, Mr. Samuel ....The Harris Lithographing Co., Toronto.....	511, 554	
Hellmuth, Mr. I.F., K.C. Counsel for Railway Companies, Toronto .....	49, 50, 188, 222, 238, 239, 252, 253, 256, 260=275, 294, 296, 482, 498, 505=511, 527=535, 540, 553, 567, 582=590	
Hinsdale, Mr. F. W.....Chief Auditor Industrial Ins. Com., Olympia, Wash..	277-348, 368=376, 402, 404, 407=409, 441, 467=480	
Hibner, Mr. D.....Furniture Manufacturer, Berlin .....	28	
Hobson, Mr. Robert.....Gen. Mgr. The Steel Co. of Canada, Hamilton .....	32=46	
Kennedy, Mr. William.....Rep. Trades & Labour Council, Galt .....	18	
King, Mr .....	Foreman Metal Roofing Co., Preston .....	15
Kingston, Mr. G. A.....Union Trust Co., Toronto ...	370, 371, 456, 467, 517, 520, 521	
Kribbs, Mr. W. A.....Planing Mill, Hespeler .....	20=22	
Lang, Mr. G. C. H.....Pres. Lang Tanning Co., Berlin.....	5=7, 32	
Lawrence, Mr. Calvin...Rep. Brotherhood Locomotive Engineers, Ottawa....	249, 250, 461=465, 529=535, 581=611	
Lucas, Hon. Mr. I. B., K.C., M.L.A..Markdale .....	527, 537	
MacMurchy, Mr. A., K.C. Solicitor C. P. R., Toronto, 128, 131, 141, 152=186, 223, 238, 246, 274, 410=443, 506, 507, 541, 543, 564=617		
Maloney, Mr. John.....Representative Bro. Railway Trainmen, Ottawa....	348, 367, 376, 403, 404	
McCarthy, Mr. D. L.,K.C. Toronto.....	247, 482=494, 508, 526=541, 587=617	
McCulloch, Mr. C. R.....Pres. Ont. Engraving Co., Hamilton.....	38 ,41, 45, 47	
McKinstry, Mr. A. E.....Gen. Supt. International Harvester Co's. Works.....	35=40	
Meredith, Mr. H. T.....Representative Ry. Trainmen's Union, Toronto..	162, 466, 467	
Merrick, Mr. J. G.....Secretary Employers Ass'n, Toronto .....	515	
Neely, Mr. Charles H....Gen. Manager Ocean Accident & Guarantee Corp., Toronto ....	348	

	PAGE
Pannabaker, Mr.....R. Forces & Co., New Hamburg.....	23, 24
Pattinson, Mr. George, M.L.A.. Woollen Mills, Preston.....	8
Ritchie, Mr. Charles, K.C..Counsel for Casualty Ass'ce. Companies, Toronto..	229, 237,
	241=245, 253
Sass, Mr. W. T.....Mgr. Interior Hardwood Co., Berlin.....	29=31
Scellen, Mr. J. A. ....Counsel for Waterloo Co. Employers Ass'n, Berlin.	240=241
Sherman, Mr. P. T.....Counsellor-at-Law, New York City, N.Y.....	188-240
Studholme, Mr. Alan, M.L.A., Hamilton .....	38=47
Trowern, Mr. E. M.....Secy. Retail Merchants Ass'n, of Canada, Toronto ..	50=63
	98, 247, 248, 296, 297
Wegenast, Mr. F. W.....Counsel for Canadian Manufacturers Ass'n, Toronto, 148=158,	
160, 169, 178=187, 232=238, 253=291, 316=324, 331, 342=345, 367, 370=376,	
387, 401=446, 465=519, 533=618	
Wellhauser, Mr. Adam S..Secretary Trades & Labour Council, Berlin .....	26, 27
Williams, Mr. S. J.....Williams, Greene & Rome, Mfrs., Berlin .....	9=13
Wolfe, Mr. S. H .....Consulting Actuary, New York City, N.Y.....	128=187
Woodland, Mr. C. W. I...Joint Mgr. Employers Liab. Ass'ce. Corp., Toronto	162, 182



## APPENDIX I.

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# MINUTES OF EVIDENCE

Taken before the Commissioner

THE HON. SIR WILLIAM RALPH MEREDITH, C.J.O.

ON

# Workmen's Compensation

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## TWELFTH SITTING.

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THE LIBRARY HALL, BERLIN, ONTARIO.

*Friday, 19th April, 1912, 8 p.m.*

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner.*

MR. G. C. H. LANG: Mr. Commissioner, we citizens of Waterloo county are very much pleased that you have made it convenient to give us an opportunity of placing our views before you as to workmen's compensation, and the bill upon which you are at the present time engaged. This gathering here is composed of employers and employees, and I think every municipality in Waterloo county is represented. We thought Waterloo county, being the industrial centre of Canada, would be a fit and proper place to hold an investigation. Since this important subject has been under investigation many of our citizens in this community have given it some considerable thought. Within the past few weeks we had with us Mr. Harrington Boyd, of Toledo, who I believe was the frame of the Ohio act, which act appears to have given fairly good satisfaction at least, and a report of his address was published in the daily press here, so that considerable information has gone abroad to the public. We hope that you may find a means of framing a bill which will be fair to the employers and will be also a protection to the employees and those dependent upon them. I will call upon some of the employers and employees who are here to place their views before you so that you may be able to judge what are the requirements of our people, or what they wish for.

THE COMMISSIONER: Mr. Lang, and gentlemen.—I could not think of dealing with the question, the consideration of which has been entrusted to me by the Government, without getting the opinion, of both the employers and the employed throughout the Provinces, and, as Mr. Lang has well said, there is no part of the Province which is more alive to this question and in which there are more interests in proportion to the population than in this city and county and in the neighboring towns. The work to be done is an important one. The old ideas with regard to the relations of employer and

employee are changing, and I am glad to say it is recognized that the present laws, so far as they provide for compensation to a workman who is injured in the course of his employment, are behind the age, and that the employers are quite agreed that a change is necessary in that respect. The thing is to determine what is best and fairest to be done. A law that is unjust to the employers or that is unfair to the employees will not be satisfactory. We must endeavour, as far as practicable, to arrive at what will be a fair Bill to the employer of labour and to the man who labours. I hope too that there will be something like permanence, or a promise of permanence at all events, in a measure that I expect to be able, after full consideration, to submit to the Government for their consideration. I think it would be most unsatisfactory that there should be agitation, a feeling that things were not right and a desire to change. It is much better that the employer and employee should now arrive at a fair and reasonable solution, if at all possible, and endeavour to put upon the statute book a law that will be fairly permanent. Nothing in this world is permanent, everything changes and probably everything may be improved, but as far as practicable I think we ought to endeavour to put upon the statute book a law that as far as accidents are concerned at all events, shall regulate for years to come the relations between employer and employee. ¶ I am not here, however, for the purpose of expressing my views; at present, indeed, I have no views. I am here to get information. I want to hear everybody who feels he has anything to say. I have made an interim report to the legislature. I was sorry that I could not submit a measure that could have been considered by the legislature during the session, but the more I got hold of the question the more I became impressed with its intricacy and its importance. So many questions have arisen that it would have been folly on my part to have attempted to formulate any measure and submit it during the present session. It is my intention some time during the year to cross the water and examine at first hand the working of the laws in Germany, in France, and perhaps in one or two other countries that have had laws of this kind in force for a number of years. In Germany a very serious attack has been made upon the law by a gentleman who has held high office in connection with it. Others, with diametrically opposed views, say that there is very little in Dr. Friedensburg's objections. I feel that it would be well therefore for me to make inquiries on the spot, and so be in a position as far as possible to judge for myself upon which side the truth is. I will be very glad to hear now anybody who desires to express his views upon the subject.

MR. LANG: I, like many of those present here, have a good deal of hesitation in speaking upon such a broad subject. It is such a big study, and the more I think of it the more there seems to be in it. There are only a few points on which I would care to speak, and one is that I believe a fund for the purposes of compensation should be raised by levying a tax on the employers of five or more persons. I think this levy should be made annually. From what I can gather so far, I think if another means were adopted a great fund would be created at first that perhaps would not be necessary, and I do not believe, from what I know of it, it would serve any good purpose; but the annual tax I think the actuaries state would increase. I notice what some of the employers are doing, and the means they are taking to counteract—that is, they are getting together and providing means to avoid

accidents. I just received a circular to-day from a Tanners' Association where they set forth means of avoiding accidents by hoods, covers, screens, and nets, and drawing attention to dangerous appliances. I believe if there were an annual assessment or tax for this particular purpose the manufacturer would be very careful to keep those rates down. It would be to their own interests and they would watch out where they could make improvements, and accidents would be prevented. I think in that way many accidents would be prevented. I also think in the event of an accident or death the widow and family should receive a fair proportion of the earnings which the husband or father was making. With a man earning \$600, at the rate of \$12 a week, I believe his widow should get \$300 annually anyway, and that amount should be paid to her annually as long as she lives.

THE COMMISSIONER: And does not marry again.

MR. LANG: And does not marry again. I believe in Germany they hold out a bonus for the widow to marry again. I think they give her three years' allowance if she remarries. I believe also that this insurance fund or compensation fund should be handled by a commission appointed by the Government with as little politics to it as possible, possibly along the lines of the Railway Board. I believe a high class man should be appointed to that position such as a High Court Justice, and salary should not be a question. I do not think employers or employees or the public generally would hesitate on that point. I believe they would be willing to pay a large salary, a salary of say \$10,000 or \$15,000. I think if three honourable men were appointed, say a High Court judge, and possibly a business man and a working man, one of whom at least would be a disinterested party—a professor or someone of that kind—it would be sufficient, and those three to administer the fund. The expense of administration, I think, should be borne by the Government because as the matter now stands it would be a benefit to the whole community. Many cases would be kept out of court and there would not be the lawsuits, and there would be perhaps less work for some of the judges. In any event I do not think the cost of administration would exceed the cost of administration by the courts. I have also a note that a question comes up in the minds of some people that the payments to the beneficiaries should commence at once after the accident; and the question if there should be a waiting period; and if the employee should contribute. I do not think the employee should contribute towards the compensation; but there may be something in the waiting period of several weeks, and that perhaps the hospital bills and so forth should be paid. I think in that particular case the contribution should be made, because, while it is not a general thing, it would avoid many cases of claims which are very trivial. In fact, there are many factories which have their own benefit associations in order to overcome difficulties of that kind. I am sure that the employer and the workman whose interest it is in the meantime would have to pay out considerable money. You can all understand it would cost considerable money, but the law is going to be made anyway, and as it is for the benefit of the community, we would have to bear that. However, I believe very strongly in the current payment, that is in the annual payment or the annual collection of the tax that would be required in order to make that compensation.

I would like to call on Mr. George Pattinson of Preston, who

is an employer and manufacturer, as well as a member of parliament. He may not perhaps want to express himself so fully, but he is a good fellow and he will have something of interest to mention that will perhaps be new. I haven't the slightest doubt that all the members of parliament have been studying this question for some time.

MR. GEORGE PATTINSON: Sir William and gentlemen, I am sure with the gentlemen present, I have a great deal of pleasure in meeting Sir William upon this occasion, because this is a question in which we are all interested, and I think perhaps the more we look into it and the more it is studied the deeper the interest becomes. I came here to-night somewhat in the same position as Sir William himself, and with the object of listening and learning, because in a small degree perhaps I may have to be connected with any measure that may be placed upon the statute book and for that reason I want to get all the information I can. However, there are some general things I may say that have occurred to me upon which I think it is fair to speak. It certainly is a fact that the matter is of vital importance to both the employer and the employee, the one is just as much interested as the other. I think I may add to this, sir, that it should be of almost equal importance to the State, because the State should be interested in any matters that would prevent accidents or in anything that may alleviate the suffering that occurs from all accidents. I think the three are interested, but to the greatest extent perhaps the employer and the employee, and any bill that may be brought before the House, or any law that may be made unless it is thoroughly satisfactory to these people, will not have the desired effect. I think it is becoming a recognized principle that manufactured goods should bear the cost of not only what it takes to make them, and the wear and tear upon the machinery that is making these goods, but to a certain extent the wear and tear upon the employee who is engaged in making these goods. That assumes in some businesses a very serious risk. For instance in mining the risk is much greater than what it is in some other manufacturing places. Railroading is a very dangerous business, and the risk is very great. I think that the cost of any product should to a certain extent include the charge that would compensate for the wear and tear upon the mechanic as well as upon the machine. We all recognize that we have to meet in figuring up our costs, the wear and tear on machinery and plant. Now, to have that satisfactory there are different elements that enter into the subject. There is the question of who is responsible for the risk. I had a great deal of pleasure in listening to Mr. Harrington Boyd, and in listening to the tables he quoted, and I followed him as closely as I could, and I think the assumption that he makes clearly shows that these are divided into three classes. First of all there is the liability of the employer, who perhaps is to blame for want of proper protection, or for not being strict enough in seeing his rules carried out, because people are lax and will run into danger unless held back with a firm hand. There is then the liability of the servant or employee, who may be responsible perhaps from negligence and carelessness; we know that has happened. In our daily vocations by coming frequently in contact with danger we seem to forget the danger that is all about us. Then there is the common danger that can be attributed neither to the employed nor the employee, or, as Mr. Boyd clearly put it,

the danger that is due to the risk of manufacturing, a danger that is always and everywhere present and not in manufacturing establishments' only. There is risk in everything; it is larger in manufacturing establishments because there is greater danger. The question is how to meet these risks. I think, as Mr. Lang has said, that a scheme should be provided to pay and to pay liberally those people who have either suffered temporary suspension from work, or who may be disabled for life; a scheme that will be fair and at the same time be a preventative. I think anything I have read in connection with the scheme in Germany would indicate that there is a disposition for a great number of people to come within the workings of the Act who perhaps were never intended to come within that act. It is the same, sir, with the fraternal societies, and one of the factors that keeps the fraternal societies in the shape they are is the interest that every individual member belonging to that fraternal society has to see that the society is not imposed upon. In saying this I do not want to cast the slightest suspicion upon any working man, in saying that they might be inclined to come in and remain a permanent charge upon the society any more than any other class of people would do, but it is part of human nature. It is being found so in Germany, and the gentleman who was president of the senate, refers to it upon several occasions in his pamphlet that has just been issued. I think the employee's interest is the greatest means of prevention. Let him have an interest as he has in the fraternal society, and by that means you will make possible the working out of the act, difficult under any conditions, but impossible without his interest and co-operation. By interest I mean a monetary interest, an interest not as large as that of the employers, the manufacturers, upon whom I would place the larger share, but some proportionate interest. I think a great many people, a great many mechanics, when they understand this matter aright will feel that in this way they would not be coming in as a privileged class, but that whatever was coming to them was coming as their right, and the compensation, whatever it might be, they had helped to pay. Let me say again it should be very much less than what would be paid by the employers, but it should be such as to give them a standing and a feeling that whatever they claimed they were claiming as a right, and that it was not given to them as a pension, or as something that they had not earned; they could then look their fellow-men, their employer, and the world in the face, and say: This is what we are entitled to.

These are just a few remarks that I thought I would like to make; as I said, I came to listen. The question is so broad that if I were to go into details, I would perhaps be saying something that would be much better said by others present. I am glad to have had the opportunity of meeting these gentlemen here, both employers and employees, and I hope that as a result of the investigation, and with the co-operation, because there must be co-operation, of both employers and employees, such a law will be framed as will be a credit, sir, not only to the efforts that you have put forth, but a credit to the Province of Ontario, and if it is I am sure it will bring untold blessings to thousands of homes in this district where that law may have jurisdiction.

**MR. S. J. WILLIAMS:** Sir William and gentlemen, I am very pleased to be here this evening to give my endorsement to a scheme for the compensation of workmen, and I congratulate the Government on their selection of Sir William as the man who will frame this bill; that the

will be eminently fair we all know. Any one who has watched his career for so many years will feel sure that our interests and the interests of the labour people will be in safe hands. I do not want to speak as an employer of labour, but four-fifths of our people are women, and they require care and compensation the same as the men. In our industry and allied industries there are not very many accidents. I have never known of but one death, and that occurred in our own factory about twenty-five years ago. There have been many accidents, but few serious ones, but all the same they require some protection. In speaking of the question of compensation, and who should be assessed, I may say I am in sympathy with the thing throughout. I believe that the employer should bear the brunt of the burden; that the Government should bear the expense of administration so that the law shall be administered properly; and that the labour people should bear a portion of it so that we should be assured of their assistance in the prevention of accidents as far as possible. My experience with the labour people is that they do not want to be patronized; they do not want to accept anything that they are not justly entitled to, and I know that when this matter is put before them properly that they will feel, if they are going to be as it were the ones to watch our interests and their own, that a small contribution from them will be on the right lines. This will lead, to my mind, to accident prevention and to the use of safety devices which are most essential in every business where there is machinery running. No matter how small or trivial the machine may be it should be protected, if it is possible to protect it, and I think that the one who should give the ideas for the protection of that machine is the one who works it. If they are contributing to a certain extent to the fund they will watch and see that the machine is protected and that careless people are disciplined for being careless and bringing upon themselves an accident for which co-workers will have to bear part of the expense. I feel sure from my experience that the labour people will bear their share willingly, and that they do not want anything but what they are entitled to. In doing this they are safeguarding the lives of others. It is a small matter to scrap machinery, but it is a very expensive matter to scrap your employees. There is a very large investment in employees by every factory and by every manufacturer in the world, and that must be preserved. The earning power must be preserved as far as possible. We must have co-operation and the hearty co-operation of labour in order to preserve this. Then in taking care of the ones who are left, there should be a good and fair compensation to the widow and the children. We are all to-day, I may say, feeling very kindly towards each other all over the world after this terrible accident of the Titanic. There is nothing that brings us so near to each other as accidents to our fellow-men, and if it happens in your own factory you feel it just as much or a great deal more than you would with this terrible catastrophe that we are hearing the details of to-day. In speaking of the benefit societies, we have in our factory, and have had for years, a benefit society which has been a great success. The contributions are very light. There has been a great deal of good done to those who have been sick or injured, and the benefit society has been run and administered entirely by the employees. The firm has nothing whatever to do with it in any shape or form. We made them a small contribution a number of years ago and since then we have had nothing whatever to do with it.

There is no officer nor anybody in it connected with our company. For several years we sent a collector around to collect these dues from the people, both men and women, but we found that they resented the collector running after them all the time. About a year and a half ago the committee decided that they would, with the foreman's consent, have this deducted from the pay-roll every two weeks, as we pay every two weeks. Since that has been done there has never been a complaint. The society has grown, and last year was the most successful in its history. There never has been a complaint. That proves to us that when the labour people are given a fair chance to contribute, if it is a reasonable one, they are quite willing to bear it, and they have never said a word and have entered no protest at all. The largest contribution from any employee is 10 cents per week, \$5 per year, and the largest compensation is \$7.50 per week for the first eight weeks and half of that for the next four weeks. It has proved eminently satisfactory to the employees, and the proof of that is the growth of the society.

With this compensation act I presume the benefit societies will be done away with largely, but it occurred to me that if it was decided that a waiting period was desirable that the benefit societies could possibly be maintained for the collection of that fund with a possible 50 per cent. reduction from what it is to-day of the amount that is assessed. I feel that there should be a classification of manufacturers. We would not like to be classed with the more hazardous risks, because we have few accidents and no deaths that I have ever heard, except the one which occurred a good many years ago through a girl's foolishness in putting another girl's dress under the table and making her believe that her apron or something had caught in the shafting and she got down under the table to do this. In those days the girls used to wear their hair down their backs, and this caught in the shaft and pulled her under and she died in the course of a week. She completely exonerated us as far as she could, said it was her own fault, but all the same the pall of that accident has hung over us all who have been connected with the plant. We have tried as far as possible to protect our machinery, and will accept from any one suggestions for the protection of any piece of machinery we have around the place. I am sure the employees will all welcome an opportunity to make this a success when they consider how small the contribution will be for them to be made part and parcel of the act. As to the question of the court administering this fund, I agree with Mr. Lang's suggestion, but I would like to go a little further and throw out another suggestion. When it comes to the report of the accident and how this court is going to get its evidence, it will naturally come from possibly three different sides. There will be the doctor in attendance, the employer, and the one who is injured. Now, if the court sits a number of miles away from here there may be some question if even all three of the people will cover it when it is brought to the judge, if it be a judge who is the chairman. Then if you had someone whom they could send out to a place like Berlin to investigate the accident, taking these reports and getting details, and then make a strict investigation of the piece of machinery on which that accident occurred, in a very short time that man would become an expert in all classes of machinery and would tell them how to protect it, with the help of the one who is working the machine. Otherwise the court will not be able to

order that intelligently. We want prevention, and the way to get prevention is to have somebody who has seen a similar accident and knows how that machine should be protected. Then those machines and the preventive devices could be photographed and afterwards printed and distributed to all the manufacturers throughout the Province, and they then would get an idea of how to protect all classes of machinery so as to preserve the lives of the people and stop maiming them as is being done to-day. I believe this would lead to a great good, this expert assistance coming from a man of that kind. There are a number of gentlemen here whom I presume wish to speak, and I am very pleased to give way to them.

THE COMMISSIONER: Just bearing upon the question of contribution by the workingman, how do you meet this argument: No scheme of compensation pays more, in the case of permanent disability, than 50 or 60 per cent. of the wages, and it is said that the workman contributes the other 50 per cent. or the other 40 per cent.; he bears that himself. Nobody proposes to indemnify him fully for the loss due to injury. What do you say to that argument? Has it force, or how do you meet it?

MR. WILLIAMS: Do you mean the workman bears one-half?

THE COMMISSIONER: He bears one-half of the burden. He is maimed and he is totally disabled; he does not get his wages; he does not get more than 50 or 60 per cent. in any way; the balance he loses. It is said that he is a contributor to the extent of that loss, and that that is a safeguard on his side against his wittingly incurring danger.

MR. WILLIAMS: Well, Sir William, does he always bear all that? Supposing it is due to negligence on the part of this man? We have to pay just the same if he is a negligent man you see.

THE COMMISSIONER: Let us take a case that is not complicated by negligence. Supposing a man without negligence on his part is injured, and totally disabled. All that any law would propose to give him at the utmost would be 50 or 60 per cent. of what he was earning at the time the accident happened. Now, he loses the balance of that for the remainder of his life or for as long as he would be incapable of working, and the argument is that in that way he contributes very materially.

MR. WILLIAMS: Yes, it is true he does, but he is contributing all the time, for he has created a fund for taking care of himself by doing this. Is there no risk that he should take as well as the manufacturer?

THE COMMISSIONER: Does he not? The argument on the other side is if you were paying him full compensation for the injury there would be more force in the contention that he should contribute, but you are only paying the half.

MR. WILLIAMS: Of course I am saying now he should have a fair compensation.

THE COMMISSIONER: I do not think any country has gone higher than 60 per cent. of the earning capacity of the totally disabled workman. I am only just asking the question. That is an argument that has been used and I want to know how you meet it.

MR. WILLIAMS: Well, I do not know that I can answer that at the present time without giving it some more thought.

THE COMMISSIONER: I will be glad to get the answer at any time.

MR. WILLIAMS: I will be glad to do so.

MR. A. R. GOLDIE: Mr. Commissioner and gentlemen, I feel a good deal of difference in following the speakers who have already presented this case, and I do not want to say anything more than just on one point really, following the line of Mr. Williams. First of all I think that as a manufacturer a reasonable compensation act would appeal to me very strongly. I have had a little experience in handling a body of men, and if there is any one distressing thing in that experience it is the uncertainty of not knowing what to do when a man is injured. Unfortunately I have had the experience of one man being killed while I have been in my present place. It was entirely owing to his own negligence, but at the same time, as Mr. Williams has said, it was a most distressing experience, and the inability to decide what was the fair thing to do afterward was one of the hardest things I think I have had to do. I believe most employers want to be fair, and I believe that most workmen want what is just, but the uncertainty of not knowing what is fair and what is just is a very hard question, and if any Act lays down definitely what shall be done under the circumstances it clears the air of a great deal of misunderstanding. The point I would like to mention is the practical experience that has been had in our company with a benefit society very similar to the one Mr. Williams mentioned. In fact if I am not mistaken the society was modeled after ours. Ours has been in existence I think for thirty or thirty-five years. Of course it is a benefit society for sickness as well as for accident. It is entirely voluntary on the part of the men. The company contributes a very limited amount every year in two lump sums. The company takes no part at all in the management, and the men as I say contribute voluntarily, and the membership consists of about three-fifths of the total employees. That society levies a tax of 10 cents a week on each member, and at the end of the year pays a dividend, dividing up any surplus, except a small amount with which to start the new year, so that it brings it down to about 7½ cents a week. Out of that they pay \$4 a week sick benefits for thirteen weeks, 25 cents a day for thirteen weeks, and 35 cents a day for the next thirteen, and 25 cents a day for the next twenty-six weeks, making a compensation for one year from the day of sickness or accident. One point that probably has been a debatable point is the question of a waiting period. I had a talk yesterday and this morning again with the present president of the society who has been in our employ and was one of the first members of the society, and he said that at the beginning of the society they paid from the date of taking the sickness or the date of the accident, and it nearly wrecked the society. A man who was slightly indisposed would always stay off a week to get the week's benefit. I will not say always, but enough to make it a serious question. What they do now is this, I understand: It is entirely on the men's own initiative, a man that is one week off or less than a week gets no benefit; if he is two weeks off he gets one week; if he is three weeks off he gets two weeks; and then if he is four weeks off he gets the whole four. In that way it cuts out trivial accidents and trivial sicknesses. There are a number of benefit societies

in the factories in Galt, I think probably most of them are almost exactly the same as this. This same gentleman, the president of the society, stated that the local lodges have the same provisions. Now then, the proposition, as I understand it from your preliminary report, sir, is to have the compensation paid out of a collective fund assessed on all the industries. the industries being grouped in classes according to their risks, so that any individual employer does not directly pay for the accidents in his own individual factory. If that is the case I would make one suggestion, basing it on my experience with the society in my own company, and that is this: This fund will have to be managed from a central place. A great proportion of the accidents are minor accidents. I did not look up the statistics, but just roughly I would judge 80 per cent. anyway of accidents are of a comparatively minor character, and it will take as long for a commission or an expert at a distance to sift out and adjust minor accidents as it will for major accidents. What I would suggest would be this, that for minor accidents or accidents in which an employee is off say up to four weeks, should be handled by an individual association in each individual factory under the regulation and control of the same commission that has the larger fund. and that this association or benefit society, or whatever you call it, take care of all the accidents not over four weeks; that the compensation be decided on by the commission, what is fair, and that an assessment be made equally upon the employer and upon the employee to cover these minor accidents, and that the assessment for the major accidents, anything over the four weeks, be entirely on the employer. I put the proposition up to the president of our society to-day, and I asked him if he thought it was a fair proposition, and whether the workmen as he knew them would be willing to do that. Of course it is the opinion of one man, but of one who is in touch very largely with the men in our factory, and in touch with a number of lodges. and has a pretty fair opinion of what the men are thinking, and after thinking it over he said most decidedly he would consider it was a fair proposition. He said that first of all he would want to feel that he was contributing something to what he was getting back, and it would give him a feeling of independence that he would not otherwise have. That is only the opinion of one man, but I am giving it to you as he expressed it to me. This taking care of the fund locally would clear the way at the central office by taking out a great deal of the work, and if the workmen were interested to the extent of contributing half they would see that the fund was administered wisely. In fact from experience with our employees I would not hesitate to give the management of the fund to the employees, and there would be a tendency to see that there was no shirking. Then it would give them a feeling of responsibility and it would encourage them in using safeguards and in asking for more. My experience with regard to safeguards has been that in a good many cases an employer will put on a safeguard and that the workman will take it off if it is a little harder to work the machine, and he takes the risk. I go round my own factory very often and make them put back guards that have been taken off. I cannot find out who takes them off. but they are off, and I think it would tend to get away from that if the men felt they had more of an interest. This, Mr. Commissioner, is the suggestion I would make, that the minor accidents be handled locally, and that any extending over four weeks be handled by the commission. That four weeks is

just a figure, but that would cover a great many of the cases, and that anything that extends over that be then taken care of by the central fund, with the management of the local society largely in the hands of the employees.

THE COMMISSIONER: If anything like that were done I suppose it could be made optional with the employers and the employees in any particular establishment to do what you suggest, Mr. Goldie. That is, not to make it compulsory, but if any factory where the employer and the employees were willing that that should be done, it might be done.

MR. GOLDIE: Well, of course that would be one way, but I did almost think as I look at it now that it would be a wise thing to handle that part of the fund that way and make it compulsory. I think it could be left optional with the employees and the employers as to whether that society should cover more than bare accidents.

THE COMMISSIONER: But suppose it was limited, as Mr. Lang has suggested, to an establishment employing five, you couldn't apply it very well.

MR. GOLDIE: There might have to be an association grouping all the small industries into a group in a municipality. That is of course one objection to the suggestion.

MR. KING: Mr. Commissioner, and gentlemen, the factory which I represent is the Metal Shingle Siding Company of Preston. The employees in that factory have for the last six or seven years been covered by accident insurance of one kind or another, but for some reason or other accident policies did not appeal to them, and about a year and a half ago they decided to form a benefit association like that which has been described by the gentleman who spoke before. This at the present time is working to the satisfaction of the men. For the upkeep of this benefit the men pay into the association 15 cents per week. The remuneration to them in case of sickness is \$5 per week for the first twelve weeks and \$3 per week for the second twelve, and this seems to work out to the satisfaction of the men. I do not know that I can add anything further.

THE COMMISSIONER: Well, Mr. King, that would not take care of the more serious accidents as it strikes me. Supposing a man is permanently injured it would not take care of him. You only provide, as I understand it, for 24 weeks.

MR. KING: 24 weeks, yes.

THE COMMISSIONER: Supposing a man is totally disabled or is killed?

MR. KING: You see this is a benefit society amongst themselves and their liability, of course, would end at the expiration of the time.

THE COMMISSIONER: Do I understand that an employee gives up his right to be compensated if he is totally disabled in consideration of the benefit he gets, or has that question never arisen?

MR. KING: Well, it seems satisfactory to the men.

THE COMMISSIONER: I suppose you have never had an accident the consequences of which have lasted longer?

MR. KING: We have not as yet, no.

MR. W. E. GALLAGHER: Mr. Commissioner, and gentlemen, I did not expect to be called on to say anything, and I feel that I am not in a position, not having the information, to express a very intelligent opinion on the matter. From what I know and from what I have read of Mr. Boyd's speech, and the gentlemen that have spoken to-night, it seems to be a very important question. I came merely to get information, and as the former speakers have all been along the lines of the manufacturers, I have been able to get a lot of information that I consider of interest to the workingmen whom I represent.

As far as a benefit society goes I do not see how that could have any bearing on a compensation act to be enacted by the Government. There are advantages, but they are all optional, and when you come to take the workingmen into consideration and make that compulsory, and levy a tax on them they would consider that it was a kind of imposition, I believe. I am only speaking from my own general impression of the workingmen. I do not think there are many of the workingmen who have given this question very serious consideration. Personally, I believe it is a great advantage to both the manufacturer and the workingman and I am very anxious to see it come to something, and I hope that it will be something definite and satisfactory to both parties. I think there are great advantages in it to both the manufacturer and to the workingman. I believe at the present time that numbers of manufacturers now carry some insurance on their employees in insurance companies, and with the settlements that are made with their employees I think they must be disappointed. They pay for protection to a certain extent, but it is left to the insurance company to convince the court that it was the man's negligence, and quite often they convince the court that it was. However, I do not think the employer is altogether free from responsibility in that respect. If a manufacturer or an employer has a man that is negligent on a machine of any kind where he is liable to be disabled, I think he is doing both himself and the man an injustice if he leaves him there. He should be taken off there and a man put on that is careful, because he will only educate the careless man to a certain proficiency that he may get disabled. Then he does himself the injustice that he loses the man, and the man may be loses the power of an arm or a leg, and I think the employer is still responsible to a certain extent in that respect.

I think the workingmen in general are all independent enough to want to feel that they are not getting anything for nothing, and I think they would be satisfied to contribute to some extent, but they must be educated to the idea that they are getting a better compensation than they were formerly under the insurance companies in which their employers mostly carried policies. Then I think when they realize that fact that they would only be too glad to go in and co-operate with the Government and the employers to bring about such an end. But as to making it in the form of a benefit society and making it a compulsory assessment I believe personally the workingmen would resent it. Some of the earlier speakers gave me the impression that the State would derive certain benefits. I think myself that they would. There are widows and children who are left unprotected, and if they are not in a position to take care of themselves they must necessarily go to some charitable institution which is kept up by the State, and that would be one reason why the State would benefit. Then the manufacturers I

believe would benefit in this way, if a man meets with an accident and it is put into the hands of some person else to make a settlement for the smallest possible sum, it is financially his business, they are going to make it very low; and it is not only going to hurt the man, but it is going to hurt the manufacturer, because it creates dissatisfaction amongst the remainder of his employees, and at the same time the employer himself is disappointed at the settlement. He may be paying to the extent of a thousand dollars, and he would be only too pleased to see the workingman get the full amount of what he was paying for, but he does not. I consider, therefore, that a law like this would be a great benefit to the manufacturers and to the workingmen. There cannot be any question in the workingman's mind but what it would be a great benefit to him. There would be no necessity of going to law and losing what little prospect there was of getting something, and I do not doubt if the workingman became acquainted with the details, of course the details would have to be drawn out before them to keep them educated, but I believe they would take a great interest in it, and do anything in their power to co-operate.

THE COMMISSIONER: I may express this opinion. I quite sympathize in what you say about the duty of the employer to try and make his men more careful; but take a man who is working on a machine, and he thinks he knows all about it, and the employer says to him, "You are not careful enough, you must get out." would there not immediately be trouble in that factory?

MR. GALLAGHER: Well, as far as that goes there might be trouble that way. He might resent that. There are people that will overestimate their ability in running machinery; you often find they do it, and that is one case where the workingmen in general have to suffer for an individual. Just while I am on my feet, one of the speakers mentioned about employees taking the guards off machinery. I was just thinking after he mentioned that what would be the object of them taking those guards off, if it was not to increase the output of the machine, or to work to better advantage. It would necessarily mean he was taking that guard off for some certain purpose, and the manufacturer should appreciate that the employee is interested to that extent that he is taking that guard off that machine to increase the output of the machine, or something to that effect.

THE COMMISSIONER: The weak spot in that is that sometimes he takes it off because the work is easier. Then if a man is doing piecework he can do more work. There is no doubt that happens, and it seems to me that if the workmen generally would insist upon their fellow-workmen being reasonable about these things, and careful, and disown those things, that would help a great deal both the employer and the man himself who gets hurt. I have seen a good deal of that in cases that have come before the court. Men have been injured and the evidence has disclosed that the man was careless. I am afraid the workingmen do not sufficiently realize that they owe it to themselves to disown carelessness on the part of their fellow-workmen. Perhaps it takes a good deal of courage to do that, but I think it would be in their interests if they did. However, that is by the way.

MR. SAM. GOFTON: I was not expecting to be called on to-night. I am not a speaker. I do quite a bit of thinking, but when it comes to expressing my thoughts I am almost lost. I have heard a few of the speakers to-night, and what I have been thinking is this: It is a very good act to take hold of. I have always thought that a man should have some protection, especially in these manufacturing places. Of course, as some one said, there are places where they have protection by way of insurance, but at the same time it does not concern the men in the factories when they are at their work and when they get hurt. Mr. Williams said to-night he thought the employees should contribute something towards this. I am really of the same opinion, for this reason, that I think they will be more careful themselves and there will not so many accidents happen. The workingmen I think are independent enough to think if they do not contribute anything they have no right to receive it, but still after they get hurt or disabled then is the time they want to have something. They forget that part, where if they contribute to it they will not think about it afterwards; but they think, well, I have helped and I am getting my own back, and the man that is not hurt when he sees his neighbour hurt will say, "I have done something to help my neighbour." That is my view in having the employees contribute part of it. As I said before, I can't just express my thoughts.

THE COMMISSIONER: You are doing very well.

MR. GOFTON: So I will not take up any more time.

MR. WM. KENNEDY: Mr. Commissioner, and gentlemen, I did not expect to be called on to give any information on this particular subject. I came here more with the idea of getting a few suggestions that might be educational, for one must more or less receive some benefit when a discussion takes place. I suppose it is the intention of the Government to try to frame up a law that will meet the views of the different classes of people. Of course it is almost impossible, I believe, to frame a law that will satisfy everybody. There will be more or less dissatisfaction all along the line possibly, but the idea, I expect, is to satisfy the greatest number possible. Well, I classify the accidents to a certain extent under three headings. An accident sometimes is unavoidable owing to the lack of necessary collective information or expert information. It cannot be avoided until experience gives people the necessary knowledge to avoid it. Then there is the accident that is entirely avoidable and the employer is altogether responsible. Then there is the accident caused by the carelessness of the individual employee. Now, the question in my mind is how can we determine the responsibility. It appears to me the cost of this measure is the thing that is sticking the people, that is, the parties who are interested in it. Of course I am speaking merely as an individual and not as the mouthpiece of a great number of men, but I speak as an individual and must expresss my individual opinion. The first thing necessary is by expert statistical evidence to determine the responsibility, and of course that may take time. Then there should be workingmen represented on this board in some way. I do not think the workmen want something for nothing; I believe they are all willing, if they understand it, to pay for what

they get, but it is a question of whether they are responsible for the accidents to the extent that they are called upon to pay. That is where the trouble is going to come in my opinion. Some want the employers to pay all. I have heard workingmen state they wish the employers to pay all. Well, of course they are in the position of the employer who wants possibly the workingman to pay all. But my opinion is I would have to have, if I was to give an intelligent view as to the cost, such evidence that would convince me as to where the responsibility was, and distribute the cost according to the responsibility. If, for instance, five per cent. of the accidents were attributable or traceable to the carelessness of the employees they should pay five per cent. of the cost. If ninety per cent. of the accidents upon investigation were found to be placed to the credit of the employer they should pay ninety per cent. of the cost, and if five per cent. of the accidents was entirely unavoidable the State should pay that part of the cost. That is the way I look at it. Of course the parties who would possibly administer the affairs would consider that. Now, as to localizing the distribution by the local manufacturers I think as far as the working man is concerned that is altogether wrong. In my opinion there should be an independent commission appointed by the Government who would be strictly independent as far as either employee or employer is concerned, and they should investigate all cases, and the Government should handle all the money. How they collect it of course is merely detail that must be worked out in the framing up of the law.

As to the compensation in itself I take the view that if a man is totally disabled owing to the fact that the employer has been rather neglectful in protecting machinery, or hiring men who are not competent to do the work and therefore through some peculiar blunder on the part of this particular workingman other workingmen may be totally disabled, I think there should be the full liability. They should get, in my opinion, when the evidence was taken up, in case of death and if the man was in complete health, (and they could find out very easily whether he was a healthy man or not), if he was killed at the age of 20, and the general record of a man's life we will assume is 50, that man should get, or his family at least should get, as much as that man's earning capacity was until the time of his death. If upon investigation they found out that the employee himself was responsible then I do not think he should get that amount. As far as the amount and how it might be regulated as to those things, some insinuate (it isn't an insinuation possibly either) that a lot of workingmen might try to slip in on the game and try to get paid for an accident that did not really occur, or frame up something of that kind. I have found in my experience with workingmen, while I will admit there are some who would possibly do that, the percentage is so very small it should not be taken into consideration. In fact, those individuals are possibly well known, especially if they are working in a large concern. They are so well known that they would be easily detected. While the fraternal organizations work on the principle of a waiting period I believe in case of accident, which would be investigated right there and then possibly by the employees and the employers, and if it is found that the accident was serious enough to lay him off for a week, his pay should start right away and there should not be any waiting period whatever, because in my opinion the percentage is so small of people who try to

frame up a job, especially if the pay was slightly under their earning capacity, it would hardly be worth while taking notice of. As far as my personal opinion is concerned that is all the information I can give.

MR. J. W. BURGESS: Mr. Commissioner, I came up for information and education. I certainly have listened to it so far with a great deal of pleasure and as my minutes are limited to catch my car I will have to cut short my remarks. I certainly fall in line with Mr. Lang. He was the only man who said that the manufacturer should bear the brunt of those benefit societies. Now, I am in favour of compensation to the workingman. By making inquiries from men from other countries where compensation is in effect and they belong to some fraternal organization it has a tendency to create a laziness, and I do not like lazy men, and moreover I don't believe in the employers paying it all. They said the employees were contributing willingly. I work for men who are sitting in this room where I was forced to pay whether I wanted to or not, and it was on a very small wage too. I believe if the employee is forced to pay this he must have the remuneration in the pay envelope that is due him. This talk of paying a man 35 cents a day out of the benefit society if he meets with an accident, why, at the present prices of butter and such like it wouldn't buy butter for the table, and it is an injustice I think. With regard to men taking guards off machinery, the way the manufacturers are at it to-day, specializing everything—they specialize men on a machine and then when the next man comes along he has got to do the same or get out, and if the guard is in the way, he has got to do something or lose his job, and he may possibly take the guard off. I don't know of any case where it was done. Now, Mr. Commissioner, I am in favour of compensation, but I believe in both parties contributing to it.

MR. W. A. KRIIBBS: I am like a great many more here, I came to hear what was said instead of to make any suggestion. At the present time the way the Act is, most employers have insurance by which when an accident occurs the men are paid a certain amount. In all the accidents I have had in my woodworking establishment the companies have been lenient with them in minor accidents. They have paid their wages and also their doctors' bills. Sometimes the companies have not gone quite that far, but I have done it myself, so that any man that has been hurt in our shop has been paid his wages and his doctor's bill. I don't know whether the new Act will be according to the German law, or if it is according to the German law, he will be in as good a position as he is to-day for minor claims, but where a man is injured badly or permanently injured and goes to the courts, and has to go to the courts, I do not think that he is getting justice. I do not think the workingman can get it or does get it, and the amount of money he gets allowed him, a great deal of it is eaten up by expenses in one way and another. I think the Act at the present time should be repealed and something new instituted whereby the workingman would get what was due him without any expense to him, and then the employer would know what he has to do, and when a man is injured what he will have to pay, or what the Government will tax him. If it is done on the German plan he will know then about what amount of money he has got to pay each year. As I understand it the German law will cost

the manufacturer two and a half per cent. on his wage bill. The insurance to-day in our line—I don't know what it is in the iron works—the wood-working line is one per cent. on the pay sheet, the amount of wages that we pay each year. It shows that the manufacturer is going to pay a great deal more money, and I have not heard of a manufacturer that is objecting to pay that extra money to help the workingman. But there is one feature that I do not know will work out right unless the Government appoints a commission that will not be changed and that cannot be used as a political football. An Act that can be changed by either political party at every election I do not think will be satisfactory to either the workingman or to the employer. I think it should be something permanent. The Government should appoint the best men they can possibly get at no matter what expense, and take it out of politics altogether, and make it as the Railway Commission is, so that it shall not be changed every time there is an election or any agitation. There is another thing I want to say a few words on, and that is the removing of guards from machinery. I know in my shop, and I know in every shop I have been in, the manufacturer tries to get the best guards that he can for his machines. The wood-working plants I think are the most dangerous. In my own shop I have gone to the expense of buying the best make of guards for every machine we have got, and if you go through the shop one man will have it off. Now, you say "what is that guard off for?" "Well, it was in the way; I don't want the guard." I put up a notice that no machine must be used without the guard on. In a few days the notice was gone. The factory inspector comes along and says, "Where are the guards? There they are hanging on a post. What are they there for? Why don't you discharge the men?" Well, you go to discharge a man and you will lose half your men. I discharged a man for that reason and two men left that I couldn't spare very well. You will find in every shop when you have dismissed one man, other men will take up his cause and leave too. The guards are there for every machine and they will not use them. When an accident happens the guard is always off. Whether it is put on after the accident happens I don't know. I have never seen any of the accidents happen myself, but I am of the opinion the guards were not on when the accident happened or they wouldn't have happened, especially on a shaver and buzz plane, and on the saws.

As to the employees paying a part of the indemnity I myself think that is what it should be. Employees will stand by one another and when an accident happens you can't say unless you are a witness at it how it happened. They won't tell you. I know in one case I tried my best to find out whether a guard was used or not. Nobody knew. The guard was shoved into its place when I saw the machine after the accident. Nobody would tell whether it was on or off, and I couldn't find out. Now, if the employees pay a small amount they would see that their brother employees used the guard and would do their duty. Accidents often occur from men being careless, and if they would pay a small amount I think they would see that every one was using these guards, or see that they could not get injured. They would be more apt to look after each other and see that there was no injury caused. Then on the other hand I know of cases—I will not say all workmen are like this; it is a very small percentage—if an accident happens, a small thing that would not lay them off from work,

when they know they are going to get their pay and their doctor's bill paid, they will lay off for two or three or four weeks, when the doctor has told me himself they should not be off more than one week or less. Now, that was a case that happened at my own place, where I inquired from the doctor. I did not think the man injured was so bad, and the doctor was surprised that he was not back at work. He was laid off nearly four weeks and the medical man said he should not have laid off more than one. I do not think there are very many like that. On the other hand, while there may be a few of the workmen who will do that, there are manufacturers who will not provide guards; they will not provide anything. On the one hand you may have some of the workmen who will not do their duty, and on the other you will find manufacturers the same. It is not all the fault of the workingman. We have manufacturers I know that will not provide proper appliances. They say the men will not use them, and a great many of the men will not, but if this act should be passed whereby each man would be assessed according to his wage bill at  $2\frac{1}{2}$  per cent., you will find a lot of men are going to throw off these guards because a man can do more work on any machine that I know of without the guard than with it. The guard is a hindrance to a man getting out work, but I do not know of any case where a manufacturer has crowded his men so that the man had to throw off the guard to get out the amount of work. I do not think that ever happens. It has not to my knowledge. If this act is passed one thing they should have is factory inspectors who would compel every man to put on guards wherever it is possible to do so. How to get over the men not using the guard is a thing that I cannot very well tell you. I know in my own shop I tell them to use them and they use them three or four days and then they are off again. You have got to keep continually after them, but I do not know in what way you could frame a law to compel these men to use these guards. A great many of the accidents which happen I know are the fault of the men, and other accidents are the fault of the manufacturers for not having the machines properly guarded. I have nothing more to say only this, that whatever Act is passed I am sure the manufacturers and the workmen and the Government will try to make it satisfactory to everybody. I hope the Government will put it in such shape that it cannot be used for a political football at every election.

MR. C. DOLPH: Sir William, and gentlemen, from what little thought I have given to this matter, and what I have read, and from what I have heard here to-night, I would like very much to say that I think in the framing up of this act provision should be made to try and lessen the expense. From what I have heard from speakers who have given this matter a great deal of attention I believe they contend it is possible to reduce the expense by 50 per cent., and if that is possible that subject should at least receive 50 per cent. of the attention. We know there are many sides to the problem which has to be solved, and we recognize it is a very difficult matter to frame up an act which will deal justice to all people. At the same time in gathering information as we have been doing here to-night it seems to me that Sir William should be able to recommend something which would to a very large extent meet the case. As I am very desirous of catching this ten o'clock car I do not think I should

detain you very long with any remarks, but I would again repeat I would like to see very much the attention paid to this matter which should be paid.

MR. PANNABAKER: I do not know that I can add very much to what has been said to-night. There are a few points however which I might emphasize. I think you must not forget that while there are manufacturers or employers who would take advantage of their employees there are no doubt employees who would take advantage of their employers, and the number of employers as compared with the number of employees is a very small minority. There are so many employees that if one in ten or one in one hundred was disposed to be a little fraudulent or disposed to take advantage, the total number in our Province of Ontario would be quite an insignificant number, and it seems to me from the study I have made of the systems of compensation in other countries it has been in the minor cases of accident where a great deal of the fraudulent work has been worked out. If a man loses his hand it is easy to determine that his hand is lost, but if he is suffering from some little accident it is more difficult to determine to what extent he is injured and to what extent he may play upon his minor accident. So it is upon the small accidents where apparently the safeguard of the law must be brought to bear in order to protect the manufacturers and make a fair and square deal for both. I know the great majority of employees are just as anxious to have a fair and square Act between themselves and the employers as the employers are on the other hand. This act, as I see it, can be handicapped to such an extent that what we would save in lawyers' fees now would be eaten up by an army of officers and clerks in administering the fund at headquarters, and it appears to me a reasonable thing that if a good part of the minor cases of accident compensation could be dealt with locally, as has been suggested by some of the gentlemen, that it would relieve to a great extent the expenses which would be involved if all the details of settling minor cases, as well as the more serious ones, were dealt with at headquarters or the head office. The suggestion is that if minor cases not involving incapacity for more than a certain limited time could be dealt with locally, this objection would be averted; that is, the expense of a large staff at headquarters to administer the act and to distribute the compensation might be avoided by allowing local institutions of some description, such as I believe exists in Germany (perhaps not for that purpose, but in some such way) under proper supervision to distribute the funds in minor cases. But one thing I would like to say, and that is, there should be no room for quibbling between the employer and the employed; that there should be some definite stated compensation arranged so that there would be no cause of friction arising when an accident occurred, and that in minor cases as well as in more serious ones some definite amount of compensation would be provided for by the act so that there would be a fair understanding between the interested parties, and then no room left for a lot of litigation to arise afterwards in the settlement or adjustment of any case. I do not know that I have much more to say. I would like to see the elimination of all necessity for litigation, and not as in the case of Germany where the employees have the right of appeal to two or three tribunals. This has multiplied very seriously the work at headquarters, and, as I read from Dr. Friedensburg's books, has necessitated an enormous staff of officers and clerks to carry out the act.

THE COMMISSIONER: I would like to ask one question. You speak of certainty as to the amount. How would it be possible to have certainty where there is partial disability?

MR. PANNABAKER: The only way I see in that case would be a certain percentage of the wages.

THE COMMISSIONER: It must be regulated according to the extent of the injury?

MR. PANNABAKER: Certainly.

MR. ADOLPH GRUETZNER: I think most of those who have spoken had an idea that they might be called upon, which in my case, sir, has not been so. Had I known that my name would have been called upon I might have gathered a few thoughts, which I did not do. I am quite in sympathy, I think, with what I understand from the manufacturers here this evening, that something more satisfactory should be done. We are all under certain expense in paying to insurance companies, and then when an accident occurs it really does not go to the party who meets with the accident, and we would much rather pay and have that money go direct to the party who is injured even if it costs us a little more. I do not think that there is any one who would regret or grudgingly pay a little more, for we are all anxious that those who are injured or perhaps totally disabled should be looked after and that their families should be provided for. How to get after and make it fair for all, the more a person begins to think about it the more it seems a difficult matter, because we know, those who have quite a number working for us, that while we may be as careful as we can possibly be we find that we get conditions where it is all in vain. To give you an example, I advertised for a first class man to run a certain machine. I got an application from a man and hired him to come right on. He started in the morning, but soon showed that he could not run that particular machine. I left in the morning, and the superintendent told him that he wasn't satisfactory on this machine; in fact, the man proved to the superintendent that he did not understand the machine at all. He then said he could run a saw, and he begged that he should remain at this saw until I came home, as he had not sufficient means to go back to the city. The superintendent allowed him to go and work at this saw, a little sliver came loose and got into the saw and wedged his saw. He grabbed the saw with both hands and tried to shove the saw through, and a neighboring workman grabbed him by the collar—he reached over and grabbed him by the collar and gave him a jerk and pulled him off, and said, "If that saw had started your fingers would have been off both hands." Now, that man had only been in there a couple of hours when this happened. He told us he was a first-class man. This was three years ago, and he asked \$2.50, and I agreed to give him what he asked. Then I had another man who answered an ad. in the paper, and I cautioned him; I said, "I wouldn't for anything have an accident, and I will tell you it is a buzz planer and very dangerous. I have a guard and I want it kept on, but I want a man that understands it and a man that can run that buzz planer all day." He said: "I am your man. I have worked at it for three or four years, and I will take my own chances; I will run the buzz planer; I am not afraid of that." I said, "all right." I went through the shop one day and I saw

him cutting, and as I went past him he turned his head to look and watched me until I got to the door. Then I said to him, "See here, when I came in you looked up at me, and when I went out I saw you looking this way and that way. I know where I am going and I would much rather you watched your work, because if not you might have your hand cut off," and he said, "Thank you; I will do as you say." The superintendent warned him along the same line. Shortly after this, one morning before eight o'clock, he came up to the superintendent and told him he had his fingers all off. Now, there was a guard there and he was cautioned. We did everything in our power to prevent such a thing. I do not mean to say that workingmen are all like that. Of course a machine may break. I have seen a knife fly out of a machine, it went through the floor and struck the post and went into this post about an inch. The men told me that there were about half a dozen men between the post and the machine from which this knife flew, and if any of these men had been in line they believed it would have gone through two or three of them. Well, if any of those men had been hurt certainly their wives and children should be protected. So that it is a very difficult matter to say that the manufacturer should pay the entire loss. If one of the men had been between that machine and the post and had been killed I would not like to say but that the firm was responsible, and I would like to see such an arrangement as we are speaking of, that he should be paid the entire loss; but where a man whose carelessness allows a knife to be put in improperly gets hurt I do not see that the man should be paid the entire loss. In such a case it would be a great kindness of the firm to pay fifty per cent. to his family if that were sufficient in some way to keep them respectable. Since I have been looking into this during the last few days, and from the little that I have read, I have concluded to give it considerable more thought, and I will be pleased to hear when something definite has been drawn up and I hope that it will prove satisfactory. The one great danger I see is that it may get into the hands of politicians and those anxious to become politicians. There might be the danger in that direction of promises being made to either party that would not be fair and just.

MR. Z. A. HALL: I rather think I am too young in the manufacturing business to give any special idea on this act which is being framed. I have always thought though that the old act was rather a misnomer. It was considered a Workmen's Compensation Act, but I think a better name for it would have been "The Solicitor's Compensation Act." At the present time we know that all manufacturers carry a line of accident insurance, and the labouring man who wants to get compensated, if he does not settle peaceably but wants to go to law about it, is up against not an ordinary solicitor or lawyer, but is up against the solicitor for the insurance companies who has made a special study of that line, and the solicitor whom the workman employs is certainly not in a position to take charge of a case against an insurance company. I believe in many cases that the working-man would fare very much better if he settled with the manufacturer rather than go into litigation. So far as any act which may be put upon the statute books hereafter, I believe one thing in connection with it should be a definiteness which is not in the law at the present time. I quite agree too with a point that Mr. Pannabaker brought up that there

should be a specific remuneration for certain charges and certain accidents. Take for instance your accident insurance policies, which we all carry to a larger or smaller extent; the loss is assessed there, and there is no doubt about it. I do not know whether that could be incorporated in the Workmen's Compensation Act, but it certainly is very definite. Now, in connection with the management of these funds and who is to pay them, I believe the manufacturer should pay them. I believe the man who is working for you—and I do not say this in the way of any reflection at all—is the best constructed machine you have in your shop, and while we as manufacturers do not propose to own them or anything of that kind yet we repair the ordinary machines that are broken, and we repair them at our own expense, and I believe the manufacturer in whose employ a man is hurt should be the man who should pay the bill. I have not given this very much thought. In fact I did not know I was coming here until just a few minutes before the court came along. I have listened with a great deal of pleasure to the remarks that have been made, and only wish that I could have known more of this earlier so that I could have thought something about it. I think the Government has made a very wise choice in the selection of Sir William Meredith as the commissioner. We have been accustomed to look upon Sir William Meredith as a man who is absolutely honest and absolutely straightforward, as regards both manufacturers and workingmen, and any person who should, I might say, be so unfortunate as to come before him in another way. I do not think I have anything further to say, but I hope this law will be sufficiently definite and sufficiently simple and sufficiently straightforward so that the workman will get his dues.

MR. ADAM S. WELLHAUSER: My fellow workmen have pretty nearly covered the ground, especially Mr. Kennedy. He has voiced their views very well. It is only natural for the manufacturers to state that there are a lot of employees that are very negligent. Now, that may be the case. However, I believe that every workman knows that in nearly every factory he has seen guards put on after accidents happen. I know of more than one case where guards have been put on after the accidents happened. I remember one instance a matter of ten or eleven years ago, where a young lad fell out of a two-story building, and he has never been able to work at that trade since, and all he got for that was his wages, \$1 a week at that time. Now that would hardly pay his board. I believe the time is ripe for a compensation act, but the money should come from the employers. It is only too true what the last man stated that the workman is one of the most necessary machines he has in the factory. Without him he can practically do nothing, and if he can afford to repair his other machinery he should also repair the human machinery. Some have stated that perhaps the German law would perhaps be a good one. I do not believe that would be a good one at all, because they only pay after the fourth week.

THE COMMISSIONER: The thirteenth week.

MR. WELLHAUSER: So much the worse. I believe a man who is hurt needs the money the first week when there is nothing coming in but there is more expense.

THE COMMISSIONER: They have another fund which provides for him for the thirteen weeks, a sick fund, and that is contributed to by both the workman and the employer.

MR. WELLHAUSER: I believe they have a private fund, but in this town the workmen have private sick benefit associations and the like. However, that should not be mixed in with the compensation act because it is their own money. They have a perfect right to draw their own money at any time, just the same as if I belonged to a fraternal association. That has nothing to do with the Compensation Act. We have those workmen's organizations and they pay as high as \$7 a week for thirteen weeks, but that should not be mixed with this. In this case where a man is hurt he should be paid from the day he is hurt, providing the doctor should give a certificate weekly. The benefits should commence from the very first week. The certificate could be signed by the local doctor and sent to the commission. I do not believe in what someone has suggested that a local board would be better. I believe that would entail more expense. I believe a local doctor's certificate would be all that is necessary. Let the local doctor examine the man and send it to the commission. I think a commission of three should be enough.

Now, as to payments. Some say the workmen should pay 50 per cent. and others 25 per cent. I believe the statistics show that twenty-five per cent. of the accidents are due to negligence by the workman. However, I think that is not quite a fair estimate. I imagine it should be lower than that; that 25 per cent. was probably found from the records of the court where the workman has had a very poor show, has been up against the same kind of attorneys as this man referred to, and had to fight the very best legal talent with his limited means, and for that reason I believe they get 25 per cent. Perhaps if he had a fair show it would be down to 10 per cent., or lower. Assuming that ten per cent. would be a fair estimate the workman should only pay ten per cent., providing he is entitled to the same amount of benefits as his wages. Unless he is entitled to that should he lose half or twenty-five per cent. of his wages? Should the benefit be that much lower he should pay nothing to this fund because he is then contributing twenty-five per cent. of his wages already, which is a fair estimate. I hope you will quite understand what I am trying to get at. If he loses any part of his salary that part is contributed, which is enough. Some former speakers have referred to paying two and a half per cent. I do not believe they would have to pay two and a half per cent., because two and a half per cent. seems to be very high according to the accidents in this great manufacturing centre. If the manufacturers pay three-quarters of one per cent. I believe it would cover all the accidents that occur around here, and pay them pretty fairly at that. Of course some of the accidents that occurred were fatal, and you might say it bears heavily on those families that get very little. You can't blame the manufacturer for it. It is the court that does it, and their good legal talent. There was something else I was going to refer to but I have forgotten what it was. However, I think this should almost cover it. The workingman should either get his full wages from the day of the accident, or not contribute. If he should get three-quarters of his salary he should not contribute one cent

because then he is contributing twenty-five per cent. already. I believe that some employees take guards off machinery, especially when they are on piecework. Piecework was only invented to drive men and for no other reason. It may be all right, I have been working on piecework in our business, and it is all right for there is no machinery, but in some instances where a machine is dangerous, piecework should be done away with, because a man will naturally try to earn as much as he can in such hard times as at present and where the cost of living is so high, and a man has to work day after day to stop even, and he will remove almost anything to try and make some more money. Now, why not have some of those obstacles removed, and then if the man removes the guard let him be fined say \$1 for each offence, or something like that, and you will soon teach him not to take the guard off. It will perhaps stop the speed, but that is the employer's loss, if he works on day especially.

MR. D. HIBNER: Mr. Commissioner, and gentlemen, in considering what has been said I do not know that I can add very much, only this, that I think it would be only fair that each employer and employee ought to contribute a certain share to the fund that is to make up the indemnity that has to be paid. As a mechanic myself I believe the mechanic or hands in the factory would get more or less careless, it would put them more on their guard, particularly those that are not quite so fortunately gifted as to be practical mechanics. The better man alongside of one of those men would naturally help to educate him and try to help him along, if only to protect their own interests. There would be an interest at stake and human nature would naturally point that way. You know, sir, under the present conditions in the labour market for the last couple of years there are any amount of inquiries at the offices of the different departments. You know, that the rural districts are deserted. The young people are all drifting to the towns and the cities. They go to a factory, say in Hanover, and they work alongside of a machine, and once in a while only on a buzz planer. A man from there comes to Berlin and inquires at a furniture factory, or some other factory. He is asked, "What have you been doing?" "Well, I have been running a bow machine." "I don't need one of that kind, but I could use a buzz planer." He then says he has run a buzz planer, and the chances are he is hired and he goes to work, and what is the result?

He may be spared, possibly, and he may not, and therefore I say the men hiring out in some cases are not honest to themselves. If they were all honest I do not think there would be so many accidents, but they just like to make as much money as they possibly can even though they stretch the truth to some extent. I know it has been the case in our factory, and I am pretty sure I am safe in saying it has been the case in other factories. Human nature makes them try to get after as much money as they can possibly make, and more particularly in the busy times when workmen are so urgently needed and you cannot get help. Therefore I think that the mechanics and all those working in the factories ought to be assessed a certain per cent., just enough to put them on their guard, and let them understand that they have a partnership in the transaction. It has been mentioned that this commission should not be a political organization. I

quite agree with that. I should say, pay the price and get the best talent for a chairman that Ontario has got. I would say one of the High Court judges would be the best one to act as chairman, and let them appoint a second man amongst the labourers or mechanics, a good practical and thorough mechanic who knows all the ins and outs, and is fair and square, and then let those two appoint a third man, or whatever arrangements could be made. In that way I think that this commission would be out of politics altogether and that is where it ought to be. As Mr. Kribbs has mentioned here let it be without any political reflection. I know during this last local election it was said that Sir William was taking evidence, and all this, that, and the other thing, and he will report. Well, that is all right. I believe the Government is trying to have something to protect the workingmen, and I think they ought to be protected, but I do not think it ought to be mixed up in politics. It would be the worst thing that could happen. We do not know when the local House will change and there will be wrangling and uproaring about this question. I do not know that I can add very much more, sir. You have certainly got a lot of information. Berlin, and more particularly the county of Waterloo, is the manufacturing hub of Ontario, we claim, and I am sure I am speaking for myself and for the manufacturers and for the mechanics working in the factories when I say we are certainly delighted with your visit to Berlin to get the necessary information. We have a limited insurance and it costs us so much a year, but I don't know but what we have paid a good deal more than our help ever received. If my memory serves me aright in New York State I think they paid out to the insurance companies about \$23,000,000, and all the money I believe that has been paid back is about \$7,000,000. Now, that is unfair at the present time. As has been intimated before a man can get anything, particularly when it gets up to quite an amount, he has to fight for it. In some places if a man gets hurt to-morrow or in a couple of days (with all due regard to the legal fraternity) there will be some lawyer after him, and he says "Mr. So-and-So, I hear you got hurt?" "Yes." "How did it happen?" "Well, so and so." "Indeed, what are you going to do about it?" "Oh well, the boss says he is going to use me all right, he is going to pay my doctor's bill and pay my wages and all that." "But that is not going to put back your finger that you lost down there, and you have got a pretty good thing, and you had better get after some damages." Of course he is working for himself. Now, that is the big trouble, and I am glad to see that the Government is taking hold so as to do away with it and put the money where it really belongs. It is certainly very unfortunate if any one should lose a finger or a hand, and I believe that man ought to be compensated, and I am sure if the manufacturers and those working in the factories stand together, each one having the aim and object of doing what is fair and square between man and man that all concerned will be satisfied, and that of course makes us feel better all round. I thank you for your kindness.

MR. W. T. SASS: I do not know that I can add very much to what has been said to-night. It appears to me that as far as avoiding accidents is concerned the workingmen themselves can do more than anybody else. The employer usually has to take a man as he represents himself, and has to take

what he tells him for granted, as the truth. In a great many instances, as has been said, they want to get started in a factory, and naturally they think it is an easy job and sometimes it is. Now, in cases where men come in and they are given an opportunity I think it is only fair to the workingmen generally that they should stand by one another, and where they see that a man runs a machine in a careless way it is not only to their interests, but to the interests of everybody generally that they should point it out. Every mechanic who has been working for years on a machine knows the dangers, and knows how to handle it, and if he finds a man who wishes to have an opportunity of getting along in the factory and improve his position he can in many instances avoid an accident by telling him how. But oftentimes they feel that a man who comes in as an inexperienced man is a cheap man and they say we won't help him, no, we want experts, and they are not to be had. The manufacturing industries of Canada are growing at a rate faster than mechanics are made. As has been said here by several it has been specialized, and mechanics generally are not learning their trade to-day as they did years ago, and I believe the workingmen generally can help in this way, and do more towards avoiding accidents than any one else. I believe that so far as the workingman is concerned that he should be taken care of. Speaking for our own firm—and I have been practically a workingman myself and have always worked with machines and things of that kind up until a few years ago—we never belonged to an employers' liability, for this reason, that we did not think it was a fair proposition, and when I say this about men not being fair to one another it is not because we don't want them to have all that is due them. If any one is hurt he should really have what is coming to him and not pay it to the lawyer, but we must guard against that which makes men careless. You know when a man does not pay for anything he is apt to get careless, more or less. He is not interested. But if you belong to a business and have money in it you are interested in it to a greater extent than if you had nothing in it. I think every one would be. So it is with the workingman. If we as a whole contribute to an accident policy of that kind which helps one another every one is interested. I think it should be mutual and fair, and that each one should pay a certain amount towards that which is fair to both. I believe in the centralizing of a fund and that if each community would appoint an executive to take care of minor accidents and report to the commission it would be a benefit generally, and it would not involve the expense it would otherwise. Let the labour organizations appoint a fair honest man, and probably a manufacturer, and a disinterested party selected by the two, and let them take care of the minor accidents. In some of these cases where there is insurance to be paid it is oftentimes abused. I have worked in factories since I was thirteen years old practically, and I have known of a great many cases where men belonging to accident insurance societies abused them when an accident happened and the benefit was larger than their daily pay, and therefore it has hurt them to a great extent. The same thing happens with fraternal societies. So I believe where the men pay to a thing of that kind they are more apt to caution and warn those who put themselves in as being still incapacitated by the accident, when they are practically able to go to work.

They do not care to contribute to anything which is unfair. I might state just a short time ago, in fact not six months ago, we hired a man to run a buzz plane. That is the machine that has been talked of as rather dangerous. We hired him as a competent man, and he started but only worked a few days when he had an accident. It was practically nothing more than a scar. I was away when it happened, and they said you had better not work on this machine until Mr. Sass comes. "Oh well," he said, "I am myself to blame, I can do that." The man was put off the machine, and the next morning I asked him was he hurt much. "Oh no," he answered, "It was my own fault, and I am getting along all right, and I want to work." "Very well," I said, "but you had better work on some easier job where you will not have any pain through working." Well that was all right. At noon he got worse, and I said, "You had better stay at home." "Oh, but I can't afford to." "All right," I said, "we will take care of you." We always paid men up to this time, not belonging to the employers' liability, during the time they were off. Well, it wasn't long before the fellow came around and he wanted some ready cash. It was against the principles and we said we would help him along and pay his board. Oh no, he wanted the money, and he had a wife in Guelph he wished to bring in. We said we would pay the expenses. "Oh no, I want the money; I want \$25, and I want it right away." We got suspicious and we said we wouldn't do that. But we would pay all the expenses and give him \$10 to come to Berlin with his wife. Well and good. He wouldn't do that, and he said he must have it. We refused him, and the next morning before 8 o'clock we had a letter from a lawyer that we had better settle with the man that was hurt at our factory. Now, we considered it very unfair to ourselves when we consented to take care of the man that he should take such means of making something out of nothing, so to speak. We got a second letter from the same lawyer, and we explained the matter to him, that we wanted to be fair, and we believed we had done what was fair to the man. Well, he stopped me on the street and said he wouldn't take \$500. I might say as far as the part that was off his finger was concerned he could take that much off all his life and if he got \$500 every time he wouldn't need to do anything any more. It was that much of an accident. Now, in regard to the policy, it should be on the line that each one should contribute a certain amount, and make it on a fair basis.

MR. D. W. DETWILER: It is certainly a very interesting subject, and we all wonder now why this matter wasn't taken up earlier. There is no question but it is one of the most important that is before the country. I just want want to make a few observations. The accounts that Mr. Williams and Mr. Goldie gave of the working of their benefit societies gave me an idea. I think Mr. Williams quoted 10 cents a week as the contribution of their hands, and Mr. Goldie  $7\frac{1}{2}$  cents a week, which included sick benefits as well as accident benefits. I was sorry they did not give us the proportion that was paid out for sick benefits to that of accident benefits. However, I came to the conclusion that for minor accidents the contributions would be so very light that there could be no possible objection to a society of that kind being kept up and the minor accidents taken care of locally and so relieve the commission of a great amount of work and burden. Further

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than that I think there is no question but that the manufacturers are all ready to share the large proportion of the burden of the major accidents. That is all I have to say at this late hour.

MR. LANG: All the gentlemen who have given evidence before you are, I think, workingmen (with possibly the single exception of myself), who started in to work at a dollar a day or less. We are all of one kind here. Those who are employers now were employees at one time. I thank you gentlemen for your presence here, on behalf of the Manufacturers Association who called this meeting, and who asked the Commissioner to give us a hearing, which he has kindly done and has listened to us so patiently. I hope he will return home with information that will be useful and help him to frame such a Bill as you desire.

THE COMMISSIONER: I am sure I am very much obliged to the gentlemen for the information they have given me; it will certainly aid me, although there are some differences of opinion. I will be very glad to hear by letter from anybody who desires to supplement what has been said. I will be glad to hear from Mr. Williams, who was not quite prepared to answer a question I put to him. It was not fair, perhaps, to expect an immediate answer. If he will give me an answer in writing I will be glad to get it. It is a hard enough job anyway, and I want all the assistance I can get from all quarters. I presume that everybody will not be satisfied with any measure that is proposed; the only thing will be to have the most satisfactory and the fairest all round that we can get.

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## THIRTEENTH SITTING.

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THE COURT HOUSE, HAMILTON, ONTARIO.

Tuesday, 30th April, 1912. 8 p.m.

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner.*

MR. ROBERT HOBSON: We understand, sir, the case of the manufacturers was pretty thoroughly laid before you in Toronto, and we are willing to rest our case as put before you at that time, but we thought it only right that we should come here to-night and meet the labour men and answer any questions they might have to raise. Speaking for myself and my company I would say that we should be very glad indeed to see a compensation act whereby all employees should receive some benefit in case of an accident, whether it was due to their negligence or the negligence of the company, but we feel that the employees as well as the employer should be interested in providing for those benefits. We believe that if the employee is interested, as well as the employer, that it would tend to create a general carefulness throughout the plant, and if an employee saw another employee taking unnecessary chances and risks that he would call his attention to it, and also call the attention

of the employer to it as well, and he would also suggest safety devices, and on the whole we would all be benefited by it. There is nothing so distressing as an accident in the plant. I know I speak for ourselves, and I think I can speak for the manufacturers generally here in the city, when I say that we try whenever there is an accident to do everything we can to help the injured party whether he is to blame, or whether the company is to blame. I know in our own case we had an accident here which was tried before Mr. Justice Teetzel, and he commended us very highly for the manner in which we had looked after the man. We were not in any way responsible for the accident, but we got him into a private ward in the hospital and we had a trained nurse there with him, and paid his wages all the time he was off, and we were prepared to give him employment just as soon as he was able to come back to work. The man was not well advised and brought an action against the company, I am sorry to say, and we settled, and the judge commended us very highly. We try in every possible case to make a reasonable settlement with the man, and I believe that is the feeling of the manufacturers generally throughout the city, but we certainly think the employees as well as the employers should be a party to this agreement.

**THE COMMISSIONER:** The employees generally are very much opposed to that. At Berlin the only thing I heard said favourable to it was that if it was a voluntary contribution it would be all right, but they would not be content to have a compulsory contribution. I asked Mr. Williams who was there what answer he had to the argument that the workman does contribute under any scheme that would be proposed, because no one proposes to pay full wages or full indemnity. In no country is it more than 50 or 60 per cent. Does he not bear the other 50 or 40 per cent., or whatever it is, himself? Is that not a pretty strong incentive to save himself, in addition to the desire of every man not to hurt himself? There are very few men who wilfully hurt themselves I suppose. Men working, especially in industries like yours, get accustomed to these things and they take chances.

**MR. HOBSON:** No doubt.

**THE COMMISSIONER:** Not with any idea of an accident or getting any claim, but they take chances they ought not to take.

One of the questions is whether there should be a waiting period. A great advantage of the waiting period as suggested is that you would get rid of a great many small cases, and if the waiting period was a week or ten days, or something like that trivial accidents would not be claimed. The workmen of course object to that, but it obtains I think in nearly every country where there is a compensation law. It obtains in England.

Then what do you think of the suggestion which was made in Toronto that the industries should be classified? Would there be any difficulty in doing that in this province?

**MR. HOBSON:** I do not think there would be very much difficulty about it. Then we would be a check on each other. If we had more accidents in our company than other steel companies I have no doubt we would be checked up by the other companies who would be bearing an unfair proportion by reason of our negligence.

THE COMMISSIONER: What do you think if an employer neglects to conform to the law in providing safety appliances and an accident happens and he makes a claim on the fund, of giving the right for the fund to claim from him additional contributions? I think most of the laws have provision of that kind. In some the man is given his common law remedy, where the employer has been recklessly careless.

MR. HOBSON: Well, is it the proposition that the employee should have the right to enter action under the common law as well as the other?

THE COMMISSIONER: That is one of the subjects to be discussed. What is thought by some is that as the compensation will be paid upon a very liberal basis and negligence left out, it might not be unreasonable to do away with the common law action. My experience is that there are very few cases in which there is any recovery in common law,—I do not think one in a hundred,—so that there would not be much given up.

MR. HOBSON: I am afraid if the man is allowed to bring an action at common law that we would still have that serious trouble of the men being ill advised. I have made settlements with my men and they were absolutely satisfied with the settlements we had made, and we paid them the money and took their releases, and afterwards had actions brought against us.

THE COMMISSIONER: There is no doubt there are difficulties of that kind.

Have you any view as to how far the operations of the Act should extend, whether it should take in all the employees, no matter in what walk of life, or whether it should be confined to what might be called the hazardous industries?

MR. HOBSON: I am not speaking now for any person but ourselves, but I would like to see a compensation act that would give the men some benefits, no matter what positions they occupied.

THE COMMISSIONER: Of course in a small concern if you had every employee there would be a great difficulty in getting hold of the people to collect the tax, and it would involve a good deal of expense, but on the other hand it would be a very unsatisfactory thing if a man in your establishment is hurt for him to be compensated, and a man next door in a small place is hurt and he is not compensated. A law of that kind I should think would cause irritation. These are some of the questions outside of the general principle that are very important to be considered before a scheme is formulated.

Then, shall the people in commercial businesses be brought in?

MR. HOBSON: I would make it from the farmer up.

THE COMMISSIONER: Perhaps if you represented a farming constituency in the legislature you would hesitate to say that.

MR. HOBSON: I hope some day, sir, when I have got a little bit older and accumulated some of my earnings that I will be able to go onto a farm myself.

THE COMMISSIONER: Well, in most of the countries they have not brought in the farmer. In England they do. In Germany I think it is limited to farming industries where motive power is used. In the North West provinces

they have excluded farming. Of course they are all farmers there. However, it is a strange thing that the statistics show that there are more accidents in the farming industry than even in railroading. I would not have thought that that was so.

MR. A. E. MCKINSTRY: I do not know that I have any original thoughts on the subject, Sir William. I have thought that any scheme, or any plan that might be put into operation, should aim first at the prevention of accidents. It seems to me that is the prime thing to be accomplished if we can. In our own business, and I am speaking only of our own business here, we classify accidents roughly into three classes. They can fall into three classes. In one we find the accident is due to some fault of the company; that is, it could have been prevented by some safeguards or some prevention if we had been wise enough to foresee it. The second class of accidents is due entirely to the carelessness of the man or the employee in failing to use the appliances provided for his safety, or through his awkwardness, or through his inattention to his duties. The third class is simply accidents; you can hardly put them in either one of the other classes. I think I am within the mark in saying that within the last year we have spent about \$10,000 on safeguards and devices to make our plant as safe as it is possible to make it. We have safety committees in all the departments of any importance, three men in each department. Every week they have an hour of the company's time, on full pay, to go freely about the department in which they work in order to make suggestions and recommendations to me as to what they think should be done, and I find that after we spend all the money that is possible to spend, and do everything that we can see to do to reduce the number of accidents, yet there are still accidents happening. Accidents still happen, and I know to stop them or reduce them we must have the co-operation of the men; that is necessary or we cannot stop a certain percentage of them, which is a very considerable percentage. I think that is one of the big features to aim at. Then I should hope that we might be able to define clearly the liability; that is to say, that we might fix something in this Act that would be accepted as final without recourse to common law. I think if that is not done we will fail to escape the injustice and the expense that is now brought about by bad advice from some of the legal fraternity, which I think it is very important to get away from. I do not mean to reflect on the profession as a whole, sir, but I think all employers of labour recognize that as one of the features involved in this thing. Another point that seems to me of importance is the administration of it. In the administration of our small affairs we have found a good many pretty solid problems, and it seems to me unless that part of it is very carefully safeguarded there will be a large proportion, or a considerable proportion, of the money collected used up in the administration of the act instead of going directly to the beneficiary to whom it should go. It seems to me important that it should reach the injured man and his dependants as quickly as possible and with as little diminution as possible. I think we all agree that the principle is right. We haven't any quarrel with the principle. We believe it is right, and what we are interested in is getting at a workable basis.

THE COMMISSIONER: Is there much piecework in your factory, Mr. McKinstry?

MR. MCKINSTRY: Yes.

THE COMMISSIONER: Does that not tend to cause accidents in the hurry to earn a little more pay than if they were working by the hour?

MR. MCKINSTRY: I do not believe I can answer that definitely; I can give you my impression. I do not believe that it does.

THE COMMISSIONER: Would it not be natural that a man would work a little harder than if he were working at so many cents an hour, and if he had a device that was in the way of his doing a little more work that he would be more likely to throw it aside? Would that not be human nature?

MR. MCKINSTRY: That might be human nature, but I have never had experience in a shop where piecework did not obtain.

THE COMMISSIONER: It is not all piecework.

MR. MCKINSTRY: I say I do not believe that is measurably true, because in the department where we have the largest amount of day work we have the most accidents, and strange to say in all our departments we have I believe the largest number of accidents in our shipping department, in the warehouse.

THE COMMISSIONER: How do your men compare as to intelligence?

MR. MCKINSTRY: I think very fairly.

THE COMMISSIONER: It would not be because they are less intelligent?

MR. MCKINSTRY: I think not.

THE COMMISSIONER: What particular problems come up in your administration?

MR. MCKINSTRY: Well, we practically recognize the principle of workmen's compensation in our scheme. When it was inaugurated we did not require a man to sign away his legal rights. When he was injured he still had the same privilege to go up town and bring an action against the company that he had before. We simply said to him, here is what we have to offer you: this is what we have to give you under the circumstances; and the man was at liberty to either accept that or to stand on his other rights. If he accepted our proposal and took what we had to offer, then he signed a release and relinquished his other rights, and I think our biggest difficulty has been right in that one feature.

THE COMMISSIONER: Is there much difficulty in ascertaining when a man is really injured, and the extent of his injury?

MR. MCKINSTRY: I think not.

MR. HOBSON: I do not agree with you there. I have found it pretty hard to find out how badly a man is injured.

MR. MCKINSTRY: Well, you have to be governed by some one's judgment in matters of that kind.

MR. HOBSON: We have a surgeon out at our plant every day, and we are guided largely by what he says, and if it comes to suit we always find that that man was very much more injured than we had any idea of.

MR. MCKINSTRY: If a man is disposed to be fair, as he is in the biggest majority of cases, it is a matter easily settled and determined.

MR. HOBSON: If a man wants to be fair.

THE COMMISSIONER: Where a man is always advising with men about accidents he is apt to take a little too light a view of the injury. That has been my experience with regard to men who are in the position of medical advisers for large corporations. They always minimize, or most times they minimize the extent of the injury. It is human nature, I suppose.

MR. HOBSON: I think you are quite right. A claims agent does probably take too light a view of the man's suffering.

THE COMMISSIONER: When a man is injured, is there any waiting period, Mr. McKinstry?

MR. MCKINSTRY: No sir, he draws the benefits from the start.

THE COMMISSIONER: Have you a first-aid?

MR. MCKINSTRY: Yes, we have a first-aid building on the plant, and we have a first-aid man who stays there all the time, and we have a doctor who stays there from seven o'clock in the morning until ten or ten thirty, and then he comes up town and makes his calls, and comes back in the afternoon about one or two or when he can get back, and stays the rest of the afternoon pretty well.

THE COMMISSIONER: How many men have you?

MR. MCKINSTRY: Two thousand and forty.

THE COMMISSIONER: Coming back to that matter of the administration, ought it to be a very expensive thing?

MR. MCKINSTRY: No sir, it should not.

THE COMMISSIONER: I do not know whether you gentlemen are sufficiently acquainted with our municipal system to say whether that could be used in the collection of the tax, especially if it has got to be extended to all employers of labour, where the employer did not send it in. That is the principle in most of the States where they have adopted it. They know the amount of the tax and they send it to headquarters, but I fancy with a smaller concern it would be different. It would be slow and I do not see why that should not be put upon the tax-roll and be collected just like any other tax.

MR. HOBSON: Is that on the pay-roll?

THE COMMISSIONER: That is the system that has been universally adopted.

MR. HOBSON: I think, sir, if you require a declaration as to the amount of the wage sheet or pay-roll, we practically give that where we insure with the insurance company. We practically give a declaration as to that.

THE COMMISSIONER: There would be no difficulty with a large employer in collecting it. The difficulty would be if it was extended to small employers, a man employing two or three hands. They would not be as prompt to

pay. Take the small employer employing one or two men, would it be practicable to use the municipal machinery, if he did not pay the tax, to collect it with his other taxes?

MR. ALLAN STUDHOLME: I do not know that I should be one to answer a direct question like that without knowing more about it. I do not think it would make any difference whether a man employed one or a hundred. If a man goes into business he has got to insure his business, if he is a business man.

THE COMMISSIONER: It is the collecting of the money. They would not be as likely to pay as the larger ones who would send their money up to date.

MR. STUDHOLME: You mean for the State insurance?

THE COMMISSIONER: Yes. What is submitted, and as far as I have heard from the workingmen they approve of it, is a scheme by which all the employers of labour, within whatever class is ultimately determined, are assessed to pay for the cost of the compensation. That is based upon the pay-roll, and has regard of course to the relative risk of the industry. Then if it was made general and applied to all employers of labour I think you would have to have some machinery for collecting it, and it occurred to me that in small places, or in fact in all places, where the man did not pay in time send the amount of his tax to the collector and put it on the roll and let it be collected with his other taxes. It would be cheaper than the administrative body sending out somebody to collect it, or suing them for it.

MR. C. P. McCULLOCH: Would it not be feasible, Sir William, to send the money through the banking institutions?

THE COMMISSIONER: There are some men who will not pay.

MR. HOBSON: Make it the same as any other tax.

MR. McCULLOCH: Your idea is economy of collection.

MR. HOBSON: That is the idea, so that the man will get as much money as possible, and get it as quickly as possible at the time he needs it.

THE COMMISSIONER: If you load down the thing with a lot of machinery it will break down. If it is made a piece of machinery to find positions for a lot of fellows it will not be satisfactory.

MR. MCKINSTRY: I should think that plan would be feasible. I think a large proportion of the tax would be remitted without difficulty, and the remaining portion that is tardy could be reached that way more economically than any way I know of.

THE COMMISSIONER: Dealing with the case where an employer works with his men, in one case they allow him to come on the fund if he contributes, if he includes his wages on the pay-roll. That does not seem unreasonable, does it?

MR. MCKINSTRY: I would not think so.

THE COMMISSIONER: You see there is very little difference between the employer and the employee as far as financial standing is concerned in many of these cases. Because he happens to be the boss he may not make as much as the

man that is employed by him, and a man who is an employee if injured is compensated, and the other man if injured in the same accident is not compensated.

MR. HOBSON: It could be incorporated in the act that a man should register so that you would have a record.

THE COMMISSIONER: Probably there would be the same default. The law requires partnerships to be registered and a great many of them will not do it. I think it could be worked out in that way so that the bulk of the taxes could be collected. Of course there might be some loss.

Now, is there any danger in this system of current cost, as it is called, of unloading on the future, loading up the future with claims? For instance, take the case of a man who has half a dozen accidents in his establishment: under the present law he would have to foot the bill for all that himself, but that is continuously being paid by the body of the manufacturers as long as the thing continues. The man may go out of business next day; he may only contribute his first payment. I suppose all that was considered before the manufacturers assented to the proposition that they should be as a body taxed for all of them. I do not see how that could be guarded against.

MR. STUDHOLME: Does the State come into the thing at all?

THE COMMISSIONER: The proposition from the labour men in Toronto, and the proposition from the Manufacturers' Association is that the State administer the fund.

MR. STUDHOLME: It does not meet any of the losses?

THE COMMISSIONER: It does not meet any of the losses.

MR. STUDHOLME: I should think in a case of that kind it might easily be taken care of by the State, because it would be one of those things which would be a little difficult. If he does not pay, then of course it comes into the other fellows to pay it, and who should be better able to pay in a case of that kind than the State. That is getting it from everybody. Of course there would not be many of those, but there would be some.

THE COMMISSIONER: I fancy it would not amount to a great deal. What do you say, Mr. McKinstry?

MR. MCKINSTRY: I do not think it would be large. I cannot see any particular danger in it, although I confess that I am not as well informed about that particular feature as I might be.

THE COMMISSIONER: A great deal of care will have to be taken in framing it. You will have to start with a provisional tariff for your initial contribution, and then a great deal of care will have to be taken in fixing the relative proportions to be paid by the different industries in the shape of this tax. That will require a great deal of very careful consideration by experts. Now, in a large number of the industries I understand the suggestion is they should be grouped. There is the woodworking industry, and the steel industry. Mr. McKinstry would perhaps come in both.

MR. MCKINSTRY: No, we would come in the agricultural class. I presume the grouping would be determined by the hazard.

THE COMMISSIONER: I thought Mr. Wegenast would have been here. His idea is that the metal industries, and such like large groups, would be formed, with the ultimate idea of associations being formed as exist in Germany, and that they would look largely after their part of the service.

Now if this scheme is going to be carried out, somebody will have to be got pretty soon, to formulate a tariff, because that is a very important consideration. Whether it would be better that I should report without waiting for that to be done, and leave that to be done after the scheme is adopted, if it is adopted by the legislature, might be worth consideration. I should think it would take some time to work it out.

MR. HOBSON: Have the accident insurance companies not worked that out pretty thoroughly?

THE COMMISSIONER: Well, I suppose they have, but I would not care to go to them for information; they are hostile to any scheme of this kind. In the States of Ohio and Washington, and I suppose in all the States—but those are the two I know most about—they have a tax upon the industry. There will have to be a great deal of latitude upon that, to readjust the classes if necessary. I think the main thing to be got at is, after we have adopted the principle, as Mr. McKinstry has said, that we should not waste any more money than is actually necessary in administration and to get the money as quickly as possible.

MR. MCKINSTRY: That is true.

MR. HOBSON: Mr. McKinstry, in your experience, would you say there were more accidents in large establishments according to the number of men employed?

THE COMMISSIONER: What do you think about that, Mr. Studholme?

MR. STUDHOLME: I do not think I could answer that right off. You say, sir, there are more accidents on the farm. Well, that is an eye opener to a great many people, until you commence to sit down and think what the farmer is up against. In many the percentage would be very much more than you would think.

THE COMMISSIONER: I think you would have to examine those statistics carefully, because there might be a great many minor accidents.

MR. STUDHOLME: If you take a large factory and a small factory, you must take into consideration the care that each of those men has taken in guarding his machinery.

MR. HOBSON: Do you not think the larger the establishment the more competent the force of mechanics and foremen they have?

MR. STUDHOLME: I would not think so.

MR. HOBSON: Is it not more important that they should keep their machinery in good shape?

MR. STUDHOLME: It just depends what the firm is after? If it is a firm that is after dividends then they don't care. If it is a firm that looks after their employees then it is different. One factory uses everything that it is possible for money to buy for the purpose of saving human life, and accidents seldom occur, and in business where that is not done there are accidents all the time.

MR. McCULLOCH: It is a matter of organization isn't it?

MR. STUDHOLME: It seems to me even if you take your statistics you would want to know exactly what care was being used and whether the machinery was guarded at all or not. You see that steel plant in Chicago where everything is guarded that it is possible to guard, and in other places no guards, no anything at all. So you see even if you took them to-day and grouped them, you would want to know if a firm is using any precaution at all, or what guards they are using, or if they are working rough and ready and taking chances. That is what you are trying to get at, you see. For instance, take the cogs on a machine; I saw a man crushed to pieces just because he had a loose smock which caught in the cogs, when even a piece of wire or a tin over them would have prevented an accident. In some factories care is taken in this way and in others it is not. If you take the number of accidents then you want to know what position that factory or firm was in.

THE COMMISSIONER: Take the thing you have just spoken of, Mr. Studholme, where the workman was seeing that every day, would there be any reason why he would not communicate that to the employer?

MR. STUDHOLME: They might communicate it a hundred times. Here is the trouble: you have got to take that chance to hold your job, or let your wife and family starve, or quit your job.

THE COMMISSIONER: Do you think it would mean that?

MR. STUDHOLME: I know it does. I have worked in a place, and we have had to run out of that place because they had an inexperienced man working an engine on the railroad. He would let the water out of the boiler, and the boss would run and pull the fire out, and then we would go back to work. They said, Why don't you quit? Well, that is all very well, but it would leave your wife and family unprovided for. They paid a man \$1.25 to run an engine and boiler and to do two men's work besides, and he would throw on a big fire and the first thing the machine would be going to beat the band and we would go up on the Grand Trunk and watch it go, and the boss would run down and stop the machine to save the price. Then another man goes into a factory, and there is a notice there, "This firm not responsible for accidents." If I were killed there I wouldn't get anything, and a man says, "What do you go there for when that notice is there?" The fact is I have got to go. You can kick till you are sick and tired of kicking. If you can fix it yourself, fix it; and if you can't, let it go. Now, the men are up against that all the time. A man has got to work and take his chances.

THE COMMISSIONER: I was asking Mr. McKinstry a question, and I will ask you.

MR. STUDHOLME. Do you think piecework causes more accidents than would occur with the men working by the hour?

MR. STUDHOLME: There is another proposition. I have worked piecework the greater part of my life, and I might not be so hungry to make a dollar but I would have a little care as far as possible to save a limb or life, but another fellow is so anxious to make it, or he may be on a poor job where he has got to take chances. The job may be poor and he needs the money, and he takes chances, and he might have a good reason for it. It might be on a poor job that you would kill yourself to make an honest living out of. These things crop up, and you would want to know why these men do that before you could condemn them for doing it. Men often do foolish things, but if he stops and goes down to get the man to stop the machinery he loses ten or fifteen minutes, and he takes a chance. He has got that much work to do and he cannot waste a minute in doing it without taking it from his work. Of course every trade might not be like that. In some places they take it as a floor with so much space and they have got to turn out so much work, and if they do not turn out that much work you are not wanted. You are simply given so much work to do, and if you cannot do that in time then you have to go, because you are using the space and not turning out work enough. There are so many of these things come up against a man in these places, and he has got to do it and take chances, and he does take chances that he has no business to have to take. That is the proposition he is up against, so that when a man tries to figure out it is carelessness, he must take that into consideration. I saw a man myself condemn a worker for doing a certain thing and five minutes afterwards lose his own hand in a piece of machinery. A man got his fingers cut, and he came blustering and complaining because he had done a thing he should not have done. He took the guard off, and he said anybody can do this thing, and he himself had his hand taken off. You see those things happen right along. He was annoyed because the man got caught, and he deliberately got caught himself. He would not have got caught possibly if he had not been annoyed and angry at the other fellow. Of course those things are things that are going to occur all the time, I suppose, but the question is to guard the machinery and prevent accidents. There are so many people under the impression that so far as a workman is concerned he would sooner lose a finger or an arm and get compensation than he would save his finger or his hand and work. I never saw a man in my life like that, never, and there are mighty few that would do it. I would sooner have my fingers than your steel plant or foundry. Mr. Hobson.

THE COMMISSIONER: In the stress of the work a man takes chances, and he is hurt that way. I suppose there are very few men who wilfully injure themselves?

MR. HOBSON: I think that is true. and the more intelligent a man is the less likely he is to do it.

THE COMMISSIONER: The only thing I recall being mentioned where a man injured himself was in military service. That is the only thing I have heard of, except very rare instances.

MR. STUDHOLME: Now, a man may refuse to do a thing and the foreman of that place even call him down, and call him a coward, or say he is afraid, daring him and he will do it himself and possibly will do it right, and another man may get caught. There is a lot of that, and there is no business to be. If a man that overlooks carefully his foundry or factory and finds his foreman doing such a thing, because he is really daring the man to do something he is doing himself, he should be discharged. Some men will not do it, but another man does and he loses his hand. Some places they pull off a belt while the machine is running, and a man should sack a foreman if he does these things. Some places they will not do these things, and that machine has got to stop before the belt is taken off; they are not to touch it; but another place you have got to do it all the time for they won't stop for you. There are lots of those things cropping up all the time.

You see the position I am in. We have discussed this question for years at the trades congresses, and we understand the British law and the German law fairly well, and also the plans that the Provinces have been working out. Now, the Trades and Labour Council instructed the executives of the various sections to take this matter up as soon as the matter was ready, and to be on the job, thinking Toronto would be the headquarters, and you have heard the men there, and they have handled the whole case. Now, they sent to the executive of the Trades and Labour Council here their documents, and the executive here went over them and considered the position taken by the Toronto men was satisfactory. They got the Trades and Labour Council to endorse it, and it stands in that position. I was not here at the time. So that Hamilton stands in the same position as Toronto.

THE COMMISSIONER: They put their views in writing?

MR. STUDHOLME: Yes. I have here a statement which I may as well put in.  
(Hands copy of statement to Commissioner).

THE COMMISSIONER: The principal point of difference is as to whether the employees should contribute anything.

MR. STUDHOLME: I can speak on that, because in our discussion it was brought up, and we absolutely say no. We do not look at the firm at all; we look upon the business. That business has got to carry fire insurance, and has got to allow for depreciation, and all that, and we take the position that that business—not the firm—has to carry the risk. We are not saying anything about the man or the firm, but the business should carry that the same as it carries every other risk. Then we have another good reason for that. You take the average worker and he is carrying more to-day than he can possibly carry. He is up against a proposition. He has got to insure his little furniture, and he has got a home and he has got to insure his home, and then he has got to go into the fraternal society, and he has his organization, and he does not seem to have anything to contribute. We think the business should carry it.

THE COMMISSIONER: Some people seem to think that the collective economic loss cannot be escaped, and that this tax put upon the manufacturers the manufacturers must get in some shape or other from somebody else. It

has to be borne by the industry, and if he cannot get it from the man he sells his goods to where is he to get it? The suggestion is that ultimately it may have the effect not perhaps of reducing wages, but of preventing increases in wages if too heavy a burden is put upon the manufacturer.

MR. STUDHOLME: We speak from experience. Take the majority of industries and they are making good dividends and laying by money. Just take the steel plant. They are making a million and a quarter to the good and they do not consider that a good season at all.

THE COMMISSIONER: Mr. Hobson has just been telling me they are having a lean time.

MR. HOBSON: Mr. Studholme forgets how much money we have invested.

MR. STUDHOLME: You have not invested a dollar for every hundred you have got. There comes that proposition, Mr. Commissioner. The manufacturers as a rule never were doing as well in their lives as they are to-day, and the farmers never were doing so well, but the worker is not doing as well as in times past. Simply because he is making a little more there is no man will start to argue that a dollar is producing a dollar's worth of goods to-day. It is not producing 50 cents worth of goods, and if he only gets five cents or ten cents or twenty-five cents increase he is up against it. Everybody unloads on the worker and the worker cannot unload on anybody. Take the manufacturer. If his goods cost him more he has got to unload on the men he sells to; there is no question about that. Then take your grocers and butchers, and they raise their prices and the worker has to pay.

THE COMMISSIONER: Do you think, Mr. Studholme, that the only man who works is the man who works with his hands?

MR. STUDHOLME: Why no, I don't care whether a man works with his brain or his hands. If a man is receiving a salary and wants an increase he has got to fight the boss for it. He comes up to the boss and says, "Here, Mr. Employer, my dollar is cut down to fifty cents and I am up against it. It is cut down fifty per cent. in purchasing the necessities of life. My landlord has put \$6 a month on me." I have known cases where they stuck \$10 or \$12 on him. He says, "Here is the fix I am in. I am doing the same work and I am getting the same money." "Well," the employer says, "I am very sorry but I cannot do anything for you because I can get another man of your kind for the same money. It is a matter of business." Look at the position the man is in.

THE COMMISSIONER: Does not the logic of that mean if you put upon the manufacturer so much more he will take it out of you in the long run?

MR. STUDHOLME: No, not necessarily. Let me take my friend here where he has a million and a quarter. He can give up a little of that dividend.

THE COMMISSIONER: Supposing he will not do it?

MR. STUDHOLME: We have got to make him. The law will have to come in here and say, Mr. Man, if you refuse to treat your men as a man ought to be and pay him a decent wage we will put more succession duty on you.

THE COMMISSIONER: That is when he is dead.

MR. STUDHOLME: If you can catch him dead, why not catch him alive; why not catch him before he dies?

MR. McCULLOCH: Mr. Studholme referred to the fact that the workman was held up by having to pay an increased rental of say \$10 a month more than he had been paying. Now, it is not the manufacturer who is responsible for that position, it is the landlord. Then the landlord will argue back, "I am paying now infinitely more for bricklayers and mechanics than I did years ago, and for that reason the increase is made." It is not caused by the manufacturer but really by the land owners.

MR. STUDHOLME: You can catch him by single tax. You can catch the landlord easier than anybody.

MR. McCULLOCH: Is that not the solution of your difficulty?

MR. STUDHOLME: No.

MR. McCULLOCH: I think it unfair to say that the manufacturers are responsible for the increase of rentals.

THE COMMISSIONER: I do not think that is what he said.

MR. STUDHOLME: I do not want to put all the sins on the manufacturer for a moment, only I say the manufacturers are doing well to-day.

THE COMMISSIONER: You must not, Mr. Studholme, claim to be exempt from the ordinary frailties of human nature. Every man will put it on, he will want more wages, he will want more rent, and he will want more for his goods if he can get it.

MR. STUDHOLME: And if he is an honest man that is what he will have to get. If I were working at my trade I could not pay my honest debts and then I would be blacklisted at the grocery store.

MR. McCULLOCH: How much would you get now a week?

MR. STUDHOLME: By the organization of labour right in this city where the manufacturer never made so much in his life, for working ten hours we get \$2.50, and he cut us down to \$2, and the landlord was sticking it on.

MR. McCULLOCH: What are they getting now?

MR. STUDHOLME: \$2.25 a day is all they can get. If they do piecework they make more.

MR. McCULLOCH: \$5 a day for piecework?

MR. STUDHOLME: No, no man in the city makes \$3 a day. Now, that is the proposition, when the landlord is putting up the rent and the butcher is charging you more, and the grocer. Look at that stove factory business some years ago, and that is why 1,500 men are working in the United States that ought to be working in the city of Hamilton.

MR. McCULLOCH: With reference to that stove proposition, are there not an  
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immense number of stoves shipped into the North West and cutting the manufacturer out of that market?

MR. STUDHOLME: That is the manufacturer's fault. The manufacturer over there in the United States found they were getting more here than he was and he started shipping the goods himself.

MR. McCULLOCH: How many years ago would that be?

MR. STUDHOLME: About twelve years ago.

MR. McCULLOCH: Conditions have changed now, of course.

MR. STUDHOLME: They never made enough stoves to fill the North West.

Of course, Mr. Commissioner, you have been up against it long enough to know that there are hundreds of propositions, and very seldom do two men have exactly the same idea.

THE COMMISSIONER: No, unless it is a party question.

MR. HOBSON: I think we are agreed upon one point, Mr. Studholme, that we want to see the workmen compensated?

MR. STUDHOLME: Certainly.

MR. HOBSON: It is the method of raising that money to compensate them.

MR. STUDHOLME: The principle is all right, too. Nobody wants to see anybody crippled or hurt. We have got to put our hands in our pockets to help some unfortunate devil that is up against it, and then it should come down to that social business. The manufacturer should be perfectly willing if it is possible and practicable first to use every precaution. An ounce of prevention is better than a pound of cure, and while it costs money it saves money. Now, we are fighting for shorter hours. If you take Germany, for instance, you find in the last hour, whether it is before closing time or meal time, the accidents are three or four times more than they are in any other time during the day. It shows the man is getting tired. Take from eleven to twelve and from five to six. There they find it does not pay to have the long work-day because it costs too much money.

THE COMMISSIONER: There was something said that was very unsatisfactory, from your standpoint, as an explanation as to how that happened.

MR. STUDHOLME: From the German standpoint?

THE COMMISSIONER: Yes, somebody discussing it. You are putting it because the man works too long?

MR. STUDHOLME: Yes.

THE COMMISSIONER: The idea of this man was that on a particular day he had been drinking too much beer the day before: and another idea was that when it was getting near the time for quitting the workman was a little more careless. That was the way it was put.

MR. STUDHOLME: I am not speaking on that subject; I am taking the German history of the case. The writer I am speaking of takes every working day

and shows in every instance it is always the same, that it is the last hour of the time before quitting when the accidents occur, and it has got to such an extent that the firms have recognized it and have shortened the working day.

THE COMMISSIONER: Do the statistics since show a decrease?

MR. STUDHOLME: Certainly, a decrease immediately on the shortening of the hours. That case you are talking about is only the blue Monday case where a man stays at the bar too long and on Monday he is under the weather and also following a holiday. But it is only ten per cent. that comes to work Monday morning unfit. They haven't the money to spend. If you figure it out you will find there is not ten per cent. that come into your factory under the influence of liquor..

MR. McCULLOCH: I believe that is perfectly true. He would not be kept if he did.

MR. STUDHOLME: So that as I have always said for the sake of ten per cent. I do not think the other 90 ought to be punished.

THE COMMISSIONER: Has any other gentleman any view to express? Have you anything, Mr. Halford?

MR. H. J. HALFORD: I am not in a position to say anything. The views of the Council as put in were simply endorsed.

MR. McCULLOCH: Have you thought of the constitution and the character of the Board of Commissioners?

THE COMMISSIONER: They would have to be all of blameless character.

MR. McCULLOCH: Of course we would like to express the view that the matter should be removed as far as possible from political control. I think in the interests of the people it should be a big man who is appointed or chosen for that position. It seems to be the view of Mr. Studholme, and I am sure it would be acceptable to the public in general.

MR. STUDHOLME: It may be that somebody who has made his pile would give the balance of his life to that work.

THE COMMISSIONER: I think you will find as a rule, Mr. Studholme, if it is not worth paying a man for his service it is not worth having.

MR. STUDHOLME: I do not care what you pay a man if he is worth it, but of course in some cases it is looked upon as a social service. Men sometimes make a hobby of it.

THE COMMISSIONER: You will probably find he is somewhat of a crank. You must have level-headed men wherever they are got from.

MR. McCULLOCH: If he wished to remit his salary it could be received back into the treasury. That is always open to him.

MR. BANCROFT: We had in Toronto last week Mr. Charles LeGrosse, and we were sorry he could not stay long enough to have an interview with you.

He corroborated our position that the workmen in Germany did not contribute to accident insurance.

THE COMMISSIONER: I think they contribute to sick insurance which includes accidents.

MR. BANCROFT: But the principle in Germany is that it is not a contribution to the accident fund from the workmen.

THE COMMISSIONER: It does not make much difference if you kill a man how you kill him. The money comes out of his pocket. During the first thirteen weeks there is no claim upon the accident fund, but during those thirteen weeks the man is provided for out of a fund to which he contributes. It provides against sickness as well as industrial accidents.

MR. BANCROFT: And non-occupational accidents. The occupational accidents were covered incidentally because the legislation was there.

THE COMMISSIONER: You see, Mr. Bancroft, if there was not that other fund there would be thirteen weeks during which there would not be any compensation at all.

MR. BANCROFT: That is not the British act. If he is off two weeks then it dates from the beginning.

THE COMMISSIONER: The great point in that is not so much the question of the money, but it would save an enormous amount of labour in administration as to trivial accidents which would perhaps lay a man off a day or two. I fancy most employers are decent enough when that happens not to dock the man's wages.

You gentlemen apart from that one question about the contribution are apparently of one mind.

MR. JOSEPH GIBBONS: I see very clearly where it is to the benefit of the manufacturer as well as to us, because these insurance companies are not in the business for their health. They have men out to secure the business and they have to be paid, and the manufacturer must pay it all. That is one time they are the consumer, they pay for everything.

THE COMMISSIONER: I am very glad to have met the gentlemen here to-night, and I think we have heard something that is worth studying.

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## FOURTEENTH SITTING.

THE LEGISLATIVE BUILDING, TORONTO.

*Tuesday, 6th August, 1912, 11 a.m.*

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner.*

MR. F. N. KENNIN, *Secretary.*

THE COMMISSIONER: Since the last meeting of the Commission the Secretary has received from the Canadian Pacific Railway Company a memorandum of their views upon the subject of workmen's compensation.

MR. I. F. HELLMUTH, K.C.: I represent the railways, the Canadian Pacific, the Grand Trunk, the Canadian Northern, and the Michigan Central and the Père Marquette. I only desired to say to you, Mr. Commissioner, to-day, that we understand you are going across the water and are there going to make further enquiries and investigations into this matter. If the railway companies can be of any possible service in providing sources of information that would be of value or of interest to you, they will be very glad to do so. Of course they do not wish to burden you with the information of mere advocates, or anything of that kind, but there are certain men both abroad and in England who have given study to this matter from an impartial standpoint, I believe—that is impartial both so far as the employer and employee is concerned—and we would be very glad to put them in touch with you. I daresay a considerable number will be seeing you without any assistance on our part, but if we could be of any assistance in that way we would be very glad. You have seen from our memorandum presented, which you have referred to, that the railway companies do not take quite the same view in regard to state insurance as some of the continental countries have taken, referring perhaps to individualistic compensation rather than state, but it is not on that account that the suggestion is made. The suggestion is simply that we could, we think, perhaps help in some way your hearing the views of those who have looked at it from another or other standpoints than the continental standpoint—that is, those men who have taken other opinions—and, if you would allow us, when you are over there we might suggest to you some of these men who might seem worthy of your hearing.

THE COMMISSIONER: I would be very glad to get from you, or from Mr. Mac-Murphy, or anybody else representing the companies any names you would suggest as persons who ought to be seen. I will not, of course, promise to see them.

MR. HELLMUTH: We would not ask anything so unreasonable, because you might have a great many more names suggested than it would be possible for you to see.

Then there is one other matter, and that is that when you return we might be allowed to present some evidence; not a great deal, but one or two men perhaps from the United States who have studied this question par-

ticularly, and again I say not advocates; and, perhaps, we might be permitted to make some arguments with regard to the system after you return. That is all I have to say to-day, Sir William.

THE COMMISSIONER: There will be meetings held after I get back and an opportunity given to present any views. I will hear any evidence pertinent to the enquiry.

MR. HELLMUTH: Mr. MacMurchy may possibly be on the other side, but if not we will find some firm perhaps that we can communicate with, such as Blake and Redden.

THE COMMISSIONER: If you write me direct, care of the Bank of Montreal, in London I will get the letter in due course.

Is there anybody here representing the Eaton Company?

MR. DILWORTH: Yes, I was sent up here to see what was wanted. I haven't any information myself.

THE COMMISSIONER: Notice was sent to the Eaton company, and also to the Simpson company, on account of something Mr. Shepley said to me as to their views on the subject of compensation. I was in hopes that somebody from one or both of these companies would be here to state what their views are, as to whether they should be brought under any law such as is suggested, and whether from their standpoint there is any objection to this system of collective insurance. Are you in a position, Mr. Dilworth, to give us any information on the subject?

MR. DILWORTH: I am not in a position to give any information on it at all.

MR. WEGENAST: The T. Eaton Company are members of our Association, so far as the manufacturing end is concerned.

THE COMMISSIONER: I suppose there are more employed outside of the manufacturing departments than inside?

MR. DILWORTH: A few, yes. There are about 12,000 altogether.

THE COMMISSIONER: In Toronto, or in all the establishments?

MR. DILWORTH: Montreal, Oshawa, and Toronto, not including Winnipeg. There are about 4,000 in the factories.

THE COMMISSIONER: You have factories in Oshawa and in Montreal?

MR. DILWORTH: Yes.

THE COMMISSIONER: Have you any system of insurance of your employees by the company?

MR. DILWORTH: Not that I know of, sir.

THE COMMISSIONER: Is there any one here from the Simpson company?

THE SECRETARY: I notified the company, but apparently there is no one here representing them.

MR. E. M. TROWERN: I represent the Retail Merchants' Association. I have come

for information rather than to give information. I wanted to find out where we are going to be in this thing.

THE COMMISSIONER: This is not the place to get information, this is a receiver.

MR. TROWERN: It is a difficult thing, from the way I view it. Of course we have had no information given us, only what we have seen in the press and from the labour organizations, and they seem to have set out a pretty full contract here, if it goes into operation at all in anything like the manner it is set forth by them. If it is I am afraid it is going to bring a good deal of hardship upon a class that I feel quite certain you want to get information from. A moment ago we were hearing from Mr. Eaton's representative about 12,000 employees. Of course those are divided. Those workers in the factory who are engaged in manufacturing are in an entirely different position to those who sell goods. The sales people and the working people are two entirely distinct classes. The salesmen come under my jurisdiction as secretary of the Retail Merchants Association, and they are a very extensive body of people.

THE COMMISSIONER: They would be rather surprised if you told them they were not workers. I understand what you mean.

MR. TROWERN: I am designating them under a term that is understood. I suppose they are as hard a working class as any. In regard to this matter of insurance: to begin with, allow me just to make some remarks on the suggestions of the labour organizations. I do not know how far you have received them, or how far they have been received, but it says the Act shall cover all employments and all the employees of the Province. Of course that takes in salesmen as well as saleswomen and clerks. Then it says that compensation shall be given for all injuries received arising out of and in the course of employment. That is pretty sweeping. Then that compensation shall be given to those who are disabled, or those who receive their injuries arising out of or which are the result of being engaged in a specified occupation, the said disablement or injuries being regarded in the nature of occupational diseases. To my mind that is very sweeping. Then the entire cost of compensation shall rest on the employer. That is a little socialistic to my mind. Then in the case of an injury resulting in death the dependants, as outlined in the British act, and the State of Washington act, shall be the beneficiaries, with the expenses of the funeral as outlined. The doctrine of negligence on the part of employee or employer, fellow-servant or otherwise, shall have no place in the new legislation. To my mind that is too drastic altogether. Then there shall be State insurance in connection with the compensation act. That divides the thing into two classes.

THE COMMISSIONER: Not two classes. That is not what they mean. They mean that the State shall manage the funds; collect and manage the funds.

MR. TROWERN: Does that mean that it would be taken out of the hands of the ordinary accident company and put into the hands of the Government?

THE COMMISSIONER: It means that if that plan were carried out, or rather the plan suggested by the Manufacturers Association, and, I think, concurred in by those who represent the labour organizations, that an assessment, varying according to the risk, to cover the compensation to be paid for all accidents,

should be made upon all employers by a Board appointed by the Government. If the accident happened, say, in a retail merchant's establishment he in his class would be assessed for the proper proportion of that loss, as well as the loss in other industries, unless they were classified, when each class would bear its own.

MR. TROWERN: Would it be possible to leave us out of this thing as a class?

THE COMMISSIONER: That is one of the things to be considered. How much worse off would you be than under the present law?

MR. TROWERN: In this way, if it were compulsory that every merchant should have his employees insured——

THE COMMISSIONER: That would not be in it at all. Supposing they were divided into classes all they would pay would be compensation for injuries in that class. If the injuries were few the compensation would be small. As it is now the small retailers are subject to the common law of liability; they manage their own businesses; and if any accident happens they would be liable probably under common law, unless it was due to negligence of the employee.

MR. TROWERN: Of course I am just taking this memorial as a basis for my statements, and where they are asking to have that left out it puts the responsibility absolutely on the employer, and I can see so many complications. Of course I am simply here to present them to you, and if you gain any light from any views I may have, representing the retailers, I shall be glad.

THE COMMISSIONER: I am saying what I say merely for the purpose of drawing out your views.

MR. TROWERN: I would like you to do that, because the general public do not seem to know anything about this matter yet.

THE COMMISSIONER: Do you know how many employees there are engaged in the industries you represent?

MR. TROWERN: I could get you that.

THE COMMISSIONER: Can you give us a rough guess now?

MR. TROWERN: Speaking of Ontario alone, taking fifty thousand merchants some, on an estimate, would have one hundred, some fifty, some twenty, some ten, and some two. Give them five each.

THE COMMISSIONER: Would that not be a large average? There are a great many who have only one.

MR. TROWERN: I was taking five, because it is a very small business that would be operated with less than two.

THE COMMISSIONER: That would be two hundred and fifty thousand. I am speaking of the country stores, and so forth.

MR. TROWERN: You couldn't run any kind of a store unless you had one or two employees, and then there is the man himself. Suppose you give them three.

THE COMMISSIONER: The employer does not count, you know. Giving them three would mean one hundred and fifty thousand.

MR. TROWERN: That would be, I think, the lowest estimate.

THE COMMISSIONER: Are there any statistics? Does the census report contain any statistics as to those?

MR. TROWERN: Unless I can get it from Ottawa, I don't know. I notice that the Government in the last census counted horses and cattle and sheep, but they never counted the merchants. I asked them if they would put a line in their columns showing whether it was a retail merchant or not, and they promised they would do it, but I have not had an opportunity to see whether they did that or not. The only way I get at it is through being the secretary of the Retail Merchants Association, and our association reaches all over the Dominion. We have branches all over Ontario, and I estimate by the number of merchants there are in each place.

THE COMMISSIONER: What proportion of them do you think are members of your organization?

MR. TROWERN: A large proportion of them.

THE COMMISSIONER: Of the urban ones, I suppose.

MR. TROWERN: Well, we have a lot of places where there is a merchant by himself, and they are merchants just the same as those in a large city. The difficulty I see to provide against would be this: take butchers, for instance, whose deliveries on Saturday nights are very extensive in some cases, and they have men or boys to do that work who work in other places.

THE COMMISSIONER: The British act excludes casual employees. Probably those you speak of now would be under the British act classified as casual, and not within the act.

MR. TROWERN: I think it would be necessary to have that provision put in this, because there are a great number of those casual employees who come in from time to time. For instance, you take the employing of clerks where the custom amongst a great many merchants is simply not to engage him by the week but to engage him by the day for a few days to see how he makes out. He may not be satisfactory by the end of the day and they get rid of him. Now, if anything happened to that employee during the day I am afraid we would get into a complication.

THE COMMISSIONER: What has been suggested is that a contribution would be based upon the wage-roll of the establishment as between the different industries, and if the retail employees were in a class by themselves for all the accidents that happened in that class the compensation would be levied by a rate upon all the members, or all the employers, in that class.

MR. TROWERN: Those who had very few risks would be subject to being assessed with those who had a considerable number of risks. For instance, take a butcher.

THE COMMISSIONER: It would be possible to make the rate of the butcher higher than that of the dry goods man or the grocer. That probably would be done

if such a system were adopted, just as in a powder business the rate is higher than in other manufacturing industries.

MR. TROWERN: Of course it would be necessary to know that point, because there are some retail lines of trade where there are very few chances for injury, and in others there are a great many. Take a boy who goes out on a grocery cart delivering groceries, you never can tell when that boy is going to come back, or whether he will ever come back; whether the horse will get smashed up or what will happen. There are so many things liable to run into him, or the boy may be careless, or he might be driving a horse he never had out before. There are so many different things of that sort.

THE COMMISSIONER: Do you know what proportion of the members of your Association insure against accident? I suppose very few.

MR. TROWERN: Oh, there are quite a number who insure.

THE COMMISSIONER: In the larger establishments?

MR. TROWERN: In various establishments, both small and large. Of course in the retail lumber business every one of the employers insures his men. That is the retail lumber men.

THE COMMISSIONER: That is about as dangerous an occupation as in any class?

MR. TROWERN: Yes, I guess that would be one of them.

THE COMMISSIONER: Unless, perhaps, the drivers of these delivery wagons.

MR. TROWERN: Then, of course, all these coal drivers would come under this.

THE COMMISSIONER: I thought all the coal men in the town were wholesale men and would not rank as retailers.

MR. TROWERN: They are all retailers.

THE COMMISSIONER: Do you call Elias Rogers a retail man?

MR. TROWERN: Yes, and the Standard Fuel. They are all retailers. There are a few who are wholesalers exclusively, who do nothing else but sell to the retailers, but all the coal men are retailers here. Is there any specific place in which the thing has been worked out?

THE COMMISSIONER: Well, in Washington they have an act, but it does not extend to clerical employees, or employees in shops, I think. It would extend to some of the branches of your organization.

MR. TROWERN: In Quebec, I understand, the retail men are left out of the operation of the act.

THE COMMISSIONER: And the farmers.

MR. TROWERN: That was our view. It seemed the complication would be so great when you come to go into the whole problem. We would prefer to be left out of this thing altogether if we could.

THE COMMISSIONER: Would it not be anomalous to have next door a small manufacturing establishment with the employee insured and your employee not

insured; would that not cause friction; would a man not want to know how it was his neighbour was insured and he not insured?

MR. TROWERN: Well, it appears to me as far as I have sized it up that the labouring men have asked for this, and if they want it I certainly would like to see them get it, but we have not asked for it.

THE COMMISSIONER: But you represent the employers, not the employees.

MR. TROWERN: Yes, but it is the employers who have got to pay, and they are the chaps I am looking after. The tendency is, I regret to say, to drift unconsciously into a socialism that sooner or later has got to be checked. That is my opinion. Everything seems to be drifting along socialistic lines, and these people work so smoothly that the first thing we know we are landed into socialism.

THE COMMISSIONER: What do you call socialism? Was your Association not brought into existence for the purpose of taking as much as you could out of the public?

MR. TROWERN: Oh no, Sir William. We are probably the hardest worked and the poorest paid crowd of the whole lot. The facts go to show that the retail man is the poorest man of the whole lot. As a class they have more money invested and get least out of it. However, I am just making that remark now. It may be I may think a little differently from some men, and I like to say what I think at all times. I do not like to wait until the thing happens. That tendency to socialism has got into the labour party, into the city council, into the Government, and it is getting into everything, and somebody has got to be the bell sheep.

THE COMMISSIONER: What do you call socialism?

MR. TROWERN: It is an indefinable term. I like to put the word theoretical in front of it. I do not think it has ever been defined, but I define it by classing all sorts of things in it in which the Government is asked to take care of the people instead of the people being asked to take care of themselves.

THE COMMISSIONER: You apparently include in your definition public ownership.

MR. TROWERN: Yes, certainly. In England, in New Zealand, and in other places from which I have the privilege of getting correspondence that does not generally come to the city clerks, I find through the merchants that in these things where there has been so much taxation that they are turning back again. All these things, gentlemen, come back onto the highly assessed merchant.

THE COMMISSIONER: Do you think the retail merchant would be much better off if the waterworks were managed by a private company?

MR. TROWERN: I think we would have better water to-day. We are having the diluted sewage of the bay put into our stores, and the dust blows into our stores, and it is all over the counters, and we are hearing now about fruit being exposed. The city is taking action in that matter, and yet we are compelled to take diluted sewage, and breathe dust into our lungs, and then we are asked to maintain consumptive hospitals and all that sort of

thing. For myself I do not think that any corporation could conduct the waterworks in a worse condition than is being done now. However, that is apart from the point I wanted to discuss. This is going to come to the front sooner or later, and somebody has got to take it up. The merchants are the people on whom it has been forced, and they have had to take it up. I just want to see, of course, where we are going to land in this thing; if we are to be the victims to pay to protect people who ought to protect themselves. Is it an incentive to be careful, if a man feels he is insured by the State, and that his employer is forced by law to insure him?

THE COMMISSIONER: If an employee is injured in the course of his employment is it not reasonable that the business should bear the burden of compensation?

MR. TROWERN: Yes, if it can be shown that the employee was doing his best and did everything that he possibly could to protect himself. We had a case here not long ago where a chap was working in a butcher shop. He had been out the night before and felt a little good, had not just got himself straightened up or settled down, and happened to get his finger in the way when he came to use the chopping block; it was no fault of the employer, none at all. I am inclined to think that you must look at this thing from the standpoint of removing responsibility from the individual; the very minute you begin to remove responsibility from the individual then you are beginning to make that individual careless. If this measure is going to generate more carelessness then it is wrong; that is where our great trouble is now; people do not seem to be earnest enough in their work. It is difficult to get a boy whose mind will be centred on his work; it is baseball or something else; every merchant will tell you that.

THE COMMISSIONER: Don't you think that most people do not want to get hurt?

MR. TROWERN: Yes, I do, but on the other hand there is a lot of accidents caused by carelessness and negligence. If you make the employee feel that the employer is going to be responsible anyway, the question is just how far that is going to go. Take the people who are insured in life or in accident insurance, they insure to protect themselves fearing that they may meet with an accident, because accidents are happening all the time.

THE COMMISSIONER: Did you ever know anybody to risk life or limb because he had a life policy or an accident policy?

MR. TROWERN: I don't think so: they insure themselves fearing that something may happen.

THE COMMISSIONER: Is that not an argument against your proposition that if employee were insured he would take more risk?

MR. TROWERN: No, I don't think so. Here you are not making him a party to it at all, you are forcing him to take this. The clauses that are set out here in the labour people's document is all I can discuss, because I supposed it was like injuries resulting in death. They say that the doctrine of negligence on the part of the employee or employer, and of fellow-servant, shall have no place in the new legislation. I think that is a very serious thing—a very serious thing.

THE COMMISSIONER: That practically is the law in Great Britain, except a gross negligence.

MR. TROWERN: I am a Britisher and descended for a thousand years from British stock, but there are some things over there that I am not at all in favour of, and particularly this socialistic wave that is sweeping over England to-day; I am opposed to the whole thing, and this has the look of that sort of thing. I must say what I think. Suppose you take the retailers and divide them into classes: a drug clerk is running a greater risk than a jeweller.

THE COMMISSIONER: You mean his customer is.

MR. TROWERN: He is himself. Suppose for instance a young drug student, not knowing the difference in drugs, by some mistake mixes something which will explode—a thing he is quite liable to do.

THE COMMISSIONER: Would it not suggest itself that he should not have been put in a position of that kind by his employer?

MR. TROWERN: You must teach these boys some way and somehow. The public have got to be experimented upon, unfortunately.

THE COMMISSIONER: It is quite possible that if an inexperienced boy had not been warned against a dangerous article in a drug establishment, and were injured by it, the employer would be liable under the law as it stands.

MR. TROWERN: That is if he had not been told about it, but if he had been told about it and took no heed then in that particular case under this new law all the merchants in that class would have to pay, or be assessed, for the negligence of that boy.

THE COMMISSIONER: Do you not think that would be almost infinitesimal taking the whole of them? There are very few such cases amongst all the druggists, and it would not be a very serious thing to compensate.

MR. TROWERN: I am looking more at the principle than at the amount.

THE COMMISSIONER: Then you may say perhaps that this is the socialist side of it, but if a man or boy is injured he becomes probably a charge upon the public, and that means more taxation to the retailer.

MR. TROWERN: Certainly.

THE COMMISSIONER: So that he pays indirectly.

MR. TROWERN: Of course the consumer has to pay everything in the end.

THE COMMISSIONER: Then you should not object.

MR. TROWERN: We may as well admit it.

THE COMMISSIONER: The shoulders of the consumer are strong.

MR. TROWERN: It is the unfairness of the thing that I am trying to avoid. You take a small step and then you are going to take a big one; it is what this may lead up to that I am trying to discover. As I take it we are here this morning to ask questions and find out what we can: I can come to no con-

clusion, and I cannot do any more than ask questions, and endeavour to answer any questions that I can. There has got to be some settling down on this subject after awhile. Could we go anywhere to discover just how this thing would pan out in the end; you say in England it is in operation?

THE COMMISSIONER: No, that is individual liability, not collective; it is a very wide liability there. The doctrines of common employment, and of assumed risk have been abolished; practically all accidents that arise out of and in the course of employment, unless due to serious and wilful misconduct of the employee, are compensated, and even in that case are compensated if the result is death or serious and permanent disablement; defendants are provided for even if the injury was due to the serious and wilful misconduct of the workman.

MR. TROWERN: This, you say, is in operation in Washington?

THE COMMISSIONER: They have a law in operation in Washington, although not like the British law; it is a kind of mutual assessment limited to certain branches of industry. In Germany they have had it for years. There has been published a statement of the result of the operation in Ohio and in Washington, and perhaps Mr. Kennin could let you see these.

THE SECRETARY: I will be pleased to put everything at the gentleman's service.

MR. TROWERN: Because we have had no precedent to go by, and it is all the more necessary to watch very closely to see where we are going to land. I am not myself much in favour of taking individual responsibility and placing it in a collective way on the community; I have hardly yet got to that stage.

THE COMMISSIONER: As the law stands, Mr. Trowern, take a man in a small way in business, if an employee is injured in such circumstances that there is liability at common law, or under the Workmen's Compensation Act, he may perhaps be ruined, while under this system the loss would be distributed over all engaged in the same business. There have been some very serious cases where there has been liability; there have been cases where the man in business in a small way has been completely ruined by the burden that has been cast upon him.

MR. TROWERN: Is there any evidence to show that the present accident insurance companies have fallen down?

THE COMMISSIONER: The trouble about accident insurance companies is that so little of the money paid ever reaches the men who are injured; only a very small percentage, some say only about sixteen per cent.

MR. TROWERN: If that is the fact would it not occur to you that the difficulty must lie in the administration of the system and not in the system?

THE COMMISSIONER: There is so much expense, so much litigation; that is one of the difficulties.

MR. TROWERN: Because if these people are legitimately in business and are performing their duties as they ought to do, why can they not do it? I am not trying to defend them in any shape at all. I have not discussed it with them, nor have I ever had an accident insurance policy on my life, or any-

thing of that sort, but just looking at it from the standpoint of the way I look at other matters. If the Governments are not able to force those companies to do the right thing, how can they by any possible means undertake to operate a thing themselves? That has always been to my mind a weak spot in public ownership, amongst other things. If a civic government cannot insist upon private corporation living up to a duty that it is supposed to do, and is required by its license to do, and is incorporated to do, do you think the Government itself can do it?

THE COMMISSIONER: Have you been awake for the last ten years in Toronto?

MR. TROWERN: Yes, very much so.

THE COMMISSIONER: Have you found any evidence of difficulty in making companies live up to their contracts?

MR. TROWERN: I do not think there has been a desire to. I think the main difficulty has been an endeavour to harass them as much as possible. I cannot conceive for a moment of a law-abiding country, a country with good laws, many of them, such as we have, not being able to enforce a law. If a contract is entered into between a corporation and a civic government and it is a poor contract it is not the fault of the system; it is the fault of the men making the contract. My experience with the railway people is that instead of pulling them up before the Railway Commissioners and going at them with hammer and tongs, I can go and see the right people, lay the case clearly before them and give them a chance. I have had a good deal better treatment than I would have had in any other way. Those companies are in addition to making money trying to serve the public and trying to take care of their clients: If you have enmities existing, as you have between the City Council and the Railway Company, and quarrelling all the time, no settlement can be made; that is where the trouble is. If in some way the existing law could be made to protect the working man under a proper system, it seems to me it would be a better way. We know well enough if you take most of these co-operative life associations and co-operative fire associations, and so forth. Take the Ancient Order of United Workmen to-day—a splendid body—yet look at the difficulty they have got into with their rates and assessments, simply because they started off believing that they could do a business that requires years of study and thousands of dollars of capital. People require to put almost a life study into it, and they believed they could do that business as well as those people; look at the result. That is the way that most of these co-operative things end: must end eventually, collapse. I remember joining the A. O. U. W. some forty-five years ago; had I remained in paying the assessment right along up to date I would now be asked to pay higher assessments. and what protection would my family get?

THE COMMISSIONER: You will find the same experience in insurance companies. I know of one case where a man was insured and I think he has paid now about twice what could be got in the event of his death. and he has to keep on paying. It was a very faulty plan, no doubt.

MR. TROWERN: Yes, I have a case of that kind in my own family; but take the average insurance company, and it seems to be fulfilling its duty.

THE COMMISSIONER: Have not the mutual insurance companies been pretty successful?

MR. TROWERN: They are put on a different basis. They are practically mutual to outward appearances, but are properly officered and properly looked after.

THE COMMISSIONER: They are officered by men chosen by the members of the Association?

MR. TROWERN: Yes:

THE COMMISSIONER: I suppose there is not a better insurance company than the Ontario Mutual in the Dominion of Canada.

MR. TROWERN: They have skilled insurance men at the head of it.

THE COMMISSIONER: Undoubtedly.

MR. TROWERN: So that their system of operating would be along the line of the regular company. I would like, if you have not seen some of the reports of the collapses that are taking place in London, England, in Australia and in New Zealand in this public ownership thing, to show you some literature that you cannot buy so that you may see the other side of the story.

THE COMMISSIONER: Is it so bad that it cannot be exposed for sale?

MR. TROWERN: It has not been exposed for sale for the reason that there has been so much public talk about the success of these things. If you write to the Secretary of State in New Zealand and ask him the real facts, no doubt he will give the facts as they appear to him, and as they have passed the various councils, but he does not give you the facts as they apply to the municipalities in which they have been operating, to the merchants who have to pay the tax, and to the fellow who is right up against it. The merchants of the city of Toronto pay 45 per cent. of the taxes of the entire city, and any additional liability loaded onto them is a serious thing. Those merchants in Australia are the people from whom I get my information; it is of an entirely different character from what you will see usually.

THE COMMISSIONER: How does this Association of yours get properly officered?

MR. TROWERN: It is not operated just simply for health and for religion, you know; they elect their officers and employ them.

THE COMMISSIONER: They elect very good ones, do they not?

MR. TROWERN: I am not in a position to make any statement in regard to that. When will this be closed?

THE COMMISSIONER: Not before late in the fall, anyway.

MR. TROWERN: This is my first look into this proposition, and from what I can see and hear I do not like the look of it at all.

THE COMMISSIONER: I am going across the water to make some enquiries on the spot as to the working of the laws in European countries. I expect to return early in November and to have sittings after that. I want to get in

my report in time for the next session of the Legislature, so that they will have it if they desire to legislate.

MR. TROWERN: In the meantime I suppose you have no objection to letting me look at some of the literature?

THE COMMISSIONER: I am sure Mr. Kennin will be glad to let you see any of the documents.

MR. TROWERN: Because I can see as far as the retail men are concerned that end of it has got to be dealt with a little differently from the way you deal with the Manufacturers Association or the Trades and Labour Council.

THE COMMISSIONER: There are some organizations of employees in these retail establishments, some labour organizations; for instance, you have the Garment Workers, I suppose?

MR. TROWERN: That is the journeyman tailor who works for the merchant tailor.

THE COMMISSIONER: Working outside?

MR. TROWERN: Some inside and some outside.

THE COMMISSIONER: Is there any organization of the clerks in mercantile houses?

MR. TROWERN: I do not know of one in existence now; there used to be. In some of the lines of retail trade they employ their own operators, such as manufacturing furriers. Mr. Dineen has a large number of employees working for him. Then you have the merchant tailors.

THE COMMISSIONER: That branch of the concern would come in as a manufacturer.

MR. TROWERN: There would be a fine line to draw as to who is a manufacturer and who is a retailer. There are the three divisions, the retailer, the wholesaler and the manufacturer. The Assessment Department determines a retailer by the largest portion of his business being retail. The largest portion of Mr. Dineen's business, or Ryrie's business, or Seller-Gough's business, or Fairweather's is retail; it would be a difficult thing to put them under manufacturing. The Eaton people and the Simpson people are really retailers and would come under the retail class.

MR. DOGGETT: Our friend has told us that this is moving around socialism. I would like to ask him if he knows that the Retail Merchants Association insures their people against fire, and insures their plate glass windows and their horses? Is that not moving around socialism?

MR. TROWERN: The distinction I make is that the plate glass company makes a business of that; they do not come to me on any pretext that they are going to benefit me, they are figuring it out in cold dollars and cents. They say: If you will insure your plate glass with me we will take your risk; you pay us a certain sum of money. They estimate that their risks divided up will net them a certain profit so that they can divide it amongst their shareholders. These shareholders may be workingmen, and most of them are.

THE COMMISSIONER: The difference is that the State says to the employer: We

will undertake your risk if you pay us a certain sum; we have no profits to divide among the shareholders.

MR. TROWERN: Then you are making the State rich and the people poor.

THE COMMISSIONER: The State does not get anything out of it.

MR. TROWERN: I would like to know one State where it has been run on business lines and run successfully. Remember we get a whole lot of stuff told to us that is not based on facts at all, and when we start to dig into this thing and discover the conditions, they are entirely different from what we have been told. For instance, take the Post Office.

THE COMMISSIONER: You are striking at the foundation of all government. The Government manages the biggest business in the nation.

MR. TROWERN: Unfortunately they do not manage it as business people.

THE COMMISSIONER: They manage it pretty well as a whole.

MR. TROWERN: Take the Post Office that is held up to us by nearly everyone as being a magnificently operated proposition. Why, the electric light, the sweeping of the floors, the boxes that are manufactured to carry letters around in, are charged up to public work; not a nickel of those expenses is charged up to the Post Office. Do you know of any business corporation anywhere in Canada which does not charge to a department exactly what a thing costs and shows it in the statement; do you find any corporation hiding a great portion of the cost in another department? We have got to look at these things exactly as they are; I am not here to do anything but simply give you my views. These private corporations in the insurance business are run by men who have had years of experience; they know their business and how to operate it. It is the duty of the Government to see that those people carry out what they claim they are going to do and to protect me, but when it comes down to the Government going in and operating these things, then you are going to load this country down with burdens it should not bear, as they have done in England in a large number of boroughs. When you are in England I would like you to see some of the secretaries of the Retail Merchants Association; I am sure they will give you some information. I will be glad to give you some names and addresses.

THE COMMISSIONER: How is it that with such defective systems you carry a letter to New Zealand for two cents, and if it is an express parcel it will cost you probably two dollars?

MR. TROWERN: I am claiming now the Department should bear the cost of the Department. No matter what the Post Office Department costs, every dollar in connection with it should be charged up to that Department and not loaded up onto the public service; if the letters cannot be carried for two cents it should be more. We know well enough that to-day all the people who send letters are paying for the service of those who are sending out catalogues and mail order parcels and all the rest of it. If you were to give the people who pay postage on letters an opportunity you would—according to their own figures—reduce the cost of letters and increase it on parcels

and other things. We are now making an investigation of that whole subject; the more we dig into it the more we find. The poorest operated thing I know of is the Government Post Office. Then I turn around and look at every Department of the Government, and what do I find? Who are the poorest paid men? You have got gentlemen in this building who if they were outside in private service would be getting twice as much as they are; their services are not recognized. They are kept there from year to year, and because they are poorly paid, not getting what they ought to get, they are going out and crying down the fellows on the outside and are making them do things cheaper. If labour goes up I have to throw up both my hands, for everything goes up.

THE COMMISSIONER: You seem to be worse than the socialists: you are against everything.

MR. TROWERN: No, I am not.

THE COMMISSIONER: Except the Retail Association.

MR. TROWERN: I want to show you that it is a very broad question we are going into: when you touch on one thing you tip down one thing and tip up something else.

THE COMMISSIONER: I am afraid it will be a hard thing to meet the views of the retailers if you represent them. You seem to be very hard to please.

MR. TROWERN: No, I am very easy to please, that is the difficulty. I am pointing out that because we have gone into other things which were supposed to be good and it has turned out that they are not good and are not as they ought to be. I think that when I am asked I am justified in pointing out to you the condition of affairs.

THE COMMISSIONER: You must increase your confidence in your fellow-man: you have no confidence in him at all.

MR. TROWERN: Oh yes, so much so that I think a number or most of these private corporations are not as bad as they are painted, so I must have some confidence.

MR. DOGGETT: The gentleman has stated and I think it is generally admitted, that under State insurance for workmen's compensation, the risks in the Retail Merchants Association are very low, while in the building trades and foundries, the risks are very much higher. The position is that in Toronto every year there are hundreds of men in the building trades and other industries who are meeting with accidents. When one of these men meets with an accident and there is no insurance and no money coming in to their families, they invariably and inevitably throw themselves on the little retail merchants' stores where they have been doing their business. It means that the retail merchants are getting hit very hard if they cannot collect their bills from these men. In my opinion the retail merchants want to get right into this thing body and soul, then there wouldn't be so many of them going to the wall.

MR. C. LAWRENCE: This gentleman has said that public ownership or anything run by a Government, which is the same as public ownership, has not been

a success and has not been run on business principles. I can cite him a couple of instances to the contrary. In the city of St. Thomas the water-works are run by a commission of three; the mayor is ex-officio a member, the other two are elected by the citizens. Since they have taken over the waterworks in the city of St. Thomas they are not only supplying the citizens with a good deal cheaper water but a good deal better, and they are making a success of it. They are turning over a lump sum into the City Treasury every year of something like \$7,000 or \$8,000. A small place of 15,000 inhabitants gets that clear profit, and cheaper water than you can get in Toronto or in any place I have ever been in.

Another instance; they took over the electric light and gas plant. When they took over the gas plant the company was furnishing the city gas for illumination purposes at \$1.45 and for fuel at \$1.20. The citizens are given both now for \$1, with ten per cent. off for cash if paid by the 25th of the month. I did not intend to say what I am saying when I came here. It is on account of the stand this gentleman has taken that the trade-unions are being pressed into this movement to get something of this kind. The gentleman himself is a trade-unionist, although he will not admit it. He belongs to an organization which is a good deal more strict and is a close corporation. I belong to an organization but not a close organization; he belongs to the Retail Merchants Association. The difference between his trade-union and other trade-unions is this: they get an article and set their own price; if you buy you must pay that price. Trade-unionists have their labour to sell and they sell it at the place where they can get the most profit; they ask for a certain wage, and if they cannot get that they must take what they can get. This gentleman practically admits that they will get a boy who is not accustomed to a horse and send him out on a rig; the boy has never driven that horse before; the shop keeper does not know whether the boy or the horse will ever come back again. Should that be allowed to exist; would it exist if some insurance association like this is started? It certainly will not; the employer will see to it that the boy or the man who drives the horse, is accustomed to driving horses and is competent to take care of it. Let me just say a few things, not many. As representative of the Brotherhood of Locomotive Engineers, I appeared before you at your first meeting and stated our ideas on this question. They have taken this up in the United States, as I told you at that time. I understand there is a bill in the American Congress; it has not yet become law but it is along that same line. The law over there as to interstate commerce is different from what it is here where most of our railroads come under the Dominion Government. It is on the same principle as this gentleman is disapproving of; it pays, as I understand, a certain percentage of a man's wages, the employee's wages, if he gets injured or is killed, for a certain number of years; there is a minimum amount, and a maximum amount. I do not know whether you have a copy of that law or not?

THE COMMISSIONER: Yes.

MR. LAWRENCE: Then there is something which we like—it does away with litigation. As you stated a few minutes ago, only a very small part of the

money gets to the beneficiaries, about 37 per cent. according to statistics gathered over there. Litigation is something that we want to get away from. If we can get something where a commission will be appointed to look after things, to see that no fraud is permitted to exist, and that the employee or his beneficiary gets what is coming to him; that is what we want.

THE COMMISSIONER: What is your attitude to-day, Mr. Wegenast?

MR. WEGENAST: I do not think I have any reason to change my attitude, Mr. Commissioner.

THE COMMISSIONER: I do not see what advantage there would be in a two or three days' discussion of your brief.

MR. WEGENAST: I would be very sorry to inflict any discussion on you that was not of some value.

THE COMMISSIONER: Your brief is a very elaborate production and presents all the arguments from your standpoint.

MR. WEGENAST: Yes, but there are a number of points I would like to mention specially; there are a number of aspects of our suggestions in the constructive part of the brief I should like to put before you.

THE COMMISSIONER: Well, I suppose you had better go on. I am very glad to hear you, but I only want to hear you as Commissioner, as far as I may think it of advantage to the enquiry. I am sure you do not wish to spin the thing out. I think you intimated in a letter to me that you had something bearing upon the enquiries I am going to make, and I would be very glad to hear you on that. I do not wish to stop the flow of your eloquence.

MR. WEGENAST: I would be very sorry to think that I was using eloquence or any other form of verbosity that was not to the point. My idea was to go into some of the details of this statement. I need not say that the matter is so complex that there are a score of aspects of the subject on which there is room for endless discussion.

THE COMMISSIONER: The first thing is to settle the principle.

MR. WEGENAST: If we can assume that the principle of collective insurance is settled then of course it will eliminate a good deal.

THE COMMISSIONER: Nothing can be taken as settled.

MR. WEGENAST: If that is not settled then I shall be glad to reinforce that to some extent.

THE COMMISSIONER: Have you not done that in this brief?

MR. WEGENAST: The brief is a brief. It is not my fault it is so long; it is a brief so far as anything can be on this subject. I think, Mr. Commissioner well knows that it is not possible to do justice to a subject like this without taking some time.

THE COMMISSIONER: Then I think we had better go on and hear what you want to say.

MR. LAWRENCE: I intended to mention this subject of mutual insurance. The Locomotive Engineers have mutual insurance: for \$1,000 it only costs me \$18 or a fraction less to carry it for a year.

THE COMMISSIONER: Entering at what age?

MR. LAWRENCE: At any age up to 50 years. There is not an insurance company that I can get that for less than \$41 something.

THE COMMISSIONER: That would be at your present age?

MR. LAWRENCE: At any age from twenty-one years to fifty; they do not take them in after a certain age.

THE COMMISSIONER: Surely it does not cost \$41 to insure for \$1,000 at the age of twenty-one.

MR. LAWRENCE: No; I am giving an average. On the average in a company it would cost \$41, while at the same age in our association it is a fraction less than \$18.

THE COMMISSIONER: I suppose your officers are paid salaries?

MR. LAWRENCE: Yes. There are no such large salaries as the insurance companies pay their agents. They get three per cent. for collecting, and forwarding to the head office. They have men employed in the head office, a president and secretary-treasurer, and other employees, to run the business of the association. They are paid wages equal to the position, not starvation wages.

THE COMMISSIONER: What proportion of the locomotive engineers are insured?

MR. LAWRENCE: In the neighbourhood of 62,000 or 63,000 belong to the insurance, and there are in the neighbourhood of 73,000 in the association.

THE COMMISSIONER: And the ten thousand would probably be made up of the younger men?

MR. LAWRENCE: No. most of the young men come in and take out a policy. I will have to make an explanation as to that. Years ago our policies allowed them to join the organization without taking out a policy of insurance; about twelve or fourteen years ago it was thought better to revise the by-laws and compel every person who came into the organization to take out a policy. That explains why there is that number belonging to the organization who have no insurance; they are all locomotive engineers.

THE COMMISSIONER: How many are there outside of your organization?

MR. LAWRENCE: I could not answer that.

THE COMMISSIONER: Have you the larger number in the organization?

MR. LAWRENCE: Oh, yes.

THE COMMISSIONER: There must be a considerable number outside?

seventy-five engineers and I suppose there must be between fifty and sixty not in the organization; probably five or seven per cent. in a good many places—sometimes a good many more who do not belong—I can not say for sure.

THE COMMISSIONER: How do you manage about non-union labour?

MR. LAWRENCE: They can run an engine without belonging to the organization; that is the reason I say this gentleman, the Secretary of the Retail Merchants Association, belongs to a closed shop.

MR. TROWERN: I do not think a statement like that should be made. Ours is not a closed shop.

MR. LAWRENCE: They practically compel in some places every retail man to belong to the Association.

MR. TROWERN: Oh no.

MR. LAWRENCE: I want to tell you of some co-operative associations which have been organized and they have had hard work to buy supplies from the wholesale houses.

MR. TROWERN: You mean co-operative stores.

MR. LAWRENCE: Yes, simply because they claimed if they sold to the co-operative stores the retail men would not buy from them; if that is not trying to make it a closed shop I don't know what is. Just recently, I know, a co-operative store has been organized. I do not belong to it and have no stock in it. They are making a success of it, although the officers have told me that they have been turned down by some of the wholesale houses and have had hard work to get started. If that statement does not bear out the one I made I don't know what will.

MR. TROWERN: Were those Commissioners you spoke of in St. Thomas elected?

MR. LAWRENCE: Two of them were elected, one elected each year for two years, and the mayor was the third.

MR. TROWERN: Are they paid?

MR. LAWRENCE: They are elected.

MR. TROWERN: It is this voluntary service that is up against us. Here are a lot of co-operative people get together and want to run their own shop, working for nothing, and competing with the clerk and the merchant and other people who want to make a living and live in the community in a proper way. I claim all these co-operative concerns, and all these institutions that are trying to work for nothing, are detrimental to the State.

MR. LAWRENCE: I want to tell this gentleman that these co-operative stores pay better wages than the retail merchants.

MR. TROWERN: You can't tell me that. I know they are the greatest fraud that exists on the face of the earth.

MR. LAWRENCE: Your association is doing its best to clean them out.

MR. TROWERN: We will clean them all out before we stop, too. If you have any money in them take it out.

MR. BANCROFT: I am sorry I did not hear Mr. Trowern's statement this morning, due to the fact that we have not all our own time at our disposal, but I think some of his remarks are not altogether correct. If the Retail Merchants Association do employ labour there is no reason why they should not come under any compensation act in any community and bear the same burden as everybody else. There is a difference between the Retail Merchants Association and the trade-unions. The Retail Merchants at one of their conventions here criticised very severely the wholesalers who would sell directly to the consumer, practically cutting the retail merchant out of his distribution of the commodity whereby he makes his living. We have had the argument placed before us for a long number of years where a workman was working at a trade, and a machine was invented to lesson the cost of production, and making for more efficiency in industry, and the workman claimed he would be thrown out of employment, that he was ignorant. That was the criticism that was levelled at us, because after the invention of machinery would come about and the workman would be displaced, and the workman who claimed he was suffering an injustice because he was displaced by a machine was criticised as being ignorant and standing in the way of human progress; but when the retail merchant finds a wholesale house selling cheaper to the consumer direct, as an organization they won't stand for it for a moment. The retail merchant must take out his middleman's profit; that is one reason for the high cost of living to-day. The retail merchant all over the world is gradually being forced out of existence because he is not producing anything and in some cases is absolutely of no use to the community in this day and generation. The Retail Merchants Association has been against the co-operative store for what reason? Because it is a cheaper distributing agency, and is a benefit to the people. I would suggest that when the Commissioner goes on his trip that he ask some of the stores over there about the battles they had with the retail merchants before they gained a foothold. Mr. Maxwell, the President of one of the co-operative stores, who was over here told us that years ago when he was in the Scottish Wholesale Co-Operative Association they could not buy a beef in Scotland at all, that they had to go direct to the farmer. So the retail merchant does not stand in the same position as a member of the trade-union, not by any means. The trade-unionist is open in the market for his wages, and the retail merchant is trying to stamp it out completely. I do not know much about these things but I do believe that every employer in the Province of Ontario should come in under this act.

MR. TROWERN: It shows the great necessity of having this whole subject properly aired and the people properly educated up to all the facts; there are two sides to the story. I am not going to argue it out with these gentlemen this morning. These gentlemen are charging us with things we are not guilty of, but I hope, no matter which way the Commissioner reports or what the Government may adopt, this question will be thoroughly fought out. The whole public will have to see both sides of it; the issue is between the in-

dividual on one side and the socialists on the other, and I hope the individual will be successful.

THE COMMISSIONER: Now, Mr. Wegenast.

MR. WEGENAST: At the former session I went over a sketch or condensed summary of my brief, and discussed one of the twelve principles I put down. With regard to the second principle enunciated, namely, that the professional risk theory should be recognized and that employees should be compensated regardless of negligence, I desire to emphasize this, that while we admit that principle we do not admit it without qualification. I have stated it in my brief, and simply wish to emphasize that we consider there are two qualifications that must be recognized, and if those qualifications are not recognized so far as we are concerned the principle falls to the ground. These two qualifications are, first, that the individual employer should not be liable for damages for something not his fault. The British act is based on the principle of extending the personal liability of the employer, and we entirely disagree with the application of the principle of professional risk in the British act. The British act is virtually an attempt to operate a socialistic principle with individualistic machinery. We cannot overlook the fact that this is a form of what is sometimes called socialism. The principle of professional risk means the employer or the State loads itself up with a duty which primarily should be perhaps thrown upon the individual, but which the individual from improvidence, or whatever may be the cause, has omitted to make provision for. We say if the principle of professional risk is recognized it must be recognized with the qualification that the burden should not be thrown upon the individual employer. Then again there is the obverse side, that the employee himself should not be entirely relieved from the results of his own wrong doing.

With regard to the sixth principle I desire to point out that if there is left outstanding any common law liability, or any other liability than that covered by the compensation act or compensation system, it will mean the employer will again be called upon to insure. So long as there is an outstanding liability against the employer which is not covered by the compensation system there will be forms of insurance which he will be solicited to take, and which indeed many of them will take. The logical solution is then for a further extension of the system which will enable him to secure similar insurance for that liability, and our contention is that all these liabilities should at once be included in the act, leaving no outstanding liability on the part of the employer.

THE COMMISSIONER: Has anyone taken the trouble to make any enquiries as to the cases in which recovery at common law has been had? My experience would be that it is almost a negligible quantity.

MR. WEGENAST: I think perhaps that is true.

THE COMMISSIONER: I can count on my fingers the number of cases that have come under my observation where there has been any recovery outside of the Workmen's Compensation Act. There are two or three cases I have in mind where there was common law recovery.

MR. WEGENAST: I think that is true, and I think the percentage in England where recovery has been made is comparatively small, and yet a considerable number. What I desire to point out is not so much the probability of the workman succeeding in recovering, as the apprehension—

THE COMMISSIONER: That is not the object of my observation. The thing cuts both ways, one on which you would address me, and the other is that it would take very little away from the workman.

MR. WEGENAST: Yes, and then I desire to mention the other side of it, that it is the apprehension of the employer that he may still be liable, whether that apprehension is well founded or not. That is what I desire to call attention to.

THE COMMISSIONER: Does the recent act passed at Washington not do away with common law liability?

MR. WEGENAST: Yes. There is a clause to which we do not take exception—in fact we advocate it—under which the employer who does not provide proper safeguards, or otherwise is negligent, is penalized, but the fine goes into the common fund, not into the pockets of the workman.

I have only this further observation to make in answer to a question raised by you, sir, at one of the sessions on the question of whether the workmen should contribute to compensation funds if he was not compensated to the full extent of his loss. There are a number of answers that can be given to that question. One of the most obvious is this, that the workman if he had not been injured would not probably have drawn full wages for the rest of his life. I think in fact two thirds wages would be a generous estimate. A workman who is injured, say at the age of twenty-five, would not expect in the natural course of things to draw full wages for the rest of his life for three hundred or more days of the year.

THE COMMISSIONER: Is there any system where the compensation continues during life?

MR. WEGENAST: Yes.

THE COMMISSIONER: I think most of them are for a limited term of years.

MR. WEGENAST: No, I think not. There are systems in the United States which adopt six or eight years, but the European systems run for life, I think, almost entirely, both in the case of complete incapacity and in the case of the widow of the person killed.

MR. BANCROFT: Take Great Britain. Is it not true that the full liability can be changed into a Post Office annuity? The employer has a chance to do that.

THE COMMISSIONER: That is very much opposed.

MR. BANCROFT: I think in the State of Washington it is \$1,000.

MR. WEGENAST: On the basis of compensating a workman fully, in so far as it is possible to do so from a pecuniary standpoint, he would never get one hundred per cent. of his wages.

THE COMMISSIONER: Nobody proposes in any country, as I understand, to pay him full wages.

MR. WEGENAST: I think there is one instance of full wages, and that is in Germany where the man is incapacitated and also requires personal attention, for instance a man paralysed. I think in that case they pay one hundred per cent. of the wages, but that is paying something more than he would have earned if he had not been incapacitated. Then there is another answer to the argument, and that is under present conditions, even where there is strictly a legal liability on the part of the employer, no court attempts to give a man anything like the full wages he would have earned to the end of his days.

THE COMMISSIONER: I do not see much reason for discussing that aspect, because nobody proposes that.

MR. WEGENAST: You raised the question at one of the meetings.

THE COMMISSIONER: What I have said more than once is that the workman in my view does contribute because he does not get the full wage but only a percentage of it, varying, I think, from fifty to sixty per cent. Fifty per cent. generally, and sixty per cent. in some cases.

MR. WEGENAST: My answer to that would be if he receives two-thirds of his wages he does not contribute.

THE COMMISSIONER: Why not?

MR. WEGENAST: Because that other third he would never have got under any circumstances.

THE COMMISSIONER: Why not?

MR. WEGENAST: He would have had holidays for one thing. He would never, even if he had never been hurt, drawn full pay. I think seventy-five per cent. would be an outside estimate of what a man would earn for his full wage capacity to the end of his days. I think two-thirds probably would be a fair estimate.

THE COMMISSIONER: That is not accurate, I think, because in estimating the allowance it is the average earning that is taken, and that would take into account the possibility of sickness and holidays.

MR. WEGENAST: I am assuming a basis of one-half wages or two-thirds wages.

THE COMMISSIONER: It is the average wage; it is not the full wage that he would have earned if he had worked every hour of the year.

MR. BANCROFT: It is the average wage of the last three years.

MR. WEGENAST: My point is if he had gone on working he would never have gone on earning money at the rate he did for those three years. We can be pretty certain that that three year estimate would be a full earning estimate, and very little or no allowance would be made for holidays.

THE COMMISSIONER: The result of the accident may be to kill him ahead of his time.

MR. WEGENAST: Even then you must estimate on the basis of wages, and I am assuming it would be on the basis of wages, whatever qualification of that basis is incorporated in the act.

THE COMMISSIONER: If you want to make an Act unpopular you want to make it so that every employer can deduct so much every month or every week from his employee's wages. Would that not be a source of continual friction—the very thing that is most important to avoid?

MR. WEGENAST: I had thought of replying to that later on, but I may say apart from all logic a system of insurance as broad as that which we propose would meet with very strong opposition throughout the Province on the part of employers unless the employee contributes. For the last few months I have been travelling throughout the Province collecting some data which I propose to submit later. I was surprised and not a little gratified to find the unanimity of sentiment in favour of the general features of the proposition which we have placed before you, that is, the Government's Commission, the mutual fund, and the rest of the general features. But there is one question which comes up, I was going to say almost invariably, but perhaps hardly that—it is this: how are the workmen going to contribute to this, are we going to pay for all these accidents and they not pay? The Government will find, apart from all logic, that there would be a great deal more opposition to the introduction of an act without contribution by the workmen than to one with contribution by the workmen.

THE COMMISSIONER: You ask the workmen to contribute to the compensation for injuries, forty-five per cent. of which are due to the negligence of the employer?

MR. WEGENAST: No.

THE COMMISSIONER: The number of industrial accidents due to the fault of the employer is what?

MR. WEGENAST: It runs from twenty-five to thirty per cent.

THE COMMISSIONER: You are asking him to help the employer to pay that?

MR. WEGENAST: To the extent of twenty-five per cent.

THE COMMISSIONER: Why should he?

MR. WEGENAST: Because he is being compensated for accidents which are due to his own negligence.

THE COMMISSIONER: That would be very few of the cases.

MR. WEGENAST: It amounts to between twenty-five and thirty per cent. That is involved in my qualification of that second principle.

THE COMMISSIONER: If that is so, why not set one off against the other? He ought not to contribute a shilling towards bearing the burden of accidents due to the negligence of the employer.

MR. WEGENAST: Yes.

THE COMMISSIONER: If 25 per cent. represents that and he is compensated for 25 per cent. of the accidents due to the negligence of the employee according to the statistics, one washes the other.

MR. WEGENAST: But the idea is to compensate the workmen for accidents due to the negligence of the employer and for those due to the inherent risk of the business.

THE COMMISSIONER: I do not see why that should not be borne by the industry.

MR. WEGENAST: The employer as representing the industry should bear those two parts, but there is no justification in natural justice or logic—

THE COMMISSIONER: I think your logic is weak. If we start with the proposition that 50 per cent. of it should be borne by the industry through the employer he will take care he does not pay it out of his own pocket. Then you have 20 or 25 per cent. for which the employer is not now liable, and if you make the workman contribute to that 25 per cent. for which the employer is liable he gets practically no benefit from the 25 per cent. for which he is liable.

MR. WEGENAST: He is getting that.

THE COMMISSIONER: Surely you should set off the advantage he gets against the disadvantage of the other.

MR. WEGENAST: I do not see where the disadvantage is. He is getting it in every case. He is getting the 25 per cent. and he is getting the 50 per cent., and he is also getting the 25 per cent., and the proposition of the representatives of the labour interests is he shall not pay for that 25 per cent. Now, I say there is no justification for that. I did not intend to go into this. There is no justification in logic or natural justice or otherwise for the proposition that the employer should pay, or, if you like, the community should pay, for those accidents which are due to the negligence of the workmen.

THE COMMISSIONER: That deserves a little more consideration. It is very easy to say "an accident due to the negligence of the workman," but everybody admits our law is all wrong on the question of contributory negligence. It is all wrong to say because a man that is injured has in some way contributed, it may be very slightly, to the happening of the accident, he must be deprived of any compensation. That law is being abolished in most civilized countries. It has never been the rule of the Admiralty. There where an accident occurs and both ships are at fault the loss is borne between them.

MR. WEGENAST: Does that not go to the question of the proportion, not to the principle?

THE COMMISSIONER: What I am getting at is there are very few cases in which with a just law the workman would be deprived of his right to recover on the ground of contributory negligence.

MR. WEGENAST: My investigations lead me to believe that there would be more than 25 or 30 per cent.

THE COMMISSIONER: I should not think so. Where the accident is wholly due to the negligence of the workman, probably it would come within the exception in the British act, but under our law, as I am pointing out, if the workman has contributed even slightly to the accident, where it would not have happened but for his negligence, he is deprived of all compensation.

MR. WEGENAST: I am thinking of the accidents where a man is perhaps a little the worse for liquor, or where he puts his hand where he has no business to put it. I am not speaking of the cases which arise because of the strenuousness of the work and the mental fatigues attendant upon it, where his mind is momentarily called away from his work.

THE COMMISSIONER: Juries as a rule pay no attention to defences of that kind. Nine times out of ten where the jury thinks the accident was entirely due to the negligence of the employee the employee recovers.

MR. WEGENAST: If that were the case there would be no occasion for passing a new law. We are going on the assumption that where one accident is compensated or was compensated in the past, half a dozen will be compensated now.

THE COMMISSIONER: No, the law is necessary because a man is driven to an action.

MR. WEGENAST: Surely there must be some qualification to that.

THE COMMISSIONER: Your experience must teach you that juries do not favour the defence of contributory negligence.

MR. WEGENAST: My experience is that the Courts of Appeal regularly upset the verdicts. Whatever may be the fact it does not go to the principle.

THE COMMISSIONER: A principle is not worth discussing, much less fighting for, unless there is something substantial behind it in dollars and cents.

MR. WEGENAST: I must ask my submission to stand, that whatever are the proportions, and I think it is more than 30 per cent., of accidents caused by the negligence of workmen, that a proportion corresponding to that should be charged to the workmen.

MR. BANCROFT: Is it not true that the employers used all those arguments against the Washington act, and after eight months there were only thirty-four who did not carry out their duties? There were twenty-five hundred employers, and many of them used the same arguments, but there are only thirty-four who refuse to come under the provisions of the Act, and eighteen settled the matter after seeing the Attorney-General, and the others are coming into line.

THE COMMISSIONER: You are speaking of the State of Washington?

MR. BANCROFT: Yes.

MR. WEGENAST: It is compulsory, except where a man wants to bring an action as

to the constitutionality of the Act; he must pay in whether he wants to or not.

Just before leaving that question of compensation in full I desire to call your attention, sir, to a reference in Dr. Zacher's article of which I gave you a partial translation in part, referring to that very argument. He places it upon the same ground as I have, that the workmen would in no case, or in very few cases, earn full wages to the time of his death, and the other arguments that I have mentioned.

THE COMMISSIONER: One moment there. Would not any scheme involve the readjustment of the compensation according to circumstances from time to time, as under the British act?

MR. WEGENAST: Yes, I would think so, but I am not thinking of that so much as of this: A man is incapacitated; in the natural course of things he would have stopped working when he was perhaps sixty or sixty-five years of age; he gets compensation to his last day. He would not have worked all that time; he would not have worked during the time of non-employment.

THE COMMISSIONER: I think I have seen a good many men working in the ditch over sixty-five.

MR. WEGENAST: You must grant that what I say is to some extent true. Besides that what the employers will be asked to furnish would be not only compensation against accidents, but also compensation against non-employment and compensation against old age.

THE COMMISSIONER: Not if the compensation is based upon the average earnings of previous years.

MR. WEGENAST: Take a man who has been earning two dollars a day. You pay him if he is incapacitated, we will say, one dollar a day. Now, he gets that till he is sixty-five, seventy-five or eighty years old. In the natural course of things he would not have earned two dollars a day for all that time. He might have been killed or otherwise injured. He might have been injured outside of the employment altogether. What the employer would be asked to do under a non-contributory scheme would be to insure that man not only against the result of occupational injury but also against non-employment for the rest of his days, against accident from any other reason, against old age, and against invalidity.

THE COMMISSIONER: You have injured the man; why should all these problematical things enter into it, that he might possibly have been injured in some other way if he had not been injured in that way? The man was all right until he got hurt in your establishment.

MR. WEGENAST: We are not only asked to give him what he has lost, but a good deal more.

MR. BANCROFT: The average life of the working classes in Europe is less than fifty years.

THE COMMISSIONER: But a man who is a pensioner lives for ever.

MR. WEGENAST: That is the practical point I have in my mind.

With regard to the eleventh principle I have this submission to make, that the compensation should be on the wage basis or on the earning basis. I have no quarrel with that, but it should not be in accordance with the principle that has been embodied in some Acts in the form of an anatomy schedule, so much for an eye, so much for a tooth, and so much for a finger.

THE COMMISSIONER: I suppose the argument in favour of that is it makes certain the amount of the compensation.

MR. WEGENAST: Yes, that is quite true.

THE COMMISSIONER: The most logical nation, the French, have adopted that.

MR. WEGENAST: I would not like to admit that; I thought the Germans were.

THE COMMISSIONER: Oh no. Where socialism exists can there be any logic?

MR. WEGENAST: However, my submission is that the general principle should be embodied in the act of compensation according to wages or earnings, and that the matter of working out an anatomy schedule, if one is worked out, should be left for more careful consideration by the Commission.

THE COMMISSIONER: Dealing with that matter, how is it that some insurance companies have adopted that principle in their accident policies?

MR. WEGENAST: Because it costs less.

THE COMMISSIONER: It costs less to you people then?

MR. WEGENAST: Yes, I think so.

THE COMMISSIONER: Then why are you kicking against it?

MR. WEGENAST: Because we do not think it is the right way. Then there is this further: I am submitting in one part of my brief that the basic idea of the whole scheme is not to be an application of the old theory of the Anglo-Saxon law, the wergild theory, whereby a man was allowed to wreak so much vengeance on the man who injured him, or to collect so much money from him. My idea is that the idea of workmen's compensation or accident insurance is not to commute the vengeance which the workman is entitled to against the employer, but to provide a competence for the injured workman or his dependants, and apart from any other consideration I should be glad to see the act consistent in that respect. Some representatives of the labour interests will discover probably that it would work out in some phases so as to make it slightly cheaper for us, that a man who has no dependants in the first place will receive no compensation. At least nobody will receive compensation for the death of a man who had no dependants, and again that a man who is after his injury able to earn more than he did before will not receive compensation, or not continue to receive compensation. For instance, take the ordinary case of a farmer's boy having his hand taken off by farm machinery. He goes to a business college, or goes to school and enters a profession where he earns far more than he would have on the farm. We do not consider there is any reason why that man should remain a pensioner on the fund for the rest of his life.

THE COMMISSIONER: What do you say as to the proposition that there is no difference in the principle as to bearing the burden in the case of human machinery than there is in the case of dead machinery?

MR. WEGENAST: I have dealt with that in my brief.

THE COMMISSIONER: Is that a fallacy?

MR. WEGENAST: It is a half truth, which is sometimes worse than a fallacy. It is true in a sense, but that is one of the very things that I have against the professional risk theory.

THE COMMISSIONER: Now, you have had ten men doing by manual labour a work that afterwards is done by a machine with one man. The machine is broken. Whose loss is that? Who pays?

MR. WEGENAST: The employer.

THE COMMISSIONER: Ten men did that before. They are injured. Whose loss ought that to have been?

MR. WEGENAST: Yes, but the machine does not go out to the saloon and take a drink. I am taking that as a type. A machine does not voluntarily do anything. A machine is not capable of being negligent. Further, the machine is not human; it has not any self-respect to maintain: it has not to be taught the duty of being careful.

THE COMMISSIONER: That perhaps tells against you. You have brought an active intelligent man who guards himself against accident, and the machine cannot.

MR. WEGENAST: If he is a machine man there ought to be no impediment put in the way of his being raised to the level of a more careful man.

THE COMMISSIONER: Would you think that anything but a small percentage, where the workingmen are intelligent and anxious to do the best for themselves and the employer?

MR. WEGENAST: From the experience which I have had, and I might say I have had a good deal of experience myself in managing work of all kinds, and I have not referred to it because it is not my business to present my own views, but that experience and the brushing up I have received during the last four or five months in connection with my investigations throughout the province leads me to believe, and confirms my belief, that a great many more than the proportion of accidents we have discussed are due absolutely to the negligence of the workmen. I am not speaking of inadvertence, I am not speaking of the cases where the workmen have been partially negligent, but cases where the workmen have been injured by their own fault.

THE COMMISSIONER: Give me a typical case.

MR. WEGENAST: I have a good many in my records. Here is one: a man is working a machine, he has been told time and again not to put on the belt when the saw is running and he deliberately does it.

THE COMMISSIONER: Why does he do it?

MR. WEGENAST: I think the idea in your mind is that it might be to facilitate the work. The employer however does not want his work facilitated in that particular way, and if he has taken every precaution that the man should not do that, how can you impute it to the fault of the employer?

THE COMMISSIONER: Take an employer who says: Don't put on that belt when the machine is in operation. The man obeys instructions. The employer finds that the work is not as far ahead as he would like. The man probably goes at the end of the week.

MR. WEGENAST: That is not the general experience. I can say that with absolute confidence.

THE COMMISSIONER: I do not mean that is a deliberate thing. The employer protects himself very naturally against what he thinks would be his liability by telling the workman not to put on the belt when that saw is in motion.

MR. WEGENAST: No, that is not even typical. The ordinary run of employers throughout this Province—I am not speaking of large corporations, but the ordinary run of employers—are extremely sensitive, not only in regard to the pecuniary feature, but in regard to the personal feature. They are extremely sensitive about an accident happening in their factories.

THE COMMISSIONER: Where is your foreman?

MR. WEGENAST: He may be there, but a foreman cannot stand everywhere at once. Then there is this feature which illustrates what I have just been saying, or at least it is a sidelight on it. In collecting the data I have collected during the past few months I have put this stock question: "What was the nationality of the man?" We find that the proportion of accidents happening, for instance, to Englishmen is very much more than to Canadians.

THE COMMISSIONER: Is that because he knows it all?

MR. WEGENAST: Partly that, and partly because he does not know it all. A question will arise whether an employer who employs Englishmen will not be obliged to pay a higher rate. Now, that is a sidelight on what I am contending. There the employer cannot be blamed.

MR. BANCROFT: I just wanted to say this, that I wish Mr. Wegenast would bring up the other side too. It will necessitate another three days' sitting for us to answer him. There is an argument that he is not judged on what he does during the day under present day conditions. An employer may be sensitive about an injury, but the man is judged by the time sheet that he fills in and hands to the foreman, and the cost of the work. It does not concern the employer. The man is there to be efficient and to make profits for the employer, and he is judged by his time sheet and not on whether he puts a belt on his wheel when the machine is going or not. Now, if an engine that is not governed thoroughly was to run away and the fly wheel be burst, which a machine does sometimes, and creates an injury that no one is responsible for, it should be charged upon the industry.

MR. WEGENAST: Another type of accident, and a frequent one, is where a man goes

out of his department and fools around another machine or perhaps tries to work around another machine, which he has perhaps been told repeatedly not to do. I could turn up dozens of cases of that kind.

THE COMMISSIONER: What does he do it for?

MR. WEGENAST: Out of wantonness more than anything else.

THE COMMISSIONER: How does he get away during working hours?

MR. WEGENAST: You can't tie a man up under present labour conditions, as you could once. An employer must take the labour he can get with all its peculiarities and idiosyncrasies, or go without. A man will not be bossed or controlled as he was ten years ago, and he will use his own judgment, whether he strays into the moulding shop or not. If you don't like it he goes somewhere else.

THE COMMISSIONER: You had better let him go.

MR. WEGENAST: They do, but when the orders are there to be filled it is sometimes a difficult problem. There are a great many industries running short-handed now in the city of Toronto, and all over the province, and a man who can work at all gets work, and sometimes it is not discovered how he is doing it until an accident occurs.

THE COMMISSIONER: Have you any figures to show the number of accidents in a particular class of manufacture or generally, that have been due to intoxication of the workmen?

MR. WEGENAST: I have no figures. I have a number of instances, but I have not covered the field sufficiently.

THE COMMISSIONER: Do the reports of accidents that come into the Labour Department show that?

MR. WEGENAST: I do not think so. Of course if the cause of the accident is the man's drunkenness it is shown. I came across one case last week in Owen Sound, in an iron foundry there: it was the only accident they had in 1911. The injured man was said to be a good man and to have worked for them many years, but that day one of the other men had smuggled some liquor into the shop. Owen Sound is a local option town, and that may account for that particular method of getting drunk. At all events the man had smuggled some liquor into the shop, and this man was under the influence of liquor, and was injured. I think he fell downstairs and injured himself rather badly.

THE COMMISSIONER: Generally they say a drunken man will not get hurt where a sober man would when falling down stairs.

MR. WEGENAST: Perhaps this man was not drunk enough for that. I could give you a number of typical cases such as where a man puts his hand on a saw.

THE COMMISSIONER: Surely that may happen to the most careful man.

MR. WEGENAST: No, not to the most careful.

THE COMMISSIONER: But surely that may happen without any serious fault being charged to the man.

MR. WEGENAST: Yes, it might happen. I am not thinking of a case of inadvertence. I have a case in mind where it was the purest sort of carelessness.

THE COMMISSIONER: It seems to me, from what experience I have had in trials, there is not nearly enough care taken by employers in large factories to have oversight especially over the young and inexperienced men who are put upon dangerous machines.

MR. WEGENAST: I had my finger here drilled through with a button drill when I was a boy of about fifteen. I was laughing and chatting with a man on the next machine, and I was putting these buttons in, and the drill came down and it went through my finger. No amount of supervision on the part of the foreman would stop that.

THE COMMISSIONER: Perhaps not. These stamping machines where a very little motion on the pedal, or a man putting in his hand to take out a piece of tin, those are the most frequent causes of accident. Generally the evidence on the part of the workman is that the machine was out of order and tripped itself; for the defence that the boy must have put his foot upon the pedal, which he might do quite unconsciously.

MR. WEGENAST: I quite admit that. I am not thinking of those accidents. I would ascribe those to the inherent danger of the business. That reminds me of an accident of which I got particulars at Niagara Falls. A man there was working one of the punch presses in a jewellery factory and was changing the dies on a machine. The employer had put a very good type of guard upon that machine which would make it absolutely impossible for the punch to come down while the dies were being changed. It was no trouble, or at least it only meant a moment for a man to put that guard on while the die was being replaced, but the man deliberately changed the die without the guard.

THE COMMISSIONER: Deliberately or thoughtlessly?

MR. WEGENAST: Deliberately. The factory is a small one and the manager gives personal supervision. The manager came out and caught the man changing that die without the guard and he instantly discharged him. Now, I think that is a fair type of the action of employers in cases of that kind. I could tell an incident in Mr. Bird's factory, and he would know at once the condition. I think it is a fair type. Then speaking of accidents due to carelessness, if you will permit me, I remember when I was a boy about ten I went into a factory in the dark and wishing to see whether a certain saw was running I deliberately touched the saw.

THE COMMISSIONER: You must have been a very bad boy.

MR. BANCROFT: I think he is judging these things from the accidents he has had.

MR. WEGENAST: I have numerous instances of these accidents.

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## FIFTEENTH SITTING.

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THE LEGISLATIVE BUILDING, TORONTO.

Tuesday, 6th August, 1912. 2.15 p.m.

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner.*

MR. F. N. KENNIN, *Secretary.*

MR. WEGENAST: I have a few instances of accidents before me. I do not know that they are of any real value, but they bear upon the discussion this morning. In Hespeler a man bored through his finger. He just wanted to see if the bit would cut flesh; he wanted to try it. That was absolutely the case. Another one in the same factory working on a saw put his hand under the table to get out some sawdust, a thing he should not have done.

THE COMMISSIONER: I suppose in the first case it would not be an accident arising out of his employment or in the course of his employment?

MR. WEGENAST: Here is another one who sawed off part of his thumb. He does not himself know how he did it, nor does his employer. Here is a case of a fellow employee struck by a piece of wood from a saw operated by another man.

THE COMMISSIONER: There is no reason why that man should not be compensated.

MR. WEGENAST: Here is one where a man had three fingers cut off by a trim saw. He does not know how it happened, but he had no business to be at that saw; it was not his work. Then here is another one, a man working on a shaper who had his finger lacerated because the pattern wasn't in proper condition. It was his work to take care of the pattern. Here is another one, a man had the point of his finger taken off in scuffling. I do not know what machine that was. Here is the case of a man who had his head cut open by a board falling off a truck that he was shoving into a dry kiln. Here is the case of a man who had the end of his finger taken off by sticking his finger in the back of the machine.

THE COMMISSIONER: There is a case in the last weekly notes of a workman who was expressly forbidden to get flint in a deep trench in a quarry which was known by the employer to be dangerous. His instructions were to work on the surface of the quarry. In disobedience to orders he worked in the trench where flints were more easily gotten, the earth fell in on him and he was killed. On a claim being made the County Court judge held that the accident arose out of the course of his employment. The Court of Appeal reversed the decision saying the evidence was clear that he was not employed to get flint in the trench, that he was expressly warned not to do so. He went into the trench to get more flints and so earn more money. They held it did not happen within the sphere of the employment.

MR. WEGENAST: Now, we would compensate that man, partly because of the expense of deciding in individual cases the question of liability, or the

question of whether he was entitled to compensation or not. I mean to say of course that is not really within the sphere of the employer's obligations either individually or collectively, and we say moreover that if it should be determined that the employees are not to contribute it would be necessary for us, so far as we are concerned, to withdraw our acceptance of the second principle, that is the principle of professional risk, and to ask that the act cover only such injuries as occur because of the negligence of the employer or the inherent hazard of the business, and leave it for the Commission or tribunal to determine in each case whether it came within those bounds.

THE COMMISSIONER: I should think that would be very unsatisfactory.

MR. WEGENAST: We think so too.

THE COMMISSIONER: Perhaps I am not getting exactly your idea. If there was no fault whatever on the part of the employer and it was not an accident incident to the business, but due wholly to his negligence, perhaps that would be a different thing.

MR. WEGENAST: That is what we submit. Now, we think, looking at the problem as a whole, it would involve so much unpleasantness in each case that it is more desirable to compensate all, but that does not get away from the injustice of throwing the burden upon the employer entirely, and the obvious injustice of giving a man compensation when he is not deserving. I have a great many more of these notes, but I do not suppose it is desirable to take up time giving them. I have one right here before me of a man who had his arm broken in attempting to throw off the main belt, contrary to orders.

MR. BANCROFT: What Mr. Wegenast is giving us is the employer's side of the story.

MR. WEGENAST: These are from confidential information collected by me.

MR. BANCROFT: If you want to put those things into the record we will have to investigate them and get the man's story.

MR. WEGENAST: We would have no objection to that in some cases. We would ask the employers' leave to let you have the facts, but they are got under such circumstances that there is no object in the employers concealing facts at all, and the only contingency that you have to reckon with is my exaggerating them or falsifying them.

MR. BANCROFT: The employer has a different idea usually from what the man has.

MR. WEGENAST: This is not the kind of report you would get if there were a lawsuit on. In that case there is always room for a difference of opinion, but these are off-hand confidential reports as to how the accident really happened, and of course are reports of accidents the large majority of which never went to law.

Now, in regard to the whole character of our scheme, which is in one sense a form of state insurance, I desire to point out that the whole trend of events in the United States, as in other countries, is towards the system that we propose as a final solution. In Illinois only a little over a year ago an individual liability law was adopted, and already the employers

have made representations to the Legislature asking for some form of collective liability. The Commission of Michigan anticipated a demand of that kind, and gave leave to the employers to form mutual insurance societies. In both states the recent developments show that in all probability a state insurance system will be adopted before very long. The same is true, with variations, of a large number of other states. I have here a recent report issued only a month ago, on the 10th and 11th July, a preliminary report of the State Bar Association of Indiana, which contains one of the clearest summaries of the whole problem of workmen's compensation that I have seen. I think, Sir, you will be interested in looking over a couple of pages of the article. The rest of the book is of no value, but as a general sketch on workmen's compensation I have seen no better, and the leaning is towards a system such as we propose.

MR. BANCROFT: Indiana has no Compensation Act? It is purely an Employers' Liability in Indiana.

MR. WEGENAST: If there is any one point I would like to emphasize more than all others it is this, that so far as we are concerned these principles and our recommendations are interdependent, mutually dependent. We could not support the general proposition if any one of half a dozen or a dozen features were altered or were contrary to our ideas of the general scheme.

THE COMMISSIONER: In other words, your propositions are like the laws of the Medes and Persians.

MR. WEGENAST: No, not at all. They stand or fall together, is the idea I have in mind, in the essential features. There are a great many features in which our minds are quite open and as to which we are prepared to adopt any reasonable suggestion or compromise, but there are a number of main features which must be taken together, and the elimination of any one of these would mean, so far as we are concerned, that we could not support the general proposition.

The second proposition, as I have already said, is dependent on certain qualifications, to our minds, and is also dependent on the acceptance of the sixth principle. We would not, in other words, accept the principle of professional risk if it were not proposed to make the remedy exclusive and relieve the employer from further litigation and further forms of insurance.

THE COMMISSIONER: Will you repeat that, please?

MR. WEGENAST: We would not accept the principle of professional risk, that is the principle of compensating in all cases regardless of negligence, if the employer were to be left open to further actions and further litigation and further calls for insurance. That is the way our members look at it, practically. They say what is the use of going into this insurance scheme if we are to be liable to actions on the part of our employees outside of it. That feeling is very strong. On the other hand I might remark once more there is a very marked unanimity in supporting a general scheme of having the whole thing handled by a Commission, and taken out of the courts.

Then speaking of the fourth principle, that is that the compensation should be periodical rather than in lump sums, it is of course practically

dependent on the adoption of a state liability system. It is almost unthinkable to introduce a system by which an employee who is injured would become a life beneficiary upon his individual employer. The attempt was made in the British act, and one cannot but be astonished that the British Parliament should not have more carefully weighed that feature of the Act. Under the British act, a domestic servant, a gardener, becomes a pensioner upon his or her individual employer. It is true there is a provision for buying annuities, but it is not compulsory, and the facility is largely ignored. Only a few weeks ago a man was injured who was working for me. He happened to be working out of the course of his employment, but he had his arm taken off. If we had a system of individual liability under a periodical payment plan that man would be left a pensioner on my hands for the rest of his life, and the rest of my life. Here again comes the obvious reflection that compensation under such a periodical payment system would depend on solvency, and, in fact, the existence of the employer.

Then our recommendation—and this is a very important feature of our proposition and one which I desire particularly to place before you before your projected trip abroad—our recommendation of a State administered system is dependent upon the adoption of the current cost plan. In other words, if the current cost plan of insurance is not adopted or sanctioned, or in fact assured in the Act, we would contend and as far as possible hold out for permission to organize our own mutual insurance associations. The current cost plan presents to us two principal advantages. It saves us expense, it makes insurance cheaper at all events in the initial stages, and we believe a good deal cheaper at every stage. Then it apparently tends more than any other influence to lessen the accident rate. If we were concerned only with the latter feature we could well afford to form our own mutual insurance systems and shut out those members who were not careful, and thereby reduce the rate to the lowest minimum. If we were concerned only with the cheapness we could form our own societies and by careful selection reduce the cost very much. For instance, take the woodworking class. If planing mills were put into the same class as furniture factories there is no doubt that the rate would be materially raised. If the smaller manufacturers are brought in in each class there can be no doubt the rate would be heavier than they would be in the larger and more highly organized industries, and for that reason we would wish to be left to organize our own societies and to leave the dearer risks, of course, to be otherwise insured, or under an individual liability system, not insured at all.

I may at this point refer to a suggestion, little more than naïve, on the part of the liability insurance companies in the United States, that State insurance institutions should be instituted, but for the purpose of taking the risks which the stocks companies and the mutual companies will not accept. In working out our proposition, we naturally took the view that if the State or Province went into the insurance business that they would want the good business as well as the bad business, and we assumed that would appeal to you and to the Legislature. For that reason, and because we believe on the whole the adoption of the current cost system will tend to lessen the number of accidents, and tend to conserve the efficiency

of labourers, we decided it would be better to go into an all-inclusive compulsory scheme. I think in that respect our stand is rather unique. I know no manufacturers' association in the United States has taken any such stand, but I think I can claim for ourselves that we have tried to make our propositions perfectly fair and open, and it is in pursuance of that policy that we advocate a compulsory system which will include all employers in their respective classes, instead of allowing them to insure themselves or form their own organizations.

THE COMMISSIONER: I suppose you have read this book you gave me?

MR. WEGENAST: I have looked over it slightly.

THE COMMISSIONER: There is one point they make here which is perhaps apropos of what you have been saying. They say a hard and fast rule applying alike to all occupations and industries however diverse and however great the differences, and the amount of damages to which the particular employees would be entitled would vary so much, that in many instances it would create a great injustice. I do not know whether that is founded on the hypothesis that there would be a uniform rate.

MR. WEGENAST: I think that is likely.

THE COMMISSIONER: Then it says that a young man with his life before him might receive the same wages as an old man whose life is already spent, and to fix one measure for both would be an injustice.

MR. WEGENAST: That seems to be assuming a lump sum basis.

THE COMMISSIONER: If he only got his monthly or yearly compensation based on his then wage then the same principle would apply. That is the way it is now. Suppose you made the employer liable irrespectively of any of these common law defences all the man could receive would be the pecuniary loss he sustained by reason of the injury. I suppose that would take into consideration though the prospect of his having higher wages as he progressed in life in his occupation.

MR. WEGENAST: That feature comes in more particularly where the injured person is an infant.

THE COMMISSIONER: No, take a young man starting. He is probably a wiper in the shop getting very small wages. In the ordinary course of things he would get on to be a fireman, and then a locomotive engineer. Now, all he would get would be compensation based upon the wage he was receiving as a wiper. That is the point these people are making. Under the present law if he was being compensated the jury would take into consideration what his probable earning power would be. That is at common law. I am not speaking of compensation because that is admitted to be three years.

Then this goes on to say, "so it has occurred to some of your Committee . . . that any uniform compulsory plan could not be worked out, even if it were constitutional, to produce just results." That is an attack upon your scheme.

MR. WEGENAST: Yes, it is pro tanto in favour of an individual liability system

coupled with the principle of adjusting the loss in view of all these circumstances you have mentioned.

THE COMMISSIONER: It is against that plan, and then it is against your views about the employee contributing. It goes on to say, "The insurance of course is a charge upon the work manufactured or the service rendered and in the long run it is finally paid by the public using the product or receiving the service. It matters not who pays it in the first instance, but it should be a matter of very great importance that the employee should be compensated and there should be no friction . . . and employers will find it as necessary to insure their employees as their plant."

MR. WEGENAST: Of course that comes back again to the collective liability, or some other form than individual liability.

THE COMMISSIONER: Still the basic principle, according to the view of this Committee is, that the burden should be borne by the employer.

MR. WEGENAST: That does not go far enough. It would be borne entirely by the public if it were thrown on the workmen. The trouble is the workmen will not insure, and the employer having the facilities is supposed to do it for him.

THE COMMISSIONER: Oh, I don't know.

MR. WEGENAST: Now, the recommendation of the State system is also dependent on the adoption of our recommendation with regard to the personnel of the Commission.

THE COMMISSIONER: In popular parlance you want the earth and a little more. Do you want to name the Commission?

MR. WEGENAST: No, we do not want to name the Commission. It is a delicate subject to discuss, but my instructions are to place our views before you in such a way that there can be no mistake as to what they are. Our idea is that the Commission should in the first place be removed as far as possible from partisan influence.

THE COMMISSIONER: Where is it going to live? In heaven?

MR. WEGENAST: We say "as far as possible." We know there are Commissions in this country that are outside of politics, to use a popular expression. We know there are Commissions that are not outside of politics. We desire without analysing terms too closely to have this Commission outside of politics. I state in my brief it should be independent of the Executive, as independent I may say as the judiciary. Apart altogether from our constitution there would be no thought of having the judicial functions under the control of the Executive, and our idea is that this body should be a quasi judicial body. It will exercise judicial functions of the gravest importance. Without elaborating upon the suggestion at all, we suggest that the head of the Commission might well be selected from the High Court judiciary, and we submit that the rest of the personnel should be consonant.

We go further, we suggest that the salaries of the Commissioners should be not less than \$10,000 a year, and preferably more. It seems going a

little far into detail, but I think you will appreciate just what we have in mind.

THE COMMISSIONER: I suppose it follows that you would be quite willing that the salaries of the Commissioners should be part of the cost payable by those who contribute to the fund?

MR. WEGENAST: We do to this extent—

THE COMMISSIONER: Because, I fancy, any such proposition would not go down in this Province if the Province had to meet the expense.

MR. WEGENAST: We say the Province should contribute a portion of the expense, approximately representing the cost of administration. We do not think the salaries of the local officials should be paid out of the provincial funds. We think they should be paid by the Commission out of the Commission's funds. It would be to the interests of the Commission to conduct the insurance business with the smallest margin of waste, and if the proper parties are selected I have no doubt that great care would be exercised in that regard.

But what I was going to say is this, that if the Government appropriates a certain amount as representing approximately the cost of administration, we would be quite willing to have a portion of the salary, or such portion as the Government thought it should not be called upon to pay, charged back on the general fund, or perhaps even the whole of the salary charged back on the general fund, if that were any object. We think that these men who will be handling millions of dollars of money will be in a position to save a great deal more than their salaries by careful management.

THE COMMISSIONER: Let me see how far your proposition goes. It will be necessary probably that this Commission should be invested with power from time to time to change the schedule of rates.

MR. WEGENAST: Yes.

THE COMMISSIONER: So as to adjust them according to experts' findings. I do not think any legislature would be willing to hand that over to a Commission without some control by the executive.

MR. WEGENAST: Of course everything is in the control of the legislature, but out of the control of what is called the Administration or Executive. We would not want the fixing of the table of rates discussed in the Cabinet.

THE COMMISSIONER: That would be opposed to every principle of responsible government, that a nominative body should practically impose a tax upon the people.

MR. WEGENAST: I think not. The only tax they could impose would be the exact cost.

THE COMMISSIONER: But the burden of distributing that or the distribution of that cost, is the important thing, and my own notion would be that any revision of that kind ought not to become operative until sanctioned by the Lieutenant-Governor in Council.

MR. WEGENAST: What I would suggest, but not having thought it over fully I do not want the suggestion to be taken as final, I would suggest that the classes be fixed by the Legislature—that is the woodworking class, the agricultural implement class, and so on—but beyond that I think the matter of adjusting rates within the classes is a matter for the Commission.

THE COMMISSIONER: What possible partisan motive could come in in considering and determining any such question as that? I could understand that partisan considerations might come in in dealing with claims, perhaps favouring somebody that was a friend of the Government, or bad friends with the Government, and it would be well that they should be outside altogether; but a large question such as I have suggested, and a very important question too, I do not see how partisan influences or considerations could enter into it.

MR. WEGENAST: We are more afraid of partisan influence entering into the rates.

THE COMMISSIONER: How so?

MR. WEGENAST: Suppose you take the agricultural implement industry in which there are a number of large concerns. One prominent manufacturer said to me: "I don't want to be put in the same class with so-and-so because they employ a great many foreigners."

THE COMMISSIONER: In the same class of manufacture?

MR. WEGENAST: Yes, but this one industry makes a practice of employing a great many foreigners, and the other plant has none. Now, he said to me—and this is one of the actuarial problems which will have to be taken up I suppose—"I don't want to be in that class."

THE COMMISSIONER: You could not have a class based upon his notion.

MR. WEGENAST: Now, that institution is a very powerful institution.

THE COMMISSIONER: It would not be as powerful as the rest of the institutions combined.

MR. WEGENAST: But if these matters were discussed in the Cabinet there might be a stockholder of that Company in the Cabinet, or one close enough to the Government to make his influence felt, and I would answer your question by asking another question: What possible harm could come by leaving this to a Commission of the type I have mentioned?

THE COMMISSIONER: Because this would be an irresponsible body. Whatever Government is in power is responsible to the people.

MR. WEGENAST: I quite recognize that, but the argument as to responsibility is quite as important in the case of the Railway Board and in the case of the Hydro-Electric Commission.

THE COMMISSIONER: But the Hydro-Electric does not do anything like this. It has an entirely different kind of work to do. I quite follow your argument as to the judicial side of it, that should be independent as the courts should be. The question of the employment of the staff and all that should be in the uncontrolled discretion of the Board, but when you come to the

question of determining the incidence of the taxation, at present I do not see how it would be justified to leave it to that Board without controlling that power.

MR. WEGENAST: Of course the Board would be under this measure of control that the Commissioners would be removable from office.

THE COMMISSIONER: That would be a pretty drastic move. The court never fixes the tax any man has to pay.

MR. WEGENAST: No, but it assesses the damages.

THE COMMISSIONER: I am with you on that. The Commissioners to be uncontrolled in that respect would be my view.

MR. WEGENAST: When you come to look at the practical aspect the position is perhaps a little clearer. I have suggested in my brief that a rate should be levied during the first three or four years which would gradually build up a reserve fund and render it unnecessary to assess in anticipation of the year's outlay. I would like to withdraw that for another suggestion which appeals to me as being better. I would suggest that the Commission make first on the date the Act goes into force a preliminary assessment on the basis of as good an estimate as can be made of the year's outlay in the different branches, and then the fund raised by that preliminary assessment to pay all the claims for that year, but after that time to assess retroactively. You would have your fund to start out with without the Government putting up a large amount, as was done in the case of some Acts, and you would have the whole system worked out absolutely on an assessment basis. Now, when you come to that where is the room for supervision on the part of the Executive? It is a simple matter of assessing the cost of accidents.

THE COMMISSIONER: No, that is not what I have been referring to. You have got your provisional rating, as you may call it, operative for the first year. During that year careful consideration will have to be given to making analyses, and to fixing the rates for the different employments. Now, those rates must necessarily be subject to readjustment as circumstances show that readjustment ought to take place, and what I am suggesting is that I do not see at present how it would be proper to recommend that that first rating should become operative without the sanction of those who represent the people, or that any changes in the mode of rating, or in the classes into which the employers are divided, should be made without a similar sanction.

MR. WEGENAST: I think you assume there a more diversified rating than we had in view. I see no reason why all the manufacturers of agricultural implements should not be thrown into absolutely one class to begin with.

THE COMMISSIONER: You would have the separate classes necessarily depending largely upon how far reaching your measure is?

MR. WEGENAST: Our idea is when it comes to the end of the year the expense of compensating for accidents which have occurred in the agricultural implement class will be assessed on that class without discriminating. Our

idea is that the special classification and the rating within the classes may well be left to a later stage.

THE COMMISSIONER: Assume for a moment such a concern as Eaton's is brought into it. They have clerical and manufacturing branches. There is a greater risk in some branches than in others. They could not all be lumped. You could not charge the same rate to provide compensation for a shop girl as for a man who was employed at a machine in the factory.

MR. WEGENAST: I grant you there are difficulties there, and there will be difficulties no matter how the adjustment is made, but roughly my contention is that a concern like the Eaton Company should be divided up into its component parts. For instance the tailoring establishment, the establishment in which clothing is manufactured, should be rated with the clothing manufacturers. The retail end of it would go in with the retail dealers generally, if they were included in the Act, and so on with the other departments. The clerical end would be in with clerical labour, if that is included in the scope of the Act. It would have to be proportioned amongst those different departments. Roughly I think that makes a practical solution. We have the same thing occurring in a great many other manufacturing concerns. We have the same thing in the lumber business, for instance. I spent a day last week in Owen Sound, looking into the accident record of a number of companies there, and a number of new problems came before me. One concern there runs a very large planing mill. In addition to that it has a lumber yard, both wholesale and retail, and it has three saw mills, several lumbering camps, together with a couple of tugs to operate that end of it. Now, when I came to classify them and estimate the number of accidents in each department it was a very difficult thing to do, but there must be ways of doing it. It is a matter of segregating them in some way. That is one of the difficulties in the system. Under such a system where the cost is assessed on the persons in a class there is no room for any supervision of the rates.

THE COMMISSIONER: Then your argument is destroying a proposition you assented to a moment ago, that there would probably be a necessity for readjustment.

MR. WEGENAST: Yes, but I think that is a matter for consideration after say at least a year's experience.

THE COMMISSIONER: Oh, that may be.

MR. WEGENAST: Another point which strikes me, in which we are very much interested from the standpoint of accident prevention, is this: You put the different manufacturers of agricultural implements together and charge them all the same rate and one will say, "Why, we didn't have any accidents and look at that rate, and so-and-so had a lot of accidents, why should we pay that rate?" We are prepared for a good deal of irritation amongst our own members, but still, in the popular phrase, they have got it coming to them. If one employer has a great many accidents and another employer has not there is something wrong, and I may as well at this stage advert to a part of our proposition that I intended to mention later. On our part as manufacturers we propose to organize voluntary associations or

sections, or whatever you like to call them, for the purpose of dealing with accident prevention within the different groups. I hope myself to organize the different industries represented by the Manufacturers' Association. Take, for instance, the furniture industry; I hope to call a meeting of the furniture men when the act goes into effect. I am advocating in the latter part of my brief that any such association may be empowered to appoint inspectors to be paid out of the general funds of that group, and possibly expert draftsmen of machinery. The association might make rules, and these rules might be sanctioned by the authority of the Board, the constitution of the association in each case being approved by the Board. The whole scheme would work out a good deal like the German system, with this exception, that instead of collecting the money the employers' associations would simply exercise the other functions of the German associations.

As an incentive to the organization of those associations and an incentive to accident prevention I think there can be nothing stronger than that discrepancy in the rates—that initial discrepancy. If the system were not to be conducted on the current cost plan of course the discrimination would be too violent. There is another case of interdependence. Under the current cost plan the rate will be very little higher than it is at present, and in some cases perhaps lower at the initial stage. The man who finds that he is paying for his neighbour's accidents may well consider that if we had not this scheme we would have perhaps another scheme under which he would pay a great deal more.

THE COMMISSIONER: The railways are not in your association, I suppose?

MR. WEGENAST: No. I would like to say in that connection in anticipation of a possible demand on the part of the railways, or possibly some other large institutions, to be excepted from the general scope of the Act, we submit, although it is not our immediate concern, that that would be inconsistent with the general plan. In that connection there are a number of phases to be considered which make it a matter of very grave consequence.

THE COMMISSIONER: If the scheme were made applicable so far as the question of liability, the Board determining the compensation to be paid, and requiring it to be paid by the railway company, would there be any objection to omitting them from the classes that are to contribute to the fund?

MR. WEGENAST: Not from the Manufacturers Association, but I should think from every consideration, in view of the success of the whole system—

THE COMMISSIONER: You see the difference they will probably point out is that there are practically but three railway companies, outside of these surface roads and radials in the country, and that they are well able to pay all their liabilities. They may say that there is no object in compelling them to contribute to a fund as far as the workmen are concerned.

MR. WEGENAST: I entirely and emphatically disagree with that: as I say, not only on behalf of the Manufacturers Association, but discussing the thing in a general way—I think there would be trouble with the Manufacturers Association too, if the railways were excepted from a scheme of that kind. I know of a number of large institutions who would also want to be excepted, who are also quite able to pay. There are a number of small railways

which are not able to stand alone. There is this which was not sufficiently considered, I submit, with perhaps some temerity, in the drafting of the Federal act of the United States. I think Mr. Dawson mentioned it to the Commission, but apparently it did not receive any consideration at all. If in the first place you allow any exceptions, as for instance a railway, that means that the railway runs its insurance system on the current cost plan, or that it capitalises. Now, I do not believe there is a single railway in this country or on this continent that would consent to capitalise its losses by setting up adequate reserves. They would say: "We are large corporations and we are solvent, and there is no necessity for setting aside this fund."

THE COMMISSIONER: I do not think you quite follow what I was suggesting. If they are called upon as accidents happen to pay the amount assessed by the Board, what difficulty would there be about that?

MR. WEGENAST: Well, it would be a periodical amount, and your idea is they would pay each year the amount. Now, that would mean they would get off on a current cost plan to start with without the interdependence among the railways that exists among the different industries.

THE COMMISSIONER: Is that not a concern of their own rather than of the other industries?

MR. WEGENAST: No, it is a concern of the beneficiaries. Take any railway, no matter how large, it accumulates a class of dependants, and these dependants may live twenty-five, thirty, or forty years after the accident has happened. The pensioners will therefore accumulate in numbers to say for thirty-five or forty years, or a time when the dependants reach the peak load, as it were, and what is there to guarantee that that railway will be in existence and able to pay.

THE COMMISSIONER: If they are weak sticks how much stronger do you make it by putting three weak sticks together?

MR. WEGENAST: It is surely an axiom that three weak sticks will hold more than one.

THE COMMISSIONER: Well, I don't know.

MR. WEGENAST: There is a better answer. Take a concrete case of railways "A" "B" and "C". Railway "A" goes on running for twenty-five years and then sells out to railway "B." It is hardly conceivable that the railway would disappear in its corporate capacity. It would be either merged in another railway or would be sold out to a new management. Now, what provision can be made which will guarantee the dependants of a railway like, we will say, the Illinois Central, which is in a chronic state of insolvency and receivership? What guarantee would the dependants of the Illinois Central have that their claims would be paid?

Now, there is one way of creating a guarantee, but the remedy in that case is worse than the disease, namely, to make the claims a lien upon the assets of the railway.

THE COMMISSIONER: There is no power to do that in this Province, with a Dominion road.

MR. WEGENAST: Then they would be up against it at once.

THE COMMISSIONER: What they suggest is, I think, that they be left out entirely, left to their ordinary liability. I understand from Mr. MacMurchy that they are content to abolish the defences of common employment, of assumption of risk, and of contributory negligence, and to foot the bills themselves.

MR. WEGENAST: It makes an individual liability system of it with the circuitry of obligation and liability, and it makes an invasion of the general principle. Otherwise I would have nothing to say. I should imagine the employees of the railway would have objections that do not lie with me to urge. My objection is if an exception is made with the railways an exception should also be made in the case of large industries, and the whole scheme would become honeycombed.

THE COMMISSIONER: There are so few of these railways and they are such a separate class, as it were. There would be another difficulty in working it out, and that is these interprovincial roads, and men living in Quebec or in New Brunswick, or living somewhere else, and operating a train in Ontario. How are they to be dealt with?

MR. WEGENAST: We have that same difficulty. I suppose we have in the aggregate more employees affected that way than the railways have, men employed as travellers, or contractors and builders, and so on. The contractors and builders will have that come up, but there are ways of adjusting that simply by having the employees listed in one province or the other.

MR. BANCROFT: The Illinois Central illustration would hardly be a fair one. For instance if a railroad in Ontario was in such a chronic state and were to be merged, if they came into a workman's compensation act and paid their taxation as every body else on a current cost plan, would not the taxation go on just the same if the railway were merged upon the total wage-roll during the year? What difference would it make?

MR. WEGENAST: I am afraid Mr. Bancroft does not realize where his remark tends.

MR. BANCROFT: Tell us why any Ontario railway should not come under the same act as any Ontario industry?

MR. WEGENAST: I do not see any reason.

MR. BANCROFT: Will you point out the difficulties of the situation?

THE COMMISSIONER: He is pointing out that if there were individual liability there would be a difficulty.

MR. WEGENAST: I am pointing out it would be an evasion of the general principle if the railways were allowed to stay out of the act.

MR. BANCROFT: Exactly.

MR. WEGENAST: There is one matter that has been mentioned to me by Mr. MacMurchy which the railways seem to consider as being an obstacle to their coming under the act, and that is the provision of the Railway Act which makes the railways liable for injuries due to their negligence. Now,

my suggestion is that the Dominion Government probably would be glad to amend that section so as to overcome that difficulty.

THE COMMISSIONER: What section are you referring to?

MR. WEGENAST: I do not remember the number of the section. It makes the railways liable for negligence expressly.

THE COMMISSIONER: There is something about oil cocks.

MR. WEGENAST: No, it is a general provision imposing liability upon the railways. I should think the Dominion Government would be glad to amend that section by introducing a provision under which, if the Governor-General in Council were satisfied that in any Province adequate provision had been made under the provincial laws for defendants that section should not apply—I do not see any difficulty there at all. However, we are not concerned with that except as it constitutes an invasion of our general proposition, which we think is fair enough to include everyone. I cannot help thinking that the railways are not properly appreciating the difficulty attendant upon insuring against insolvencies.

There are more than three railways. Take the Père Marquette. It also is in a chronic state of liquidation. Would the employees of the Père Marquette be satisfied to have that railway assume the burden of compensation on the current cost plan without capitalization? There are only two alternatives, either each accident must be capitalized and a reserve set up, or there must be something of a lien on the assets of the company.

THE COMMISSIONER: In other words you propose to put the burden of compensation payable by a company that is weak and breaks down upon the other railway companies?

MR. WEGENAST: Yes, and perhaps to make the burden of compensation rest on all the railways collectively just as in the case of the manufacturers, on all the railways collectively on the assumption that if one railway goes into liquidation or goes out of business the rest of the railways will be there to gobble it up and continue its operations. That is much more certain than it is in the case of a manufacturing concern.

THE COMMISSIONER: I should have thought that probably what Mr. Bancroft suggested is much more likely. It requires legislation to allow another company to take hold of an existing one, and no legislature would allow that to be done without the new one assuming the liability of the old one.

MR. WEGENAST: There is something in that.

MR. BANCROFT: I think Mr. Wegenast pointed out, when you mentioned the matter of the law of the Medes and Persians, that they would like the weak manufacturers or the manufacturers who had a great number of accidents to be insured individually under a liability system, and the manufacturers who were strong and where accidents were prevented to pay insurance into mutual organizations, and so on. The arguments he used for the manufacturers it does not seem he would use for the benefit of the railways. The arguments he is using on behalf of the railways in the event of one railway being in a chronic state of insolvency and having

to be merged in some other organization or some other institution, that they should assume all the liabilities, by legislation as you suggest, surely that argument would apply to the manufacturers also. That is what we are trying to get at, that where there is a manufacturer who is weak and may become insolvent that the fund shall be contributed to by the employers as a class.

Mr. Wegenast made many explanations that if it was not operated in one particular as he wanted, the whole thing, as far as they were concerned, would break down. That is merely saying if the case of the manufacturers is not placed in the legislation just as he has stated then they do not agree to the propositions submitted in any other way.

MR. WEGENAST: It must be properly qualified. If we are not to have the advantage of the current cost plan then we want to have the advantage of combining in our own Association. That is all I have to say with regard to that. I suppose it would follow that the railways would want the same.

MR. BANCROFT: There is a question I would like to have answered. In the event of the railroads being considered in this proposition, is it illegal to place a lien upon the property of a Dominion railway?

THE COMMISSIONER: Yes; the Province has no power. I think not.

MR. WEGENAST: Then I point out in their practical outcome the twelve principles we have enunciated nearly all depend upon or point to such a collective system as we propose. In the matter of solvency, in the matter of periodical payments, in the matter of permanency, in the matter of economy, and so on, every one of them point in the direction of the collective system.

As I have stated I have been out through the Province, and my assistant also, as time permitted, and we have tried to collect some statistics which we think would be of value to you or to the Commission in the framing of the rates, and possibly be of value in framing some of the features of the system. I made it a point to discuss the matter with the employers and, as I have stated before, with scarcely an exception the system which we have proposed is endorsed, with of course these qualifications.

In one of the sessions, Mr. Comissioner, you asked a question which I was to consider, as to whether it would be feasible or desirable to have a system of individual liability under which the employer would be induced or compelled to insure himself, and the employee subrogated to the rights of the employer as against the rights of the insurance company. There are quite a number of objections to that which arise in my mind. I mentioned one or two of them when the question was asked. In the first place it preserves the old element of wastefulness and circuity.

THE COMMISSIONER: I do not think that was my question. I think it was that if the principle of the British Act were applied then what difficulties would there be, or what objections would there be to subrogating the workmen to the rights of the employer against the insurance company?

MR. WEGENAST: That is leaving out altogether the question of the collective system.

THE COMMISSIONER: Supposing the legislature should come to the conclusion to copy the British Act in its main features, then one of the weaknesses of that act is, as it strikes me, that the only provision to secure the workman is that in the event of insolvency there is a preferential lien for a certain portion of the payment. There is nothing to protect him even if the employer had insured. There is nothing to give him the right to say, "Now, I want the benefit of that insurance."

MR. WEGENAST: Well, I do not know that I have any objection to that principle of subrogation as against a system under which there is no subrogation, but as against a system of collective insurance there are a great many.

THE COMMISSIONER: That is not the way I asked the question at all. At least I do not think I had that in mind at all.

MR. WEGENAST: I think I answered it would preserve the old circuity of liability. There are the two questions, whether the employer was liable to the workman and then whether the insurance company is liable to the employer, because under the old state of things it is not the workman who is insured but it is the employer who is insured against the claim from the workman. Then if any system of that kind were adopted the next step in order would be, I presume—of course it would be compulsory insurance in order to secure solvency; a man would have to insure, and then the State would have to supervise the forms of policy, or in fact fix the form of the policy.

THE COMMISSIONER: It does that now if it wants to.

MR. WEGENAST: Not in the case of liability insurance. It has not done so yet.

THE COMMISSIONER: Perhaps it ought to.

MR. WEGENAST: Then in the next place it would increase the cost, because the current cost plan could not be invoked, the business being fluctuating, and the task of supervising reserves and capitalization is one that is immensely more difficult than collecting insurance and disbursing it.

THE COMMISSIONER: They do that now, if they like.

MR. WEGENAST: That does not involve the dangers that compensation insurance does. It does involve this danger that when a man gets old and his premium rate is high he may have to take out new insurance, but in the case of compensation insurance an entirely new feature arises. The man has become injured; he is drawing his pension; and the company out of which he is supposed to draw the pension goes out of existence. He cannot get any more insurance no matter what premium he is willing to pay. Then again that is true as against the employer. The company goes out of existence and the employer has no recourse. He has already paid for his insurance and the company is supposed to be paying the man, and when the company goes into insolvency the man falls back on the employer, and the employer pays twice. The whole system is anomalous and circuitous, and we have come to the conclusion that it cannot last; it cannot be permanent. We think a change is imminent in the Old Country and also in the Provinces of Canada. It just occurs to me here to remark that in the case of one Province at least, in Quebec, I happen to know that the Govern-

ment is watching the Ontario experiment, or proposed experiment, before making any changes in their own system. Let me point out this also, that in a case of compulsory insurance with subrogation there would be the inevitable competition for business, and the stronger companies would probably get the better business. The weaker companies in competing with the stronger companies would probably have to reduce their rates when they were less able to do so than the stronger company, because of the inferior class of business, and as the business got poorer the rates would have to be brought down to get more business, and the result cannot be anything else than insolvency. I have already referred to the distinction between the employers' liability insurance and accident insurance, and it appears to me the vast amount of confusion attendant upon this subject is due to the want of realization of that distinction. Under an individual liability system it is the employer who is insured, and the whole insurance is for the protection of the employer, and that is very keenly realized by our own members. I find throughout the province there is a great deal of dissatisfaction with the whole practice of liability insurance, and that is one of the features that has strengthened our association in presenting the propositions we have presented. The more progressive employers uniformly have dropped their liability insurance. In the first place they say it costs too much, and in the second place they say their men do not get enough, and in addition they say it introduces an element of friction between themselves and their employees; and in a great many cases where the employers are really not able to carry their insurance consistent with safety they have dropped the insurance because of these objections.

I just want to refer for a moment to an argument which has appeared in the press, particularly the insurance press, against the idea of State insurance in itself. While we realize that these arguments are quite legitimate, and that it is quite natural that the insurance companies, particularly the liability insurance companies, should take an attitude against State insurance, or collective insurance, or mutual insurance, we must recognize the source from which these arguments come, and must reckon with the natural bias which prompts them. The larger portion of these arguments are being circulated by a bureau of liability insurance men in New York organized, as I say, quite legitimately for the protection of their interests, but the arguments which they have advanced show on their face the natural bias which exists.

**THE COMMISSIONER:** They and Mr. Trowern will take common ground.

**MR. WEGENAST:** Yes, I am afraid so.

The Workmen's Compensation and Information Bureau of New York began a very active campaign a year or so ago by publishing a pamphlet containing a translation of an article by Dr. Friedensburg which embodied some very caustic criticisms upon the German insurance system, and fell as more or less of a thunderbolt in this country and in England, where the State insurance idea as embodied in the German system had been very much admired. It seems, however, to have occurred to the companies recently that the arguments of Dr. Friedensburg instead of being adverse to State insurance, were in reality arguments contending very strongly for state insurance. What he contended for was a greater measure of control

on the part of the state and a more bureaucratic administration of the system. Outside of that he has nothing but the warmest praise for the accident compensation system of Germany under the Employers' Compensation. His criticisms were levelled very largely at the other branches of the insurance, sickness, invalidity and old age insurance. The arguments of the liability insurance companies are very varied, and in a great many cases destroy one another. In the first place, of course, there was the argument that was advanced here this morning, that it means socialism. I do not want to enter into a discussion of that, but I think the form that we advocate is a little less than socialism, and more practical perhaps than any solution that has been brought forward anywhere. If it is socialism as Mr. Chamberlain said, and as Bismarck said in introducing the German system, we will have to let it go at that. I have an extract here of what Senator J. T. Clarkson said in discussing the question. He said: "Workmen's compensation on the German or Norwegian plan smacks of socialism. We are not ready to accept socialism, but should be ready to adopt anything good, though it be recommended by socialists. The English plan is individualistic."

Then the complaint is made that the system is burdensome. In opposition to that we have the acknowledged fact that the individual liability system is immensely more expensive and that a great deal larger proportion of waste is incidental to paying the money to the injured man. You have pointed out that the money did not reach the injured man. There can be only one conclusion that either the workman would get less under an individualistic system, or the argument does not hold water.

THE COMMISSIONER: I suppose everything will depend on an honest and intelligent administration of the law. Do these gentlemen you are speaking about say it is impossible under a state system?

MR. WEGENAST: Their contention is that the chances are all in favour of the prostitution of the system to the interests of party politics. Now, we in this country have made some examples, Mr. Trowern's remarks to the contrary notwithstanding, of fairly promising public ownership schemes, and the assumption is that this system will be managed as carefully as, say, the Hydro-Electric system has been managed, or appears to be managed.

MR. TROWERN: Which we do not know anything about.

MR. WEGENAST: Or promises to turn out to have been managed.

THE COMMISSIONER: Mr. Trowern will not put it in the alternative form, but says no good thing can come out of Nazareth.

MR. TROWERN: No, I am just waiting till I see the statement come out.

MR. WEGENAST: With the special view to finding out how the systems of Ohio and Michigan were working out, I went over to those States in the late spring, and I found a condition of things there that I think demands your consideration. I found in both cases that the charge was made, whether founded or unfounded, that polities had entered into it with respect to the appointments to the insurance boards, and the administration. For instance, here is a characteristic paragraph from "American Industries" of April. This is in reference to the Michigan act.

"Even before the Legislature passed the act the Governor was besieged by political henchmen who sought to have him appoint certain persons whom they favoured to the salaried positions on the Industrial Accident Board that will administer the provisions of the compensation act. The names of some persons proposed by these politicians are known in Detroit and elsewhere in the state and the opinion is freely given that they are wholly unfit to administer the tremendously important business that will come before the commission. Yet they are urged for appointment simply because certain politicians seek to use their patronage, through the Governor, to repay political debts."

Now, I find the same allegations made in Ohio. Whether they are true or not I am not concerned with, but they had this effect in both Ohio and Michigan, that employers generally refused to go into the system, largely, it is said, because of the personnel of the commission. Now, in view of that, you will understand the force of my contention as to the extreme importance of appointing a commission which will guarantee, as nearly as can be, efficient administration. The accident insurance companies, of course, claim, and they have no doubt some foundation for the claim, that they have had the experience to handle this business. That must be qualified by the consideration that their experience has all been practically under systems where it meant a fight for the workman to get his compensation. The writers and authorities on compensation admit uniformly that the subject is so very complex, and the factors entering into the estimation of risks are so complex that experience is varied. I have looked over with some interest a book forming part of the Journal of the Institute of Actuaries of England, which appears to be the best presentation in text-book form of the actuarial side of workmen's compensation on a capitalized basis, and a mere glance over the pages of that book will illustrate the difficulty, in fact the absolute impossibility, of anything like an accurate estimate of the cost of workmen's compensation.

**THE COMMISSIONER:** Would you expect this from a mathematician: "It seems tolerably certain that the probabilities of bachelors and married men leaving dependants will differ materially." I suppose there are dependants who are not children.

**MR. WEGENAST:** It sets forth that the factors entering into the subject of workmen's compensation are almost innumerable. In the first place the probability of a man being married, the probability of his age, the probability of his having any children, the probability of the age of the children, and so on, and I think without being an actuary or a mathematician, one is not far out in making the statement that it is impossible with the data that exists in the world to-day to estimate correctly the cost of workmen's compensation. As I say the only other field for actuaries of experience is in the matter of testing claims, and in the purely clerical end of the business. The problem is simply a problem of paying the claims for compensation where injuries arise and distributing the cost on something like an equitable basis.

In connection with the liability insurance business I may point out also that it is now becoming recognized that there are other fields of insurance open for the liability companies which promise more success and

better results generally than the field of liability insurance. There is an article which I have here which I think you would find of interest from the *Market World and Chronicle*, a paper published in New York, a translation of a German article on the boundaries between private and social insurance. It is indicated there, and I have seen it indicated in the press of other places, that the proper working out of a compensation system such as we propose, or in fact any system of workmen's compensation, will probably result in a demand for other types of insurance which workmen are not in the habit of taking out at present, and there is every probability that the result of workmen's compensation insurance will be to educate workmen into the idea of taking out other types of insurance.

THE COMMISSIONER: Has that been the result in Germany?

MR. WEGENAST: Here is a quotation from Bischoff, quoted by Dr. Manes. "It is a mistake to believe that we private insurers should be by any reason of our business interests particularly prepossessed against these new compulsory insurance projects. The experience obtained in Austria has shown that the minimum provision for the future to which the individual is compelled by law, in no wise satisfies the best elements of the class of higher private employees, but on the contrary, brings before their eyes the necessity of making adequate provision for the protection of their families by resort to a private insurance company. In Germany, again, as is well known, the State and commercial officials, whose pension rights are in general materially higher than those which the proposed bill will grant to higher private employees count among the most zealous witnesses for life insurance."

I am only speaking from hearsay, but the appearances are as I have indicated, that workmen's compensation insurance instead of injuring the business of insurance generally will probably ultimately immensely benefit it, and this article I am referring to deals with what should be the proper boundary line between the field of private insurance and public insurance. The investigations which I have made throughout the Province and which I propose to continue in the fall have shown me this, and perhaps it will be of interest to you to see just what I have collected:

#### *Accident Schedule*

For accident occurring in 1911.

Name of employer .....

Name of injured person.....

Occupation ..... Age .....

Sex ..... Nationality .....

Rate of wages per day, or, if on piece work, average daily earnings .....

(In case of fatal accidents) Particulars of number and age of children or other dependents and degree of dependency .....

Nature of injury .....

How accident happened .....

Duration of incapacity .....

Medical and surgical treatment required and cost or probable cost of same .....

Remarks. . . . .

*Industry Schedule*

Name of firm .....

Address . . . . .

Industry . . . . .

Average total number of employees, 1911, including officers and office staff and any travellers on salary .....

Male ..... Female .....

Total pay roll for 1911, excluding officers and office staff and Travellers \$.....

Total pay roll for 1911, excluding officers and office staff and travellers \$.....

Number of employees or officers receiving wages or salary of \$1,000 or over .....

Classification of employees on basis of risk of being injured .....

Liability insurance carried ..... premium rate .....

Number of accidents 1911 (This should include all accidents which laid any man off for even a few hours) .....

(Particulars of each accident should be given on accompanying accident schedules).

THE COMMISSIONER: What do you mean by this: "Classification of employees on basis of risk of being injured?"

MR. WEGENAST: I generally ask the employer as to the different classes, and the hazard which they run. Take for instance, in an iron works, I put down so many on punch presses or hammers, so many in moulding shop, so many on lathe work, and so on.

THE COMMISSIONER: I think you will have to elaborate that a little more.

MR. WEGENAST: It requires a great deal of investigation. In the wood-working establishments I asked how many men on the machines, and it enables me to form some idea of the proper class. For instance, if I find in an ordinary lumber mill and lumber yard they have half a dozen teamsters that means the lumber end of it predominates. Then there is the schedule I use for particulars of each accident, but I have not covered enough ground to enable me to make up averages, but there is every indication that the cost of compensation on the current cost plan will be, under such a system as we propose, not any higher and probably lower than the cost under the present liability insurance system.

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## SIXTEENTH SITTING

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THE LEGISLATIVE BUILDING, TORONTO.

Wednesday, 7th August, 1912, 11 a.m.

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner.*  
MR. F. N. KENNIN, *Secretary.*

MR. WEGENAST: Last night, Mr. Commissioner, I was going on speaking of the rates and stated that it would appear that the rates under such a system as we propose would be for some years probably within the present insurance rates. I have here a table of comparative rates gotten out by the Liability Board of Awards of the State of Ohio, which you will find of some interest. The chief significance of the table of rates to me is that the individual liability systems show a much higher rate than the Ohio rate, for instance, and higher in fact than the Washington rate. The policy of the Ohio State Insurance Department was also to make the rate so large that there should be not the slightest doubt as to its efficiency. Some statements were published some time ago in insurance journals purporting to give a sketch of the Ohio rates, and I have one here, from the *Spectator*, which probably you have seen in some form or other, but the rates are, in fact, not at all in accordance with that schedule. You notice there rates running up to \$18. That is, of course, entirely absurd.

THE COMMISSIONER: Yes, I have seen them.

MR. WEGENAST: It is on the back of the pamphlet that you will find the comparative table of rates. I want to refer also to the state of things I found in visiting Ohio in regard to the rates. The insurance institution is run along lines very similar to the employers' liability systems at present in vogue. If a man applies for insurance in a State institution he is asked to fill out a schedule of questions, the principal item of which is his accident experience for the past three years. On the basis of his experience and the general character of his industry he is quoted a rate. Now, according to our proposition such a system would not be called for, and would be undesirable.

THE COMMISSIONER: As I understand it there would be no rate at all if your system were adopted. If you got a class say of manufacturers of agricultural implements they are assessed according to their wage-roll for the whole of the loss in that class.

MR. WEGENAST: Quite so, and I just want to take advantage of the occasion to point out that probably there will be considerable criticism of our plan on the part of the liability insurance people, but that if there is any such criticism we are quite prepared to meet it and cope with it. I myself regard the plan under the Ohio act as a mistake, and while it is perhaps inevitable that under a system such as that in Ohio where the state competes with private companies that some such system should be adopted, I think it cannot be denied that it does away to a very large extent with

the advantages which otherwise would accrue from a system of collective or State insurance. I found this condition of things: the liability companies being left in competition with the State system are cutting the rates below what any one, even an amateur in insurance, would consider safe. I made enquiries amongst manufacturers and found numbers of instances of this. In fact, I think the rule is probably as represented by the instances that I would like to refer to. In one case a well-known manufacturing concern which had been paying a rate of 35 cents on \$100, being insured under the old liability system, applied for a rate from the state commission. They were quoted a rate of 65 cents. Now, that in the light of our knowledge of rates under an individual liability system, or at all events a system conferring the benefits of the Ohio system, must be considered a very low rate. The business was not a particularly hazardous one, but the rate is a very low rate. While it is higher than the 35 cents they had been paying before, the obligations under the new act, and the scale of compensation is of course very much higher. Now, the liability companies met that rate by quoting the same company a rate of 28 cents. In another instance that I found the same afternoon in a large agricultural implement manufacturing works the company had been paying a rate of 55 cents. They were quoted a rate by the Insurance Department of 85 cents, and the liability insurance companies met it by quoting a rate of 42 cents. Now, that cannot have any other result than to leave a large part of the insurance in the hands of the liability companies. The obvious question which arises is, how can the liability companies continue to do business under circumstances such as those? In the first place it is to the interests of the insurance companies to discredit the Ohio act as far as possible and to show they can do the business, and very large concessions could be made with that in view, but I found, singularly enough, right in Columbus an instance of the manner in which the companies work out the rates. I met a gentleman from Chicago who had been a member of the Illinois Commission which drafted the Illinois act, and he told me the rates which were being charged in Illinois by the liability companies were tremendously high; he gave such examples as 16 per cent. in the case of coal mining. That was an industry in which he was particularly interested. The other rates were correspondingly high, as I think you will see by reference to the tables. Now, the same company that does business in Ohio does business in Illinois also, you know, sir, the scale of benefits in the Illinois act are lower than under the Ohio act. It is quite obvious therefore that the Illinois manufacturers are paying the claims of the Ohio manufacturers. The conclusion is inevitable.

Another mistake I think that has been made in the Ohio system, if I may refer to it by the way, is leaving a remedy to the workmen in the courts.

There is a provision under the Ohio act by which the employer still remains liable as at common law for his wilful acts, and those of his agents. That is taken advantage of by solicitors for business for the liability companies in this way: They point out that even if the employer does insure in the State system he is still liable for the wilful acts of himself and his agents, which is a very broad and vague term. The result is the further

advantage to the liability insurance company. The State Department, curiously enough, has met that by an opinion given by the Attorney-General to the effect that it is illegal for a man to insure himself against his wilful acts. So that the one anomaly follows the other.

I have already referred to another alleged mistake in Ohio, and that is the personnel of the Commission. Another observation that I made in Ohio was in connection with the method of securing medical proof of claims, and in general the method of handling the doctor's end of the compensation system. It appears that the country is divided into districts, and the larger cities divided into districts, and a doctor appointed for each district who acts for the Commission, and at the same time, of course, remains in private practice. I would like to submit that that plan would be inadvisable here. I think under all the circumstances it would be well to leave the matter open for any qualified practitioner to act for the Commission, either in administering medical or surgical aid, or in making proofs of claims, or reports on claims.

Now, there are a number of odds and ends of observations that cannot be very well connected with any other particular department of the subject, but which are nevertheless important enough, I think, to present to you. One is this, that in assessing the cost of compensation on the current cost plan, and assessing a margin, however small, over that current cost to provide for a contingent fund or reserve for whatever purpose it may be designated. In assessing that margin the fund will in reality gradually be raised to the basis of a capitalized fund. If you continue assessing five or ten per cent. more than the current cost, and that current cost continues to rise from one-half per cent. or one and a half per cent. or two per cent., a time will eventually come when that margin will be over and above the capitalized cost, and the fund will go on accumulating to such proportions that it will eventually be in reality a capitalized fund. That is pointed out by Dr. Zacher in the article of which I gave you a partial translation, given not by way of justifying that particular method of assessment, but simply by way of showing that the plan is consonant with solvency and perfect soundness in every respect. Then I might observe also in assessing on the cost plan it would be impracticable if not impossible to place the rates except at the initial stages in an act of parliament. The rate is given in the Washington act, it is true, but that is not in reality the rate which is imposed, as you may have observed from the report.

THE COMMISSIONER: I do not understand, except for the purposes of the first year what you want any rate at all for.

MR. WEGENAST: That is just what I wish to observe. You have observed probably the reference to "printers."

THE COMMISSIONER: That is if the industries are classified.

MR. WEGENAST: Quite so. In the report of the first eight months' operations of the act in Washington it is pointed out in Class 41, printers and publishers, the preliminary call for three months at \$1.50 a thousand has produced a fund of \$6,464.72, from which \$717.35 has been paid out for accidents mostly of a minor character. At this rate the fund, barring

unusual successive accidents, will last the printers five or six years without further assessments. That is a three months' assessment, which would be one-quarter the annual rate in the act, would last under the estimate five or six years. It is quite apparent therefore, that the rates given in the Washington act are not in reality the rates which are being levied, and that the system is a flexible system such as we propose. As I observed before I should anticipate a good deal of opposition and a good deal of criticism if such a schedule of rates was embodied in the act. It is in one sense not our concern, but we are interested in having the act going into effect as harmoniously as may be, and it appears to be by placing in the act a schedule of rates it would be open to the criticism either that they were too high, or too low, or discriminative, or unscientific.

Another point which has been touched upon by you at a previous session is the question whether the funds should be interdependent; that is, whether in cases of serious accident in one class the funds of the other classes should be available. Now, I see no objection whatever to that. It broadens the scope of the insurance, but does not vitiate the general operation of the act, because whatever advances are made out of the other funds can be repaid by future assessments upon the other classes. The Washington system has got into something of a tangle owing to the rigidity of their classification in that respect, and if it were not for the fact that the funds are paid out periodically there would be considerable difficulty in connection with the explosives class under the Washington act. You will remember the accident which was responsible for killing eight persons. The largest contributor to the fund had declined to contribute, setting up the unconstitutionality of the act, and the burden of the accident fell on two or three smaller explosives works. If it had been necessary for the State to set aside the capitalized value of those lives as it is in theory necessary under the act, there would not have been money enough in the class, but there has been so far enough apparently to pay for the current claims.

I have made up a statement which may be of some value to you, Mr. Commissioner, giving the railways in operation in Ontario.

Algoma Central & Hudson Bay.

Bay of Quinte Railway (operated by C.N.O.)

Brockville, Westport & North Western.

Canadian Northern Ontario.

Canadian Pacific.

Central Ontario (operated by C.N.O.)

Galt, Preston, Hespeler & Berlin (Electric).

Hamilton, Grimsby & Beamsville (Electric).

Irondale, Bancroft & Ottawa (operated by C.N.O.)

Kingston & Pembroke (operated by C.P.R.)

Niagara, St. Catharines & Toronto (Electric).

Michigan Central.

Temiskaming & Northern Ontario.

Thousand Island Ry. (G.T.R.)

Toronto, Hamilton & Buffalo.

Toronto & York Radial (Electric).

New York & Ottawa (operated by N.Y.C.)

You will observe there are some eighteen railways operating in this province, four of which are electric roads.

THE COMMISSIONER: A good many of them are a mere difference in name. They belong to the same people.

MR. WEGENAST: I have noticed those that are operated by other companies. The Algoma Central is run under an entirely separate management. The Bay of Quinte is operated by the C.N.O. The Brockville and Westport is operated independently. The Central Ontario is operated by the C.N.O. The T. H. and B. of course is operated independently, and also the Père Marquette.

THE COMMISSIONER: Would your idea be that a railway employee, whether a train hand, or working in the shops, or doing clerical work, or a telegraph operator, should all be classed together?

MR. WEGENAST: That, of course, raises the difficulty which I alluded to yesterday, that in one railway certain branches may preponderate and make it inequitable to have the assessments on the same basis, but those are largely, I think, matters of administration, and my submission is that those are matters which should be largely determined by the railways themselves. If the railways are pooled in respect of their injuries, the compensation of the injuries and the collection of the premium, the working out of the rates can be safely left with the railway under the supervision of the Commission. The railways would, no doubt, make suggestions and send their representatives to argue the matter and generally advocate their respective interests, but the whole matter could very safely be left in the hands of the administrating Commission. You will observe that of all these railways there are only three which could be thought of as being allowed to administer their own compensation, the three larger railways. In the case of some of the railways, for instance the Michigan Central, there is this objection that the management is outside the Province, and in fact outside the country. In the case of the Père Marquette that objection is particularly pertinent. Just in this connection perhaps it would be very difficult, if not impossible, to govern the reserves and the assurance of compensation to the employees of a railway such as the Père Marquette, because it would be quite possible for the Père Marquette to sell out the whole of its Canadian railway without legislation. It is true the legislature, or rather parliament, might step in by remedial legislation and force an obligation upon the new road.

THE COMMISSIONER: I do not know how the Père Marquette can sell unless its act of incorporation authorizes it to do so.

MR. WEGENAST: I do not know that there is anything to prevent. I am speaking without having consulted the acts, but I do not know of anything to prevent any railway from selling out its assets.

THE COMMISSIONER: Oh, it cannot do that.

MR. WEGENAST: In any case there is nothing to prevent the railway from handing over the operation of its road to another road, and the only way to insure

the compensation of employers would be to make the compensation a lien, say on the roadbed.

THE COMMISSIONER: You cannot do that.

MR. WEGENAST: No, it would be very difficult. Besides, there is this difficulty, that the railways are qua railways under Dominion jurisdiction, while the compensation is being administered by the Province. It might be easy enough under some circumstances to persuade or to put pressure upon the Dominion Government, but there are circumstances which are imaginable where that would be difficult, and there would be the constant danger of a hitch between the Dominion and provincial authorities after the compensation pensioners had been accumulating for a period of years.

I have a number of forms of reports. I do not remember whether I sent these to you on a former occasion or not.

THE COMMISSIONER: Forms of what?

MR. WEGENAST: Forms of reports used in Washington for various purposes. For instance here is the report of the attending physician, the report of the employer, the report of the employee, claimant's proofs of death, and so on.

THE COMMISSIONER: Those would probably be more for the Commission when it was appointed.

MR. WEGENAST: Then a number of placards in the interests of educating workmen to the benefits of the act. I may say I have a considerable accumulation of material all of which when it came in I thought should be submitted to you, but it has reached such immense proportions that I shrink from inflicting it upon you or anybody else. Most of it is quite apropos, and in fact important, but I suppose there must be a limit to the amount of stuff of that kind that can be used.

Now, I would like to refer, and it is the last matter of any great importance that I have to-day to lay before you, to our proposition of a first-aid fund. Assuming that a period of two weeks were taken as a waiting period the workman would be thrown on his own resources for that one week. The medical expenses or the surgical expenses just at the time when they were incurred and at the time when their cost should be met would be thrown on the employee. It is true in some systems provision is made for medical expenses, but that, of course, invades the waiting period and forms a special feature, which we submit could be dealt with by the device which we propose, namely, the first-aid fund. I think you have probably seen in the report which I have referred to of the Washington Commission a reference to this first-aid fund. You will remember it was proposed in the act to have a first aid fund to cover, I think, the first three weeks of the workman's incapacity. This fund was to have been raised by a contribution of two cents per week per employee from the employer, and two cents from the employee; that is, it was to be raised by contributions in equal proportion. A good deal of opposition was encountered because the employers in non-hazardous industries found that their contributions to the fund were to be just as large as the more hazardous industries, and owing to the lateness of the legislative session the whole clause had to be elimin-

ated in order to get the bill through. Now, the administering Commission speaks of that first aid proposition. I have the quotation in my brief and I will get it in a minute. However, the statement is made that the crying need under the Washington system at present is, and the greatest defect is, the want of a first-aid fund, and the original proposition is being revived, of creating such a first-aid fund. Now, our proposition would anticipate that want, and I would like to call attention to what I am saying in my brief (p. 158), and make one or two further suggestions. What I would desire to add is this, that so far as the manufacturers are concerned we are prepared to have the act contain a provision for a first-aid fund covering say the first four weeks. We are prepared to go further than that and have a first-aid fund covering, as under the German system, a period of thirteen weeks, the question of the proper proportion of contributions being left open. One object to be attained in such a first-aid fund is the preservation of the existing benefit societies and benefit systems amongst the employees throughout the Province. I have, without going into the matter exhaustively, collected a number of by-laws of these institutions, and I was rather surprised to find that there is a comparatively large number of them in existence at the present time. Most of these societies are doing good work. At your session in Berlin and in Hamilton mention was made of a number of these, and I find throughout the Province regularly in every town of any size there is a considerable number of them. Now, we believe that these benefit societies could be kept in operation by allowing them to administer the funds of the first-aid. All that would be necessary on the part of the Government Commission would be to divide their assessments into two parts for the purpose of raising the two funds, one fund to take care of injuries lasting beyond the period of four weeks or thirteen weeks, whichever period was adopted, and the other fund to cover the cost of first-aid and compensation within the period.

THE COMMISSIONER: What do you mean by "and compensation within the period?"

MR. WEGENAST: If, for instance, compensation were allowed, we will say, from the first day of the injury, and the period were fixed at four weeks, a man would get his compensation, half wages or whatever the compensation was, out of that first-aid fund which would cover the first four weeks. Besides that the surgical and medical expenses would all fall upon that fund.

MR. GIBBONS: How would you separate that from the sick fund? Your suggestion would only be in occupational accidents.

MR. WEGENAST: That could be provided for by asking the treasurers of these societies to keep the funds separate.

THE COMMISSIONER: According to these booklets you have handed in, one at all events, and probably all of them, provide like the German system both for sickness and accidents.

MR. WEGENAST: That would be immaterial if a proper division of the funds of the benefit society were made. That is, if the funds which were collected for the first-aid fund were kept separate and were separately administered. It is possible, in fact it is altogether probable, that the schemes of these societies would have to be revised.

THE COMMISSIONER: Why not adopt the principle of these societies and cover both?

MR. WEGENAST: So far as we are concerned we have no objection. The only thing to be observed is it is a question of proportions of contribution. We have no objection whatever; we think it is quite feasible.

THE COMMISSIONER: That is the only fund to which the workman contributes in Germany.

MR. WEGENAST: No, the workman contributes to the three funds.

THE COMMISSIONER: I am not talking about the others. I am talking about the subject we are dealing with.

MR. WEGENAST: Yes, that is so. The workman there helps to cover the first thirteen weeks by paying in proportion—

MR. GIBBONS: The employer there pays 15 per cent., or did; it goes into all kinds of sickness, and non-occupational accidents; he pays 15 per cent. of all.

MR. WEGENAST: Oh, no.

MR. GIBBONS: I think you will find the workmen's sick fund covers the first thirteen weeks, but the employer pays 15 per cent.

MR. WEGENAST: Fifty per cent. now; previously, 33 1-3 per cent. It worked out under the former system in this way that if you lumped them all and made a calculation on the basis of having them all under the same fund, the employee would pay about 16 per cent. of the total accident compensation.

MR. GIBBONS: If you figure that out and figure out the basis of the occupational accidents, and the amount that comes under sickness, would not the employer be practically paying the full amount for occupational accidents? The 16 per cent. that the employee pays would not cover those coming under the head of sickness, non-occupational accidents, and diseases.

MR. WEGENAST: You are a step behind my calculations. When you lump the contributions and the compensation payments for sickness and accidents it is found they pay 16 per cent. of the cost; that is arrived at by taking the aggregate.

MR. BANCROFT: That is the way Mr. Schwedtman put it. What Mr. Gibbons is trying to point out is this, that the thirteen weeks, mind you, in a big industry with the slight accidents that happen, that don't run for thirteen weeks and are considered sickness, come out of the sickness fund.

MR. WEGENAST: I am reckoning with that. If it were not for that the employer would contribute nothing.

MR. BANCROFT: They all, or a great proportion of the sickness and accidents, come within that thirteen weeks; the employer contributes 16 per cent. for sickness and all, and would, when you take the minimum of accidents, contribute the whole thing.

THE COMMISSIONER: What difference does it make? The question is whether that is a right plan.

MR. WEGENAST: I am quite willing to let it go at that.

MR. BANCROFT: The principle established in Germany is that for accident compensation the employer bears the burden.

THE COMMISSIONER: There is no use going outside the plain facts. They have a sick fund to which the workman and the employer contribute; that includes both for the period of thirteen weeks, for occupational and other accidents, and for sickness as well; is that not so?

MR. GIBBONS: Yes, but it is safe to assume that there are ten or fifteen cases of sickness to one of accident, and if the employer pays to the ten cases of sickness and the employee only pays to one of accidents, it practically brings the balance around in favour of the employee, and the employer is paying the full cost of the accident.

THE COMMISSIONER: Why are we concerned in that, if the principle is right?

MR. WEGENAST: That is all allowed for in the calculations.

THE COMMISSIONER: Is it expedient to provide for a period during which the workman should be protected against sickness and all kinds of accidents, he contributing 50 per cent., and the employer the other 50 per cent. cost? That is the proposition.

MR. WEGENAST: That is, I presume, all provided for in the calculations. I have not investigated them, but it is certain that some percentage of the cost of the accidents falls upon the workman.

THE COMMISSIONER: Supposing after this waiting period has expired, if his accident continued he would have his wage, his proportion of the wage, from the time the accident occurred.

MR. WEGENAST: Yes, falling entirely upon the other fund, upon the employer, as in the German system. The British system attempts to deal with that by simply cutting off the compensation for the first week, or for the first two weeks. It is said by the way, and seems to be admitted by every one except the labour representatives, that it was a mistake to shorten that period in the first place, and a mistake to cover up the one week's waiting period in cases of death. However that may be, the British act in fixing a period of even one week does, as compared with the German system, effect a contribution from the workmen. Our proposition is to stop that gap; to pay from the date of the accident, but to have that come out of a separate fund which would pay not only the compensation but the medical and surgical expenses as well.

THE COMMISSIONER: That differs from the German system because the compensation does not come in upon that fund at all.

MR. WEGENAST: Yes, I think so.

MR. BANCROFT: That waiting period is entirely conditional.

MR. WEGENAST: If a man is killed, his dependants fall at once upon the accident fund; if he is only injured, his compensation as well as his medical expenses are paid out of the sickness fund.

THE COMMISSIONER: I should not have thought so.

MR. BANCROFT: I thought you were speaking about Great Britain.

MR. WEGENAST: That is substantially our proposition, whether you make it four weeks, or thirteen weeks, or any period, having proper regard to the division of contributions. Then if the workmen feel like adding to that sickness insurance, we think that is none of our immediate concern. It is quite feasible, to my mind, to leave the administration of these funds provisionally under the supervision of the Commission, to these local benefit societies. I believe that it would stimulate the organization of such benefit societies and fill a place in the local body politic that should not be left void. If the privilege were abused in any particular case, or generally, the administration of the fund could be withdrawn; it would be simply an annual affair. If the Provincial Auditor found that the funds had not been properly administered he would report to the Commission, and the Commission would withdraw the administration of the fund and administer it itself.

MR. BANCROFT: Has not the British Columbia act and the Manitoba act, as well as the Alberta act, specifically cut out the local benefit society to which you are alluding as part of the body politic.

MR. WEGENAST: And largely the British act.

MR. BANCROFT: Certainly.

MR. WEGENAST: It is considered one of the defects of the British act; these benefit societies instead of being encouraged are discouraged and being gradually wiped out.

MR. BANCROFT: Not so the workmen; they are in accord with that, because they are compulsory.

MR. WEGENAST: I am not concerned in the question of whether they are compulsory. I should think it would be in the interests of the workmen to have a compulsory benefit society under which compensation would be made for accidents from the first day, and out of which the cost of medical and surgical assistance would be paid; I do not see what possible objection can come from the workmen's side. I am not concerned with whether it is voluntary or not voluntary; that would be a matter largely for the workmen themselves to determine. If the workmen neglected to form these first-aid societies the Commission itself could administer the fund.

MR. BANCROFT: I saw a big strike within the last five years in an Ontario town where the employees who worked in a big industry were not organized and had no trade-union, on account of the exorbitant fees that were taken from their wages for these benefit societies to which you allude.

MR. WEGENAST: That would be a matter for the Commission. If any malfeasance were found I have no doubt the approval of the Commission would be withdrawn or withheld.

MR. BANCROFT: What protection has any man without an organization for making a protest against deductions from his wages?

MR. WEGENAST: I could answer the question, but I do not think it is pertinent.

MR. BANCROFT: That is why legislation is being put in force all over the world.

MR. WEGENAST: It is purely optional. We think it is desirable that these benefit societies should exist, compulsory or non-compulsory.

THE COMMISSIONER: How do they manage in cases where provision is made for medical expenses not exceeding a stated amount; how do they work it out?

MR. WEGENAST: In Ohio they have given the doctor carte blanche more or less. My impression is he takes full advantage of it and puts in his bill accordingly. That is one feature we strongly object to.

THE COMMISSIONER: I suppose that is one of the reasons why you suggest this other scheme?

MR. WEGENAST: That is one of the reasons. Another reason is we want to have the workmen have a fund which will be directly responsive to malingering and fraud on the part of the workmen.

THE COMMISSIONER: Supposing a workman says: "I belong to a fraternal organization and that provides for all I need; I do not want to pay for anything more"?

MR. WEGENAST: That same argument would apply if the workman said: "I am insured against an accident," as a good many are.

THE COMMISSIONER: A man is in a benefit society and in the case of sickness, which would include an accident whether occupational or otherwise, he gets a certain sum.

MR. WEGENAST: What I am submitting, of course, is that the scheme of these societies would have to be reformed; if the period were four weeks then the society would probably be reformed so as to omit the period of the four weeks.

THE COMMISSIONER: It is very probable that the effect of what you suggest would be to put these societies out of business.

MR. WEGENAST: No.

THE COMMISSIONER: You are suggesting a means to avoid that, but supposing that there was nothing done such as you suggest, the effect would be to put them out of business, wouldn't it?

MR. WEGENAST: I don't quite see the bearing of your question.

THE COMMISSIONER: Supposing you were taking from the workmen compulsorily so much to provide against sickness, what reason would he have for joining the society and paying for a similar provision?

MR. WEGENAST: If the funds were administered by the State institution he would be deprived of the incentive.

THE COMMISSIONER: I do not see how you could work the other; it would be too complicated.

MR. WEGENAST: I would like my submission to stand; if you should think of it, we could further substantiate it.

THE COMMISSIONER: While I am not expressing any opinion, tentative or otherwise, as to this narrow adaptation of the German system—do you agree, Mr. Baneroff, with Mr. Wegenast that during those weeks the compensation as well as the provision for sickness falls upon the fund? I did not so understand until Mr. Wegenast stated it.

MR. BANCROFT: We are in this difficulty that we understood from the beginning that this was a compensation act to deal solely with accidents and injuries arising out of and in the course of the employment of a workman in an industry, the industries covered to be specified in the act. We didn't know that we were entering into any sickness proposition.

THE COMMISSIONER: That is a subject that might well be considered in connection with it.

MR. WEGENAST: I do not want to be understood for a moment as proposing sickness insurance.

THE COMMISSIONER: This would be practically sickness insurance.

MR. WEGENAST: No, I am proposing as far as we are concerned to cover the accident insurance by that particular mode.

THE COMMISSIONER: Oh, I do not think there would be any use at all in that.

MR. WEGENAST: We are willing to cover the medical and surgical expenses in that way; the matter of sickness insurance is a matter for the workman themselves.

THE COMMISSIONER: Would it not be a much more sensible thing and less complicated if you had this waiting period and the cost of medical attendance put upon whoever has to bear the burden of the compensation, the burden of providing for the workmen during the period that he is not entitled to compensation?

MR. WEGENAST: That is to put everything on the employer.

THE COMMISSIONER: Whoever bears it.

MR. WEGENAST: There is one of the difficulties of your argument. When it comes to close quarters on the question of who bears it then we shift it over to the long suffering public.

THE COMMISSIONER: If you are right in your view that 20 per cent. or 25 per cent. of the cost of compensation should be borne by the employee, if you have faith in that, then there is nothing in your objection.

MR. WEGENAST: My proposition is this, as I said before, there are three ways for the workmen to contribute: one a direct contribution, of say, 25 per cent., in which case probably the accidents should be compensated from the first day, giving due consideration to the existence of a waiting period to obviate

frauds; the second method is through the agency of a first-aid fund, or under such a fund as in the German system; the third method is by reducing the scale of compensation.

THE COMMISSIONER: I should think, speaking subject to a possible change of view, that it would be far preferable to scale down the compensation than to have the irritation of a forced contribution from the workmen.

MR. WEGENAST: I would like to make my position clear on that, because I am definitely instructed as to that feature. I am instructed to say that we would rather compensate the workmen on a scale of 60, or 65, or 66 2-3 per cent. with contribution, than on a scale of 50 per cent. without contribution, and that even if the contribution meant that the total cost would be higher for the employer. I am convinced it will cost us more if the workmen contribute than if they do not; but those are my instructions.

THE COMMISSIONER: I do not understand that; why will it cost you more?

MR. WEGENAST: Take it this way, if the workmen contribute and the scale of compensation is made 60 per cent. of the wages a man who is getting \$2 a day will get \$1.20 a day compensation.

THE COMMISSIONER: If you mean the compensation will be higher because he contributes, I understand that.

MR. WEGENAST: No. he will get \$1.20. Of that the workman will contribute, we will say, 25 per cent. or one-quarter. That is 30 cents.

THE COMMISSIONER: What I do not understand is how if somebody else helps to pay the compensation it is going to cost you more. That is a novel proposition to me; how is it possible?

MR. WEGENAST: I am just attempting to show.

THE COMMISSIONER: Surely it is self evident that it cannot be so. If I assess you to pay the compensation surely it does not cost you more if he pays part of it.

MR. WEGENAST: It depends on what the compensation is. If it is higher—

THE COMMISSIONER: If you make your compensation higher because he contributes probably it may be so.

MR. WEGENAST: And there will be other influences which will tend to increase the cost, apart from the scale of compensation.

THE COMMISSIONER: But you see it is only the odd man who is injured who would get the benefit of the increased compensation. The people who would contribute would be largely people who never had claims upon the fund.

MR. WEGENAST: That, of course, is the insurance idea. I quite appreciate that, but my general proposition is that it is quite possible that it may cost the employers more. I say it is probable it will cost the employers more if the workmen contribute than it would if they do not contribute, but notwithstanding that we would rather have a system under which the workmen would contribute.

THE COMMISSIONER: Why?

MR. WEGENAST: For the very, I was going to say numerous, reasons I have given before.

MR. BANCROFT: To save all these schemes that are in existence now in Ontario.

MR. WEGENAST: In the first place we consider no system can be as effective as it is possible to be without invoking the pecuniary interest of the employees. That is one reason.

THE COMMISSIONER: The great weight of opinion as far as I have been able to observe is against that; that factor does not count.

MR. WEGENAST: I would like to submit then that whatever text-book writers may say, and I submit they support my contention, the great preponderating opinion in this Province is on the other side.

THE COMMISSIONER: I think common sense would teach anyway that the workman never considers when he is working whether he has got to pay for an accident if it happens. Take the cases you have mentioned where a man goes to work and puts on a belt while the machine is moving, or when he interferes with a machine that does not belong to him, or puts his hand out when he is talking to somebody; does he ever think on those occasions whether he is going to be paid or not if he gets hurt?

MR. WEGENAST: I quite admit all that, but apart from the logic the prevailing opinion is to this effect, that if the workman contributes he will be more careful. You will find that opinion expressed over and over again.

THE COMMISSIONER: I have no doubt that is the view of the manufacturers.

MR. WEGENAST: The manufacturers and employers generally.

THE COMMISSIONER: The only way it seems to me his contribution would assist at all is that you will have an incentive for him to prevent improper claims upon the fund, malingering and all that sort of thing; that is the only argument I have heard of yet that has at all appealed to me.

MR. WEGENAST: I wanted to mention at the outset what I have found to be the prevailing opinion, but beyond that there is this, that whether individual care would be assured or not by contribution, it cannot be doubted that collective interest in the prevention of accidents would be invoked. There can be no doubt the workmen collectively in their organizations would take a greater interest in the prevention of accidents if they were pecuniarily responsible to some degree.

THE COMMISSIONER: A workman knows, if he knows the law, that if he is himself negligent he cannot recover; does that prevent accidents?

MR. WEGENAST: I am speaking of the workmen collectively.

THE COMMISSIONER: I am talking about them collectively. Does that prevent accidents; is it a factor that counts at all?

MR. WEGENAST: No, not that perhaps. It does to some slight degree but the factor I am considering is this: We want as manufacturers to have the co-operation not only of individual workmen but of the organizations.

THE COMMISSIONER: Do you not think that what you would have instead of that would be an irritating sore?

MR. WEGENAST: Well, we are quite willing to take our chance on that.

THE COMMISSIONER: But is the public willing to take that chance?

MR. WEGENAST: We are the most intimately concerned.

THE COMMISSIONER: No, the great mass of the public are over you all, and it is not in the interests of the public that there should be war between the employing and the employed classes.

MR. WEGENAST: Of course I am assuming it would not mean war.

THE COMMISSIONER: I do not mean war in that sense.

MR. WEGENAST: It does not mean war in Germany.

MR. BANCROFT: They do not contribute in Germany.

THE COMMISSIONER: They only contribute with that waiting period of thirteen weeks, and when they do contribute they get the sick benefit for which there would be no excuse for taxing the employer.

MR. BANCROFT: And it covers non-occupational accidents.

MR. WEGENAST: That is precisely what I am submitting.

MR. GIBBONS: That is Mr. Dawson's statement, that if this waiting period covered non-occupational accidents and diseases the workmen should contribute, but not otherwise.

MR. WEGENAST: That is a matter to be worked out, a matter of proportions.

MR. GIBBONS: We contend that this sick fund covers non-occupational diseases and the manufacturers contribute to that.

MR. BANCROFT: Will the manufacturers of Ontario say they will include non-occupational diseases and non-occupational accidents?

MR. WEGENAST: If the workmen pay for it. With regard to non-occupational accidents I concede this, that some provision will in the future have to be made, when experience has accumulated to such a degree that it can be properly dealt with, and really occupational diseases will have to be classed with accidents.

THE COMMISSIONER: Do you not think that the German system is a guard to some extent against malingering?

MR. WEGENAST: I think so.

THE COMMISSIONER: You have a fund there to which the workmen contribute, and it covers a great number of small accidents where there would be a chance of malingering.

MR. WEGENAST: That is what I am getting at. While the individual employee may not be prevented from malingering or practising frauds, the workmen

collectively would discourage that sort of thing, and without going into the minutiae of the way in which it would work out, I think it must be clear that the co-operation of the workmen's organizations would be invoked to prevent malingering and fraud and impositions on the fund.

MR. GIBBONS: Our experience, Mr. Wegenast, is the other way, and I think the Street Railway will bear me out. When a man is injured the greatest trouble we have is to keep him from going to work too soon and probably bring on a recurrence of the trouble or a relapse. We have had cases where we have had to send the man out to keep him from going to work, because the doctor said there would be danger of a collapse, where the injuries were internal, or something of that kind. That has been our experience. Every organization has its sick benefit or accident fund and they pay in cases of accidents; does that tend to prevent accidents? The accidents will occur anyway. The organizations are at the present time interested in having no accidents because we pay for them out of our funds, but it does not tend to prevent accidents, accidents still occur.

MR. WEGENAST: I say it should tend to prevent accidents.

MR. GIBBONS: A man does not get injured intentionally.

MR. WEGENAST: But your society makes regulations which tend to make it difficult for a man to succeed in a fraudulent claim? Have you not regulations which are intended to stop a man from practising fraud upon the fund?

MR. GIBBONS: No, I don't think so. We have never had a case of fraud to deal with; if we had a case of that kind we would probably deal with it.

MR. BANCROFT: In Germany, if you notice, in the accident compensation fund the employers are the sole administrators, which is evidence that the workmen do not contribute. In all the other funds, mind you, the workmen have representatives of the board and take part in the administration. That is what stops malingering; it is the representation on the administration board that stops malingering, as far as Germany is concerned.

THE COMMISSIONER: They say it has not stopped it.

MR. BANCROFT: It does to some extent. On the administration board for accident compensation in Germany the employers have sole control; the workmen have no seat on that board, which shows they do not contribute.

THE COMMISSIONER: Nobody disputes that where they come upon the compensation fund in Germany the employer pays it. It is only the thirteen weeks period to which that the workmen contribute; everybody concedes that.

MR. BANCROFT: We have tried to explain that, and Mr. Wegenast will bear us out, that the reason for that was this, that the social legislation in Germany commenced earlier than in any other country in Europe. The first legislation was sickness and death, the second invalidity and old age, and the third accident compensation. The social legislation had all been arranged and it was found that the thirteen weeks did not cover accidents which were so serious as to take a longer time, so they took in accident compensation, and it was adopted as a principle that the employer should bear the burden of an accident in his industry. Had it been that the accident compensation

had come first in Germany you would have found that the workmen would never have consented to any other principle than that the employer should bear the burden from the first day. In the case of the week's waiting period if it lasts longer it reverts back and he is paid from the first day of his injury.

MR. DOGGETT: I pointed out not many months ago that the building trades in this province made a strong agitation, and a deputation waited on the provincial legislature in order to have a scaffold requirement so that scaffolds would be put up. A gentleman representing one of the largest industries in this city opposed it. It shows that these people have not always been with us in trying to prevent accidents. Before the committee was appointed by the House one gentleman representing one of the largest concerns in this city came and opposed the floors of a building being covered with planking; he wanted the building to be run up six storeys before they laid planking to save people from falling. Why did they not support us in that?

MR. WEGENAST: The only conclusion to come to from the remarks of Mr. Doggett, which I am surprised to hear coming from him as he has always appeared fair, is that we are insincere in our advocacy of accident prevention. It does look, although I do not believe it, that our friends across the table are bound to pick a quarrel with something.

MR. BANCROFT: We are trying our best to agree with you.

MR. WEGENAST: I have an extract from the Washington report which I would like to read; it appears in my brief. "The burning issue of the industrial situation to-day is the need of a first-aid fund. When the act was discussed in the legislature it already bore a provision for first-aid, which was stricken out at the urgent request of the manufacturers, who declared that they desired to establish their own first-aid funds; it was also felt that the law, revolutionary as it was in a great many respects, would prove to be a sufficient burden without the addition of a first-aid provision. The whole matter was therefore stricken out and the schedules designed to accompany that provision were allowed to remain as they are. It will be seen that the law provides simply for the bare necessities of life during disability or after the death of a workman, and the expense of doctor's bills, hospital dues, etc., is absolutely unprovided for. It is clearly up to the employers and employees of the state to give this question of first-aid careful and serious consideration inasmuch as it constitutes in the opinion of the Commission, the most imminent problem in connection with the administration of industrial insurance in this state to-day." As I say it is in anticipation of that gap we propose the first-aid fund.

Let me say, too, the provision incorporated in some of the acts, whereby medical expenses and surgical expenses up to a certain stated limit is provided for, is not in my opinion satisfactory. I know of a number of cases where hospital expenses have extended over months and years. I know of one case in Hamilton where the man has been in the hospital for, I think, nearly two years in the effort to have a broken leg mended and internal injuries cured; the expense in that case must run up into hundreds or perhaps into thousands of dollars. In a case of that kind the provision would be inadequate. In other cases it is altogether likely that the pro-

vision would be abused, by reason of the doctor taxing as nearly up to the limit as he possibly could. A provision, for instance, like that in the State of Ohio for a limit of \$150 would be entirely absurd, because it is too high in ninety-nine cases out of one hundred.

THE COMMISSIONER: The United States act has a provision too, has it not?

MR. WEGENAST: Yes. I do not just remember what it is.

THE COMMISSIONER: Are you gentlemen who speak for the labour organizations favourable to or against an adaptation of the German system of thirteen weeks, or some other period, covering all kinds of accidents and sickness, the employees as well as the employer contributing to that fund?

MR. BANCROFT: We have not really ever considered it from that standpoint.

THE COMMISSIONER: You might consider it from now until the Commission meets again, and let me know what your views are.

MR. GIBBONS: It would cover sickness and non-occupational accidents?

THE COMMISSIONER: All kinds of accidents.

MR. GIBBONS: That is the point I have been taking all the time, that there is one non-occupational accident to ten of sickness, and what the employee pays out for that one case of accident he receives more back from the employer in the ten cases of sickness. That is our contention, and if that is not established the employees should not contribute anything to the accident. In Germany the employer actually pays into ten cases where the employee pays into one. It is safe to assume that there are ten cases of sickness to one non-occupational accident.

THE COMMISSIONER: The German system only requires the employees to contribute to that thirteen weeks.

MR. GIBBONS: That covers all diseases.

THE COMMISSIONER: Yes.

MR. BANCROFT: The social legislation of Germany has worked out—it is not a permanent system or anything, but it covers all the unfortunate accidents and illnesses that occur to the working class. Supposing sickness was only thirteen weeks and then only a compensation covering accidents after that thirteen weeks, if a man happened to have consumption that went on for a period of years he would be practically out of court altogether. But the social legislation of the State we labour men in this Province say, and labour men in Great Britain and in every other country that has dealt directly with compensation say, should be entirely separate from the field covering accidents arising out of and in the course of employment. If social legislation is necessary covering sickness then that should be a separate piece of legislation entirely. We fear that the sickness compensation argument is only for the purpose of getting the workmen to contribute to accident compensation. We are convinced of the proposition because it has been no secret on the part of the manufacturers. It has been known for a long time that whenever workmen's compensation was brought up in this Province that the manufacturers would commence and

fight on it. Mr. Wegenast brings you the evidence here this morning of the by-law of all these schemes in existence, but the British Act is a clear case of workmen's compensation, and you see how it has worked there. We agree that individual liability is not a good thing at the present time, and the workmen of England agree it is not a good thing, and they are asking for a State Insurance Department in Great Britain, which I hope Mr. Commissioner, you will find out about by seeing some of the men; they are very good fellows I assure you, and they are working for State insurance in connection with the act. That act starts out with straight compensation, and now the social legislation of England is following upon this act. I say the best thing, and I think the workers of this Province will say that the best thing to be done is to have a straight workmen's compensation act with all those frills set aside and if the employers are so concerned about the sickness of the workmen, let them contribute to a fund to look after the sick as well as the unemployed. If the employers are honest in this they will then recommend a piece of social legislation to which the workmen will be asked to contribute. I do not think it is fair to work in the sickness compensation; this is a plain thing, that accidents arising out of and in the course of the employment should be compensated and that the burden should fall upon the employer. After that if the employers want to bring in social legislation I think the workers will consider it favourably. Germany is not an analogy; Germany started with social legislation and brought in accident compensation afterwards; in this Province we are doing it the other way around. When the Commission resumes, after Mr. Wegenast has completed his argument, we hope for an opportunity of supplementing what we have already said. We have a great deal to say on this matter now that Mr. Wegenast has brought all these matters up. We have a great deal of confidence, however, in your judgment, Mr. Commissioner, and we will be glad to put you, while on your trip to England and in Germany, in touch with men who have made it a lifelong study. We want this to be made an absolutely straight case of workmen's compensation. The Government, when they appointed this Commission, appointed it at the request of the labour interests; we made the request to Sir James for a Committee, and he appointed the Commission. It was understood from the first that it was a plain case of workmen's compensation and not dealing with sick insurance; that is a separate thing altogether. The waiting period for which the manufacturers are now arguing through Mr. Wegenast is an attempt to defeat the plain issue of workmen's compensation, for which they have absolutely no case, according to the evidence of the experts brought here. This waiting period is just a means of getting a contribution from the workmen afterwards.

MR. WEGENAST: I am sorry to stop Mr. Bancroft's flow of eloquence, but I really do not see what the point of it all is.

THE COMMISSIONER: I would like to know when a man ceases to be a worker? I thought a newspaper reporter did nothing and that he was no longer a worker.

MR. BANCROFT: There is no doubt about it that the reporters are the hardest worked of all. The proposition is that there is a wage-earning class, and a class which owns and controls industry. We have good relations with the

employers in many cases, but we say all those people who are earning wages are in a different position entirely from those people who are earning salaries. A man who earns a salary and has two weeks' holidays with his pay going on, and who does not punch a clock in the morning, we do not call a workman. A workman puts in a time-sheet, and the time-sheet goes into the office and from that time-sheet he is paid, and if he is not making a profit for the employer he is fired. That is the reason of the strenuous labour and the systems which have been developed here and in the United States. There I understand the fact is that in Taylor's "Efficiency System" a man stands with a stop watch to see if a man is using a machine to its utmost capacity, or if he is running a lathe as fast as it can be run. Men who are earning wages are looked upon as human machines and are subject to mathematical calculations to see if they get through the work in a given time. Their conditions are entirely different from those who have been fortunate enough to have their wages called salaries. That is why we speak of a worker as a wage-earner. A foreman is a wage-earner. I would not like to call you a wage-earner, Mr. Commissioner, because I would not like to think that you were subject to the regulations in your business that we are. For instance, I find Mr. Wegenast can be here any moment he likes, and he can go all over the States to investigate workmen's compensation; we cannot do that.

THE COMMISSIONER: He is putting in his day's work.

MR. WEGENAST: And the night as well.

MR. BANCROFT: When we speak of workers we do not mean any disrespect to other people. A worker under the present system lives in environments into which he is thrown, and those who are unfortunate enough to be in that class are making a fight for better conditions.

THE COMMISSIONER: Fortunate enough, you mean.

MR. WEGENAST: I just want to mention once more, what I despair of getting into Mr. Bancroft's head that the proposition of sickness insurance, or social insurance as he terms it, is not our proposition; it was not suggested by us either to-day or at any other time.

MR. BANCROFT: We did not bring it up, that is certain.

THE COMMISSIONER: The proposition Mr. Wegenast has given is a much narrower proposition. His proposition is for the short period accidents arising out of the employment that this fund should be created.

MR. WEGENAST: Yes, and what I said in response to Mr. Gibbons' suggestion that it should include non-occupational diseases and sickness and so on, was that we had no objection to that. It is possible, but we have no concern with it.

MR. GIBBONS: Mr. Wegenast is assuming that a waiting period is necessary; we do not assume that a waiting period is necessary. It is only in Germany where the waiting period is, and there the employer contributes to the sick benefit.

THE COMMISSIONER: In most countries there is a waiting period. In England there is.

MR. WEGENAST: The original conception of the British Act was that there should be a waiting period of three weeks, which the workmen were supposed to cover out of their own resources.

Now, I would like to refer to the method of collecting the fund. I submit that this could be done through the agency of the banks so that an employer could pay in his insurance premium.

THE COMMISSIONER: That is all a matter to be dealt with by the Commission, I should think, except so far as it may be thought desirable to use the municipal machinery.

MR. WEGENAST: I was just making that the foundation for the suggestion that possibly an effort might be made to induce the Dominion Government to allow the system to utilise the Post Office Savings Bank. I appreciate the difficulty in the way of such a plan, but I think that even under our federal system it might be practicable. I do not see that there could be any complaint from the other Provinces on the ground of discrimination; it would be open to the other Provinces to adopt the same system.

THE COMMISSIONER: I see no difficulty about that. Arrangements could be made for payments to be made to the banks, or wherever the Commission thought right at a certain time, and if payments were not made at that time then they could be collected through the ordinary tax collector.

MR. WEGENAST: I mentioned the Post Office because I felt that if the suggestion had not occurred to you it might be possible to ascertain, unofficially perhaps, whether the method would be considered.

I only desire to refer to what, I submit notwithstanding the doubts of the labour people as to our motives, is after all the main consideration in this class of legislation. I refer to our own attitude and our own intentions in the matter of accident prevention.

THE COMMISSIONER: You told us all about that yesterday, didn't you?

MR. WEGENAST: I may have casually mentioned the plan. The idea is to form mutual associations corresponding with the classes into which the industries would be divided for insurance purposes, and to have these organizations conduct whatever activities may be found advisable in the direction of accident prevention. To that end we would like to have facilities afforded by the act for the recognition of these associations, and for the payment, probably out of the insurance fund of the class, of inspectors or such other officials as might be necessary. The whole scheme can be worked out along the lines of least resistance; nothing is compulsory about it or would be compulsory about it. We should like to have facilities open for that.

I have nothing further to say, Mr. Commissioner, except that we appreciate your courtesy and long suffering from the length of the discussions. I cannot really take any blame for it; I blame the subject for it. There would be no profit in ignoring any of the important phases, even in the interests of brevity. I should like to suggest that if you visit Germany I might submit a list of officials whom you might see, and particularly I would suggest the name of Dr. Zacher, who is at present in Africa, but who will be back in Germany by the end of this month. He is the head of the insurance department in the Imperial Office. He is the head of the whole

German insurance system, accident and sickness, unemployment, and all the rest, and he is the foremost authority upon the subject in the world to-day. Dr. Zacher speaks English quite well.

THE COMMISSIONER: What is his calling?

MR. WEGENAST: Mr. Keys says he is a statistician.

THE COMMISSIONER: You might give me a list, if you will.

MR. WEGENAST: I presume at a later stage we will have an opportunity of discussing something concrete.

THE COMMISSIONER: Have you not got to anything concrete yet?

MR. WEGENAST: Our arguments are directed to the framing of some measure, but I should like to have something in cold print perhaps to discuss further.

THE COMMISSIONER: What do you mean by that?

MR. WEGENAST: I presume you will in due time draft a bill, and we should like to have an opportunity of discussing its provisions.

THE COMMISSIONER: Oh, yes, an opportunity will be given.

MR. BANCROFT: We will send you a few names later on. We think on your trip you will get corroboration of some of the arguments we have made, and when you get the information first hand we can better make our arguments and complete our case. We have not a great deal of doubt of the ultimate outcome, because the evidence all over the world is in favour of the things we are asking for. We would like at some session after you return to be allowed in the labour interests to go on with the case as Mr. Wegenast has been going on. We understand the forms were built and the concrete was being poured in, and the bill was taking some sort of shape. I would be sorry to go back to the mixing again. I think by now your views must be getting pretty well defined, and we feel confident and certainly hope that the next session of the legislature the bill will be framed and ready for discussion by the people of Ontario. I think that in the last analysis your recommendations will go to the legislature, and the legislature will be the body to say what the act shall be, and the people of Ontario in the last analysis will pass judgment upon the wisdom or otherwise of the legislation.

THE COMMISSIONER: You will have an opportunity. I have a commission to draft a bill, and that bill will be properly the subject of discussion here. That is only reasonable because it will be a difficult thing to draft, and I want all the assistance possible.

MR. WEGENAST: I would like to add another suggestion, that you visit the State of Washington.

THE COMMISSIONER: No, I think I should keep away from there. We had Washington here.

MR. WEGENAST: No, that was Ohio. I had in mind bringing Mr. Preston here, but I should think it would be desirable for you just to go over the ground and see how it actually works out in practice. I am very much

interested myself in finding out how it does work, and I propose to go out in a few weeks, but I think it would be of considerable value to the province if you also would go.

THE COMMISSIONER: I think it a good idea for you to prepare a list of the industries which you suggest should be classified and let Mr. Baneroff or Mr. Gibbons have a copy of it so that they can consider it before we meet again.

MR. WEGENAST: I have just glanced over the headlines of the memorial of the C. P. R., and it looks to me as if we and the labour people had a task before us to answer the arguments of the railway that are directly contrary to our mutual presentations. I notice they do not confine themselves to their particular branch, but go into the discussion of the general principles.

THE COMMISSIONER: You have said all you are going to say on the general principles, I presume. Of course it is agreed that the classes must not be too small, otherwise it may result that the burden upon a class will be such that it cannot bear.

MR. WEGENAST: I propose after covering certain lines of industry more or less thoroughly to go over the whole ground with some consulting actuary.

THE COMMISSIONER: What would we have to do with classification; should it not rather be somebody who has been accustomed to accident insurance?

MR. WEGENAST: Yes, an actuary of accident insurance companies; that is what I meant.

THE COMMISSIONER: You want to classify them according to the risk.

MR. WEGENAST: Yes. I do not see that there should be a great deal of room for any difference of opinion in classifying.

THE COMMISSIONER: Anything that is done by the legislature will have to be very elastic, allowing the Commission to re-classify and to determine to what class a particular industry, or a part of it belongs, so that they would have it within their control, and the power to determine all; for instance, there might be a question as to whether Mr. A's establishment belonged to Class 1 or to Class 10, or to both. One of the most difficult branches of the question will be how far this should extend, whether it should include all classes of employees and employers, or whether it should be limited to what may be called the industrial occupations, and whether the clerical classes should be included.

MR. WEGENAST: And the clerical department of the shop, and the managers, and if the manager goes out into the works and receives an injury whether he would receive compensation.

THE COMMISSIONER: Then as to the scale of compensation: I would like to have the views of both sides as to what that should be.

MR. WEGENAST: Ours is contingent upon the question of contribution.

THE COMMISSIONER: You can put it in that form, briefly. Then there is the question as to whether the agricultural industries should be brought in.

MR. WEGENAST: I think our submission is clearly laid before you on that question. We consider that all industries should go in and will go in ultimately.

THE COMMISSIONER: What do you mean by all industries?

MR. WEGENAST: The agricultural industry for instance.

THE COMMISSIONER: Do you include all the employees in such a place as Eaton's, all the employees in the retail departments?

MR. WEGENAST: Yes, decidedly, without exception. We recognize, however, that in order to get it properly started some industries might well be omitted.

THE COMMISSIONER: As far as the agricultural industry is concerned, I do not think it makes much difference what the Commission may report.

MR. WEGENAST: Except that you should consider the form of the system in view of the uniform tendency.

THE COMMISSIONER: I think it could be drawn in such shape that it would be easy for the House to make an exception of any class it might choose.

MR. WEGENAST: That is one of the many things I left unsaid. It might be well to enumerate the industries in the act, although that method has some objectionable features.

THE COMMISSIONER: It has a good many.

MR. WEGENAST: On the whole I believe it would work out best in the end. If they were included there would be no doubt whether a certain industry was insured or not.

THE COMMISSIONER: That might be so, but there ought to be general terms to cover all other classes that are intended to be brought within the scope of the act, leaving the Commission to determine whether they come within those provisions.

Then another thing I would like to have. One of two courses would be open: either to bring into force so much of the act as would appoint the Commission and enable it to frame a scale for the first contribution, and the rest of the act to go into force at a later date, or to embody the first contribution in the act. If the latter course were adopted then it would be necessary to have some skilled person or persons to prepare that.

MR. WEGENAST: What was in my mind was this, that the act should give the Lieutenant-Governor power to appoint a Commission with power to make a preliminary assessment, and that the compensation should begin to accrue on a date to be fixed.

THE COMMISSIONER: If that plan were adopted it would bring into force so much of the act as created the Commission and its accessories, and power to frame its tariff. Then the rest of the act would come into force on a later date to be fixed, giving time for the preparation and settlement of this scale.

MR. WEGENAST: Leaving the time elastic.

THE COMMISSIONER: You could make it elastic, and let the rest of the act come into force, or proclaim a late enough date to enable this to be done.

MR. WEGENAST: What I thought might be done is to say that on or before a fixed date the Commission shall make their preliminary assessments, and so on.  
10 L.

THE COMMISSIONER: They have got to do more than that; they have to settle the scale.

MR. WEGENAST: Well, that would be the scale.

THE COMMISSIONER: Then as soon as the rest of the act came into force they should at once take steps to collect that.

MR. WEGENAST: I think I would collect it before the date at which the act went into force, the insurance premium is paid before the insurance goes into effect. I do not see any difficulty in working out that plan.

THE COMMISSIONER: You mean the provisions for collecting it should come into force before the rest of the act?

MR. BANCROFT: When you asked Mr. Boyd as to how long it would take an accident actuary to figure out a scale of assessment in a city like Toronto he said sixty days.

THE COMMISSIONER: That must be taken with a good deal of reserve. First of all there would be a good deal of difficulty in selecting the man to do it.

MR. BANCROFT: If the industries to be covered by the act were not specified would the Commission have power to determine who came under the legislation?

THE COMMISSIONER: No. Unless it is general and covers every employee I think Mr. Wegenast's suggestion might be right, to enumerate the industries included, and then by some general words, some general expression, to include all other industries of a particular class, leaving the Commission to determine what industries fell within that class. Supposing it said "manufacturing industries," then leave it for the Commission to determine what is a manufacturing industry.

Then I would like to have your views when we meet again whether from the date that the bill receives the assent of the Governor until it becomes operative there ought not to be a provision to cover accidents happening in the intermediate time, and whether these three defences in case any accident happened between the date of the passing of the act and its coming into operation, should be done away with so as to entitle the injured person to the benefit of it—that is the three defences of common employment, assumption of risk, and contributory negligence. In some of the laws of the United States they abolish them.

MR. WEGENAST: Not for the preliminary period.

THE COMMISSIONER: I see no reason why that should not at once become law until the new provisions take effect. I think everybody concedes that at any rate the defences of common employment and of assumption of risk should go by the board.

MR. WEGENAST: We have no assumption of risk practically in this Province.

THE COMMISSIONER: Oh yes, we have, except so far as it is limited and controlled by the Compensation Act. I would abolish it as a defence at common law.

Then I do not know how they have it defined, but this doctrine of contributory negligence as it stands now, is, I think, highly objectionable. While I would not at present favour doing away entirely with that as a

defence in this preliminary period, it ought to be cut down; what should be done after the compensation provisions come into force, I say nothing. Whether the doctrine of comparative negligence should be adopted or not is a question. I have not yet seen that defined, but what ought to be done, I think, is where the accident has been caused in part by the negligence of both parties the tribunal in assessing damages should have regard to the extent to which each has contributed, and limit the damages or compensation accordingly.

MR. BANCROFT: That would be in the interim period.

THE COMMISSIONER: Yes, that is what has been passing through my mind. I would like to have your views. When the act comes to be framed that will have to be considered.

MR. BANCROFT: To anticipate, does that mean there may be a considerable period?

THE COMMISSIONER: Well, there must necessarily be some months or perhaps a year before the act will become operative; it would not be reasonable to leave what is admittedly a defective condition of the law to govern the rights of people who are injured in the meantime.

MR. WEGENAST: We do not, of course, admit that it is a defective condition.

THE COMMISSIONER: I will decide that against you offhand.

MR. WEGENAST: We quite admit that conditionally. There is this further question, whether that would include all employments and agricultural labourers.

THE COMMISSIONER: My present impression is to alter the common law and make it general.

MR. WEGENAST: I am not prepared to answer these things offhand.

THE COMMISSIONER: I am not asking you to do that. The one thing I am clear on is that the present law is defective; I have already delivered myself upon that. Everybody admits that, or I think they do.

MR. WEGENAST: We admit that with certain qualifications, but——

THE COMMISSIONER: You should not have so many "buts."

## SEVENTEENTH SITTING

THE LEGISLATIVE BUILDING, TORONTO.

Saturday, 7th December, 1912, 2.30 p.m.

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner.*

MR. F. N. KENNIN, *Secretary.*

MR. W. B. WILKINSON, *Law Clerk.*

THE COMMISSIONER: This meeting has been called on short notice, because I understand Mr. Wolfe is here from New York, and cannot stay over. I think all the parties are represented. I understand Mr. MacMurchy wishes to examine Mr. Wolfe. It has not been the custom to take the evidence under oath so far, so we will take Mr. Wolfe's evidence on his honour.

MR. ALEXUS MACMURCHY, K.C.: You might state to the Commissioner your connection with accident insurance, and other forms of insurance, and your knowledge and experience, Mr. Wolfe.

MR. S. H. WOLFE: I am a consulting actuary, and have been connected with various insurance departments and insurance companies for about eighteen years. I have been actuary for or have made examinations for a great many insurance departments of the different states, such as Maine, Vermont, Massachusetts, Connecticut, New York, California, Texas, Tennessee, Ohio and a number of others. I have been consulting actuary for life insurance companies, accident insurance companies, liability insurance companies, and have represented the English shareholders of the Ocean Accident and Guarantee Corporation for a number of years, and as such representative have scrutinized the various acts of the United States. I think I have answered that pretty fully.

MR. MACMURCHY: And have you had occasion to investigate in any way the working out of workmen's compensation in Europe as well as in the United States?

MR. WOLFE: I have. I have been consulting actuary of the Massachusetts Employees Insurance Association, a corporation which I will describe more fully later, and also consulting actuary of the Iowa State.

MR. MACMURCHY: Then dealing with Europe, have you made any personal investigations into the working of these laws?

MR. WOLFE: I went abroad last year for the purpose of considering the operations of workmen's compensation in the different countries there, and while I would hesitate to say I made a thorough investigation of European methods I think I obtained a thorough knowledge of the workmen's compensation laws.

MR. MACMURCHY: In what countries?

MR. WOLFE: Germany, France, England, Belgium, Austria.

THE COMMISSIONER: Norway?

MR. WOLFE: I did not go to Norway, no.

MR. MACMURCHY: Switzerland?

MR. WOLFE: Yes, I was in Switzerland.

MR. MACMURCHY: These are the principal countries?

MR. WOLFE: Yes.

MR. MACMURCHY: You mentioned England?

MR. WOLFE: Yes.

MR. MACMURCHY: How long were you abroad?

MR. WOLFE: I was abroad for a little over three months.

MR. MACMURCHY: And did you obtain access to the usual means, or any unusual means of information in these countries?

MR. WOLFE: Well, I approached the subject in a different way from the one that is usually followed. I entered by the basement instead of going in by the front door. For instance, in Germany I watched the operation from the standpoint of the Police Department. I was registered as a volunteer worker and had my cards issued and stamps affixed, and just saw how the thing was operated from the standpoint of the worker, not relying entirely upon the published statements of the way in which the machinery of the departments themselves were conducted. I didn't feel it necessary to go into that.

THE COMMISSIONER: What do you mean by the worker?

MR. WOLFE: The individual employee.

MR. MACMURCHY: The workman, I suppose you mean?

MR. WOLFE: Yes.

MR. MACMURCHY: Then you can tell us, I suppose, from a comparative standpoint the differences in principle and working out between the systems in force in these countries?

MR. WOLFE: Yes. In a general way.

MR. MACMURCHY: And in the United States?

MR. WOLFE: In a general way.

MR. MACMURCHY: Such of the States as have adopted the compensation laws.

Now, can you specify shortly the different systems in vogue?

MR. WOLFE: Yes, I can.

MR. MACMURCHY: You have a memorandum there, I see?

MR. WOLFE: Yes. Sir William, on account of your sacrificing your own convenience and your own time and meeting mine and holding this meeting this afternoon, I have prepared a memorandum in order to save time, and

with your consent I will read from it and you can follow it, and as I go along if you wish to interrupt me, do not hesitate to do so.

THE COMMISSIONER: Any gentlemen here who are interested had better follow it, make a note of any questions they wish to ask, and ask them later on.

MR. WOLFE: "The advisability of enacting some form of workmen's compensation to take the place of the common law liability of employers, is conceded by all; the question of the form which such an enactment should take, however, is a matter open to discussion. An examination of the different plans indicates that the following are the methods in use in some of the various countries or states which have attempted to handle this proposition.

1. The legislature may limit its activities to the enactment of a statute specifying the compensation which shall be paid to an injured employee, irrespective of the question of negligence. This method does not attempt to provide for any form of guarantee to the injured workman as to the ultimate receipt by him in all cases of the benefits due, and leaves the employer to carry his own insurance, or to protect himself by a policy in a mutual association or a stock company.

2. The legislature may provide for a scale of benefits to injured workmen and may require the employer to furnish some evidence of the probable continuance of his financial solvency either by furnishing a bond or becoming a policyholder in an authorized insurance corporation.

3. The state after fixing a schedule of benefits may insist upon the formation of mutual associations composed of employers engaged in the same form of industry and prohibit any other form of protection.

4. The state itself may become the vehicle of distribution by assessing upon the employers (in any way which may seem reasonable to it) the cost of the benefits which are provided by the statute.

Let us consider the advantages and disadvantages of each of the plans in the order stated:—

1. The first plan is the one now in use in England and in some of the states of the United States. It would seem to be the method affording the maximum amount of personal freedom with the minimum amount of state interference. The principal question arises as to the method of administration. Is the plan productive of an undue amount of litigation? Are the employers inclined to avail themselves of the privilege of requiring their injured employees to seek the aid of the courts in enforcing their proper claims? It has been stated that in Great Britain in 1909 only 2½ per cent. of the new claims for compensation were taken to court and that only one-half of these were tried, settlements evidently having been made out of court in the case of the other half. It would appear, therefore, that the element of litigation is not a serious or vital factor. But the objection has been made that (a) if so disposed an employer can force the injured workman to litigate his claim, and, (b) that the person entitled to the benefit payments has no guarantee that the employer will be solvent at the time that the first payment is due or that he will continue in a solvent condition until the last installment is paid.

To overcome these objections some of the States have modified this plan.

The second method is the one which has been adopted by the Commonwealth of Massachusetts and has been suggested in a modified form for the State of Iowa by the Employers' Liability Commission of that State.

In Massachusetts an employer in order to bring himself within the act must give his employees the statutory notice and must become either a policyholder in a stock company or a mutual association authorized to transact liability insurance in the Commonwealth or must become a subscriber to the Massachusetts Employees Insurance Association.

MR. MACMURCHY: That is on account of the Constitution?

MR. WOLFE: Of course the supreme courts in the various states differ in that respect. In New York they decided that a compulsory act was unconstitutional, and in Washington it has been held that it is not.

In Iowa it is proposed that every employer shall come within the act unless he gives statutory notice of his intention to remain without, and those electing to come within the act are required to become policyholders in the Employers Indemnity Association, any other protection in a stock or mutual company not being recognized. The bill in Iowa will be considered at the next session of the legislature and at that time it will be determined whether the people are in favour of the creation of a monopoly of this kind or whether they prefer to have the benefit of competition.

In Massachusetts, the Massachusetts Employees Insurance Association is required to divide its subscribers (the employers) into groups according to the nature and hazard of their industries, to charge premiums in advance, and after setting aside the necessary reserve for the ultimate payment of losses that have occurred in any year, is authorized to apportion the unexpended balances among its subscribers in an equitable and proper manner.

The legislature of the Commonwealth of Massachusetts, therefore, has definitely prescribed for the charging of premiums and the accumulation of reserves on the capitalized value plan, which is described more fully in the following pages.

THE COMMISSIONER: Has that the effect of keeping the employers out of this Association or is their joining compulsory in Massachusetts?

MR. WOLFE: They are not compelled to join. If they come within the act they may either join the association or take out a policy of insurance in any liability company authorized to transact business in the State.

MR. MACMURCHY: Or may they insure themselves?

MR. WOLFE: No.

THE COMMISSIONER: What is the result of that? Have many gone into this association?

MR. WOLFE: The Massachusetts Employees Insurance Association was authorized to issue policies on July 1st of this year. The law provided that it should not issue contracts until it had one hundred subscribers covering 10,000 employees. The Association in five months of its existence has over 500 subscribers and about 80,000 employees.

THE COMMISSIONER: What proportion of the whole would that represent?

MR. WOLFE: It is impossible to say.

THE COMMISSIONER: It would be a small percentage?

MR. WOLFE: No, it would be a comparatively large percentage. It unquestionably is sharing the business with the stock companies and other mutual companies. While it is impossible to give any authoritative figures at this time, prior to the filing of the sworn statements with the Insurance Department of Massachusetts, I am of the opinion that the Association will be found to have covered about 30 per cent. of the business in the Commonwealth. Of course that is purely an estimate.

THE COMMISSIONER: What security does it afford? What is its financial basis?

MR. WOLFE: It has fixed rates which have been approved by the Insurance Commission of Massachusetts as adequate. It is permitted by the statute which brought it into effect to fix a contingent liability for its subscribers. The Association by its by-laws has fixed that contingent liability at 100 per cent. of the cash premium which any subscriber pays. In other words in case of a catastrophe or a very heavy loss a subscriber may be called upon to pay an additional premium not in excess of 100 per cent. of his cash premium which he has paid.

THE COMMISSIONER: Does this Association come under the insurance laws of the state?

MR. WOLFE: It does.

THE COMMISSIONER: Subject to all the laws affecting a mutual company?

MR. WOLFE: Yes, a mutual company, and in addition to that there is a further safeguard thrown around it in the sense that all its operations have to be approved by the insurance commissioner, in not only the fixing of rates but also the grouping of the subscribers for the purpose of charging premiums, and the dividends which they will return, and all other matters pertaining to its operation.

THE COMMISSIONER: It is not purely mutual because there is a premium? It is not an assessment?

MR. WOLFE: It pays the premium in advance, and the statute prescribes that at the end of the year the amount unnecessary for the payment of the losses that have occurred in that year shall be returned to the subscribers, so it is purely mutual in its pure sense.

THE COMMISSIONER: Is that not a round-about method? Would it not be much more simple at the end of the year to assess the loss as you do in mutual insurance companies, having your first premium, the initial premium, provided?

MR. WOLFE: The effect is the same.

THE COMMISSIONER: Only it is a round-about way of getting at the same result.

MR. WOLFE: I wish to call your attention, Sir William, to the fact that there is an added security to the subscribers in this sense, that one of the by-laws

prescribes at the end of the year there shall be apportioned this return premium. The Association need not immediately return that in cash to the subscriber, but may retain that for not more than one year, if it see fit, and pay interest at the current rate.

THE COMMISSIONER: Well, what provision have you if the opposite results, if you have nothing to pay the losses?

MR. WOLFE: Then the subscribers are liable to an assessment of not more than 100 per cent. of the premium.

THE COMMISSIONER: And if that falls short of meeting claims?

MR. WOLFE: The association would be in exactly the same situation as a stock company, the liabilities of which were more than its capital stock and surplus. It is a very unusual situation.

THE COMMISSIONER: What was the reason of limiting that amount? Why would not each group be liable to meet all the claims made upon it? What suggested that?

MR. WOLFE: I am giving now entirely my personal opinion, but in my opinion it was a very wise limitation, because otherwise no man would know what his liability assessment was.

THE COMMISSIONER: It made this Association a competitor with the line companies?

MR. WOLFE: Yes.

THE COMMISSIONER: But if they had the field all to themselves there would not be that competition.

MR. WOLFE: No. I think the same objection would still stand, because if there were the right to an unlimited assessment no employer would know how his future resources were mortgaged.

THE COMMISSIONER: Well, it would be an incentive not to have any accidents in his establishment.

MR. WOLFE: There are other incentives offered under this plan. I think it very important, Sir William, that no manufacturer should have hanging over him the sword of Damocles in the shape of an unlimited liability.

THE COMMISSIONER: He has that in the English system and he cannot get out of it.

MR. WOLFE: He can get out of it by insuring, can he not?

THE COMMISSIONER: Yes, he puts it on somebody else.

MR. WOLFE: And therefore that is exactly the position of the Massachusetts Association.

THE COMMISSIONER: If a man did not want that risk would there not spring up insurance companies that would insure him under the assessment against liability, under a purely mutual plan insure him against his liability over a certain amount? Lloyd's will take a fly at a thing of that kind.

MR. WOLFE: Lloyd's will take a fly at anything, but whether it would be possible

to obtain a policy guaranteeing you against the possibility of future assessments is a thing which I am not competent to answer. I do not know in the first place whether it would be a legal form of insurance or not.

MR. GIBBONS: Would not the company who took those risks be up against the same proposition as the company you are speaking of?

MR. WOLFE: They would, certainly. There would always be that question. In times when no demands would be made upon that company its financial condition would be magnificent, but at the very time a catastrophe occurred there would be great demands made upon it and its assets would fade away and you would very likely have an insolvent insurance company on your hands instead of an insolvent employer.

THE COMMISSIONER: Has there been a case in which an association in Germany has failed to meet its obligations?

MR. WOLFE: I know of none, but I will point out the reason for that later on. I think you will find I touch upon that very point.

3. The third method has been carried to its highest point of development in Germany, and for that reason is generally referred to as the German type.

A proper consideration of this type compels us to refer briefly to the political and social conditions affecting its formation. When the German Empire was founded a workman injured in the course of his employment was compelled to establish the negligence of the employer in order to secure any relief under the provisions of the common law. As aptly expressed in the 24th Annual Report of the United States Commissioner of Labour (p. 983):

"It is the general testimony of German writers of the time that under the system of compensation provided by the common law an injured workman or his surviving dependants could but seldom secure adequate compensation for his losses and then only through a time-consuming lawsuit. In the majority of cases, even if the suit was won, the injured workman was no better off, because the fellow workmen or establishment official against whom judgment was usually obtained had no property with which to pay the damages. As a result, the injured workmen and their dependants were frequently forced to accept the degrading relief of public charity."

THE COMMISSIONER: What became of the employer, because you speak only of the fellow-workman or establishment official? Why wasn't the employer liable at common law?

MR. WOLFE: Well, I think that the establishment official refers in that relation probably not only to the superintendent but to the one who owns the establishment. That is a quotation from an official report.

This then was the situation which confronted those at the head of the newly established Empire and in 1871 an attempt was made to solve the problem by amending the liability law in such a way as to place more responsibility upon the employer. After several years of experience with that law, however, it was generally admitted that the experiment was not a success, and after an abortive attempt in 1881, two bills were introduced in 1883 to provide for accident and sickness insurance. The sickness

insurance plan was passed in that year, but the provisions relating to a compulsory accident insurance law were not passed until 1884. Subsequent amendments have extended the application of the benefits, have laid down new rules for the guidance of the employer and the employee and have served to inject elements which have presented a due appreciation of the demerits of the system, as will be pointed out later.

It should be borne in mind that this new form of protection was rather a growth than a creation. In the words of the report just referred to:

"The system of workmen's insurance introduced on a national scale in the early eighties had many antecedents which had provided sufficient experience to enable the new system of insurance to be considered as a development rather than an entirely new department." (p. 980).

In connection with this it should be noted that the laws passed in 1845, 1849 and 1854 had encouraged the formation of organizations among employees for the purpose of paying disability benefits which were the result of either sickness or accident.

It will be seen, therefore, that the political and social ground in Germany was in a most receptive condition for the planting of the seed of accident insurance by means of mutual associations under the guidance and strict supervision of the state. To have attempted to introduce this system without the preliminary education, without the years of preparation which had gradually accustomed the employees to a form of paternalistic interference, would, in my opinion, have been an almost impossible task.

THE COMMISSIONER: I did not learn until I went to Germany that under the system there they compelled the employers to form these associations, so that very many of them would be new, not ones which were existing when this law was brought into operation.

MR. WOLFE: That again is a point I think I develop later.

Thirty years ago Charles Francis Adams, Chairman of the Railroad Commission of Massachusetts, pointed out why it was not safe to assume that Government ownership of railways in France and Germany could be successfully followed in England or in America. His views are so pertinent and applicable to workmen's compensation that I desire to bring them to your attention:

"In applying results drawn from the experience of one country to problems which present themselves in another," said Mr. Adams, "the difference of social and political habit and education should ever be borne in mind. Because in the countries of Continental Europe the state can and does hold close relations, amounting even to ownership, with the railroads, it does not follow that the same course could be successfully pursued in England or in America. The former nations are by political habit administrative, the latter are parliamentary. In other words, France and Germany are essentially executive in their governmental systems, while England and America are legislative. Now, the executive may design, construct, or operate a railroad; the legislative never can. A country, therefore, with a weak and unstable executive, or a crude and imperfect civil service, should accept with caution results achieved under a government of bureaus." (Atlantic Monthly, Vol. 110, No. 6, p. 748).

A discussion of the various features of the German compensation system, their merits and demerits, may be seen by particular reference to them as follows:

*Benefits:*

The benefits prescribed in the German type are intended to meet the individual needs of each injured workman. This is an important fact which should be borne in mind, and which sometimes has been lost sight of. For instance, so well informed a student of the subject as Mr. James Harrington Boyd in the synopsis of his brief on p. 470 of the "Interim Report on Laws Relating to the Liability of Employers by the Hon. Sir William Ralph Meredith, C.J., C.P., Commissioner," states in support of the Ohio Workmen's Compensation Act:

"The law should require the employee to accept in lieu of his former precarious right to adequate damages, a stipulated sum computed not independently as to each party injured on the basis of loss peculiar to his own personal injury, but relatively as to all in accordance with their respective earning capacities. Its sole justification is public welfare, and whatever its form, it must be in effect an arbitrary levying and administration of a tax fund."

Mr. Boyd, who was prominent in framing the Workmen's Compensation Act in Ohio, states that it is an adaptation of the German Industrial Insurance Law, but it would seem to vary in this very important particular from the German law—a difference which is so vital as to go to the very basis of the plans. The report of the Commissioner of Labour previously referred to, states:

"As compensation is granted for 'disability,' the definition of that term is of importance. Total disability has been defined as being not temporary inability to earn an income, but in view of the actual condition existing, the impossibility of the injured person's securing a regular income in an occupation suitable to his physical and mental power and his previous training. In deciding this point it is of no consequence that the injured person has been unable to secure any employment whatever. The only facts to be kept in mind are, first, whether, abstractly considered, the injured man is able to earn a living, and, second, what is the amount that he is able to earn. Thus the loss of one arm or one leg is not usually rated as total disability, but the loss of both arms or both legs is always so rated. The previous station in life of the injured person is also not without influence in estimating the loss of earning power caused by an accident. Ordinary day labourers who incur slight injuries which do not prevent them from performing the same kind of labour as that to which they have been accustomed receive no compensation." (Workmen's Insurance and Compensation Systems in Europe, 24th Annual Report of the United States Commissioner of Labour, 1909, Vol. I, p. 1002).

In support of his interpretation the Commissioner gives the following table from "Einrichtung und Wirkung der Deutschen Arbeiterversicherung, p. 175:"

Occupation of injured person.	Nature of injury.	Amount of pension in per cent. of "Full pension."
Sawyer . . . . .	Loss of right hand . . . . .	66 2/3
Farm labourer . . . . .	Loss of 2 phalanges of right index finger . . . . .	15
Washerwoman . . . . .	Right hand crushed . . . . .	80
Butcher . . . . .	Stiffness of right index finger following cut . . . . .	30
Cabinetmaker . . . . .	Loss of 1 phalanx of right index and ring fingers . . . . .	20
General labourer . . . . .	Loss of 2 phalanges of the third and fourth fingers of left hand . . . . .	20
Worker in hat factory . . . . .	Loss of left thumb . . . . .	30
Worker in machine factory . . . . .	Loss of left little finger . . . . .	None
Turner . . . . .	Loss of right arm . . . . .	75
Ship carpenter (67 years of age) . . . . .	Weakness in right arm, stiffness of elbow, accompanied by weakness of old age . . . . .	100
Second-class steersman on vessel . . . . .	Loss of left forearm . . . . .	66 2/3
Factory hand . . . . .	Blindness in both eyes . . . . .	100
Ship carpenter and calker . . . . .	Loss of one eye . . . . .	50
Mason's helper . . . . .	Loss of sight of one eye . . . . .	25
Farm labourer (62 years of age) . . . . .	Weakness caused by loss of flesh from left leg . . . . .	50
Mason . . . . .	Injury to left leg . . . . .	60
Farm foreman . . . . .	Loss of left leg . . . . .	70
Glass grinder . . . . .	Injury resulting in clubfoot . . . . .	20
General labourer . . . . .	Loss of 3 outer toes of left foot . . . . .	10
Cabinetmaker . . . . .	Loss of foot following caries . . . . .	75
Carpenter (51 years of age) . . . . .	Injury to right knee joint . . . . .	66 2/3
Fireman . . . . .	Hernia . . . . .	10
Mason's helper . . . . .	Aggravation of a right hernia, development of a left hernia . . . . .	30
Locksmith . . . . .	Neurosis . . . . .	33

MR. WOLFE: This table is important inasmuch as it develops the fact that the same injury to different employees is compensated for differently. For instance, a ship carpenter and calker who loses one eye receives fifty per cent. of the full pension, while a mason's helper who loses one eye receives only twenty-five per cent., exactly one half, due to the fact that the mason's helper's disability owing to the loss of one eye is only one half as great as the ship's carpenter.

THE COMMISSIONER: But these do not form part of the law. These are the results of the administration.

MR. WOLFE: Yes, these are the results of the administration which are intended to supplement the statement of the Commissioner of Labour, and show the correctness of his conclusions.

THE COMMISSIONER: When you speak of a man not employed, do you mean not employed after the injury? You make use of that expression.

MR. WOLFE: In deciding this point it is of no consequence that the injured person has been unable to secure any employment whatever.

THE COMMISSIONER: While he may only get twenty per cent. he may be entirely deprived from doing anything by reason of the injury?

MR. WOLFE: Yes. In connection with that, Sir William, I do not know whether you came across any of the conventions which were held last year in Germany attended by the physicians who were employed by these associations, and who carried the separation and differentiates of these different disabilities to a wonderfully scientific conclusion. They are able to tell just how much disability results from the loss of one-tenth of an inch of the little finger, or some similar loss under some other occupation.

THE COMMISSIONER: Under the British system the county court judge has to do the same thing. He may not do it as scientifically, perhaps.

MR. WOLFE: It does not carry it to the same scientific refinement as the German.

It should be borne in mind that the percentages shown above are not based on the wages of the injured employee, but are percentages of the "full compensation," which is  $66 \frac{2}{3}$  per cent. of the average wage. It will be seen that the amounts received by the injured workmen are not stipulated benefits, but are computed independently on the basis of the loss peculiar to the injury sustained, together with the effect of such injury upon the future earning power of the employee.

So much for the disability payments to the injured workman himself. The consideration of the payments made to total dependants in case of death shows a marked departure from the method employed in compensation acts in the United States, where in the event of death a definite percentage of the average wages is paid to the widow and children, irrespective of the number of such dependants (as in the Massachusetts type) or of the deceased's earnings (as in the Washington type). In the Commonwealth of Massachusetts, for instance, there is paid to the widow of a workman, fatally injured, 50 per cent. of his average weekly earnings (limited, however to 300 weeks from the date of the injury and subject to maximum and minimum limitations) without considering whether she is childless, has a large family, or re-marries within a short time; in the State of Washington, on the other hand, a payment of \$20 per month is made to the widow without regard to the earnings of the deceased, and further allowance of \$5 per month for each minor child until he reaches the age of 16 years, a maximum limit of \$35 being established. In marked contrast to these methods is the one used in the German type, where the widow's benefit consists of 20 per cent. of the earnings of the deceased husband, and an extra 20 per cent. is allowed for each child until he reaches the age of 16, but more than 60 per cent. of the deceased's wages is never to be paid, and if there are more than two children, the portion of the widow and that of each child must be reduced in an equal amount in order to keep the total of the pension within the maximum limit of 60 per cent.

I have referred at great length to this provision for it indicates a fundamental difference between the points of view of the German employee and his brother workman in this country. From statements which have been made to me, it is quite apparent that 20 per cent. is considered an inadequate allowance for a widow, and there is much to be said in support of that contention. As I am dealing only with the actuarial aspects of this question, however, I refer to this merely as bearing directly upon the question of cost to the employer, which is discussed later. The supervision and paternalistic watchfulness which the German Government, acting through the mutual associations, exercises over the injured workmen, would

be repugnant to our workmen, and would not be tolerated. Such, for instance is the provision that if the mutual association provides proper employment for a disabled workman and he refuses to accept it, his pension stops at once. (Brief, pp. 7-8.)

THE COMMISSIONER: You have something like that in the Washington, the Federal, Law.

MR. WOLFE: That is not passed, but they had a similar provision of that kind.

THE COMMISSIONER: What is unreasonable in it? If a man can get employment that is offered to him and will not take it, why should he be a pensioner?

MR. WOLFE: Well, in Germany that places upon the mutual association of employers the decision, which, while it is true may be subject to further review by the authorities, nevertheless induces litigation there, and I am inclined to think that it would perhaps be found to work more desirably if some limit were placed upon the length of time for which disability payments are made.

THE COMMISSIONER: Of course there is this casual observation to make. A man under the British, or any of these systems, may be paid a pension long after when if he had never been injured he would not be able to earn a dollar. Then it would never do when the man becomes least able to support himself to throw him on the charity of the community.

MR. WOLFE: But that is what is done if he becomes disabled from any other cause, from rheumatism, for instance.

THE COMMISSIONER: But the thing is to get rid of that.

MR. WOLFE: That is a very desirable condition of affairs which I hope some time to see, or have my children see, instituted in this country and in every other country.

THE COMMISSIONER: It would occur to me as an ideal system when a man reaches the stage of employment where in the ordinary course of things he would not have any earning power that the State itself, or the community, should bear the burden.

MR. WOLFE: Yes, I agree with you fully.

THE COMMISSIONER: But we are not yet far enough advanced for that.

MR. WOLFE: No. The point I wish to develop about this transaction is this: I can best illustrate it by stating what occurred at the National State Federation last week, when we were considering the form which a liability association act for New York State would take. A representative from the Industrial Accident Board of Massachusetts, the body which is entrusted with the supervision of the Workmen's Compensation Act in the sense that no settlement of any injured workman is final until it has been approved by this Industrial Accident Board, was telling how well the Massachusetts system worked. He said that within two days of the time that the act became operative a man was killed in one of the establishments there, and within forty-eight hours the Insurance Company which was protecting his employer sought the widow, and found from the company that his average

wage earnings had been \$14.66 per week, and immediately started to pay her a pension of \$7.33, which she would continue to receive for three hundred weeks. In the subsequent discussion a representative of organized labour referred to it very sneeringly and asked whether anybody there thought a payment of \$7.33 per week for three hundred weeks was a proper payment to a widow. I mention that as pointing out the difference in the viewpoint. In Germany this widow would have received twenty per cent. of the average wages for life, and in this case the Massachusetts act gives the payment at \$7.33, or 50 per cent., for six years, at the very time when she needs it the most.

THE COMMISSIONER: Is there any provision that when remarriage takes place the pension stops?

MR. WOLFE: Not in Massachusetts. I took that up at the time the act was under consideration, and they told me there were so many spinsters in Massachusetts they had to discourage remarriage.

THE COMMISSIONER: How is it in Germany?

MR. WOLFE: It is three years.

THE COMMISSIONER: Even if they are married in the first year.

MR. WOLFE: They get three years, and I think the same thing happens in Washington.

THE COMMISSIONER: Now, what would happen under the system here, the question is what is the pecuniary loss the widow sustains by the loss of her husband, and that is given in a lump sum. That is taking into consideration all these things, the probability of death, the probability of her remarriage, and so on, but under either of the systems it is an arbitrary method of dealing with it.

MR. WOLFE: Entirely so. There are some cases where I know the loss of a husband would render the widow's condition better, and she therefore would owe the employer something.

MR. MACMURCHY: I remember a case where the widow sued for damages and pending the trial she married again, and I was very pleased to see that she was not entirely deprived of her compensation. The Chief Justice presiding said the jury might take it into consideration, but probably it was not a complete consolation for the loss sustained. She married within six months of the accident.

MR. WOLFE: Costs (Brief, p. 8.)

The relative cost to the employers of any country which attempted to install the German type at the present time is a matter about which nothing is known. In the words of the United States Commissioner of Labour in the 24th Annual Report (p. 1103):

"It is practically impossible to present a definite statement of what the insurance for industrial accidents under the German system costs the employer."

There are many reasons for this. In the first place, the administration of the accident insurance department is so closely interwoven and inter-

mingled with the administration of the sickness funds, that it is practically an impossibility to separate the two in such a way as to determine or ascertain the proper amount which should be allotted to each one. A further difficulty arises from the fact that for many reasons into which it is not necessary at this time to go, the German mutual accident associations have not charged each year a sufficient amount to pay the benefits occurring in that year. In other words, it has not capitalized the future payments for accidents which occur in any year, but has collected only enough for the actual disbursements of the year, plus a small contribution for the establishment of a reserve fund; this reserve fund is to take care of possible insolvencies in the future, together with a decrease in receipts due to business depressions, and any excess will serve to reduce the ultimate collections. It is not quite correct, however, to state that the *entire* German system is based on this current cost idea, for we find that in the case of accident insurance for persons engaged in the building trades, the German Government has abandoned the "current cost" idea, and has adopted the "full capitalization" method of levying its assessments. The statement of the United States Commissioner of Labour (p. 1061) in reference to this method is as follows:

"The cost of the insurance in the building trades cannot very well be assessed on employers on the basis of the cost of the insurance in each year, as is done in the case of the industrial accident insurance. The fact that the amount of work done each year and that the persons engaged in the building industries change so frequently made it necessary to adopt a financial system based on premiums sufficient to cover the entire cost of all accidents arising each year. . . . The basis for the calculation of the premiums is the capitalized value of the payments which the insurance institute will probably have to make for accidents on building operations lasting more than six days."

THE COMMISSIONER: Now, is there not a difference? The building trades are divided into two classes in England. Does this speak of both classes, the inside and the outside?

MR. WOLFE: This speaks of both classes.

MR. MACMURCHY: There is a reference on page 1072, which seems to cover it.

MR. WOLFE: We are enabled, therefore, to compare the tariff of premium rates charged in the building trade industries with similar charges made by stock or mutual corporations in the United States, but in doing so we must bear in mind the following points of difference:

- *First*: In Germany 84 per cent. of the accidents incapacitate the injured workman for less than 14 weeks.

*Second*: All disability payments during the first 13 weeks are taken from the sickness insurance fund, and therefore do not form any part of the cost which the mutual accident associations collect from the employers.

*Third*: The expenditures for administration do not include the cost of the imperial insurance offices, the cost of the State insurance offices, the cost of the services of the Post-Office Department (which is used for paying claims) or the cost of the services of Government officials who supervise the working of the system, assist in determining compensation, etc. (24th Annual Report of the U.S. Commissioner of Labour, 1909, p. 1100.)

*Fourth:* The benefits differ in the two countries, but it is fair to assume that the benefits (both monetary and those given in the shape of medical benefits) payable under the Massachusetts act, for instance, *covering as they do from the first day of the disablement*, are much greater than the payments which would be made after the thirteenth week in Germany.

Let us compare the premiums payable by employers in Massachusetts and those payable by employers in the building trades in Germany. For this purpose we will take the Massachusetts rates from the manual which has been approved by the Insurance Commissioner of that Commonwealth, and the German rates from the "Amtliche Nachrichten des Reichs-Versicherungsamts, 1908," for the Kingdom of Hanover:

Occupation.	Massachusetts rates.	German rates.
Architects . . . . .	\$3 75 outside 0 15 office	{ \$1 50
Cabinet-makers . . . . .	2 00	1 50
Decorators . . . . .	3 50 outside 1 75 inside	{ 2 00
Papermakers . . . . .	2 00	2 00
Coppersmiths . . . . .	1 50	2 40
Painters . . . . .	3 25 outside 1 75 inside	{ 2 80
Carpenters . . . . .	3 50 outside 2 00 inside	{ 3 30
Bridge-builders . . . . .	10 00 metal 6 25 masonry	{ 3 30
Window-cleaners and house-cleaners . . . . .	5 00	4 10
Building watchmen . . . . .	3 75	4 60
Masons . . . . .	5 00	5 00
Woodturners . . . . .	2 00	5 00
Shipbuilding—wood . . . . .	3 00	5 40
Shipbuilding—iron . . . . .	5 00	5 40
Carpenters . . . . .	3 50 outside	6 10
Building blacksmiths . . . . .	6 25	6 10
Roofers . . . . .	4 75	6 90
Woodworking with the use of circular saws, band saws, planing machines, and grooving machinery (using power) . . . . .	3 00	12 50
Demolition of buildings . . . . .	10 00	20 00

THE COMMISSIONER: Now, do these Massachusetts rates cover the association, the stock and the mutual companies, or only the association?

MR. WOLFE: These are the rates of the stock companies. Later on, if you are interested, I will point out the reason for the difference between the Employers' Association rates, and the stock rates. I prepared the rates for the Association.

THE COMMISSIONER: Do you think you are sufficiently informed to give all the reasons of the insurance companies for regulating their rates?

MR. WOLFE: These rates are regulated by the Commissioner.

THE COMMISSIONER: Of the stock companies?

MR. WOLFE: Of the stock companies. I prepared the rates for the association. In Massachusetts no stock company or mutual company may issue any rate which has not received the approval of the Insurance Commissioner.

MR. GIBBONS: In Germany, how do they pay? The employers 50 per cent, and the employees 50 per cent?

MR. WOLFE: The employers have been contributing one third and the employees two thirds, but they intended to make a change, perhaps they have already made the change, whereby the contributions are divided equally between the employer and the employee.

THE COMMISSIONER: The purpose of that was to give a larger control to the employer.

MR. GIBBONS: Now, this covers non-occupational accidents and diseases as well as occupational accidents?

MR. WOLFE: Yes.

MR. GIBBONS: Would it not be a conservative estimate to say that there were five cases of non-occupational accidents and diseases to one of occupational accidents?

MR. WOLFE: I am not prepared to make an estimate of that kind.

MR. GIBBONS: I think it would be a very conservative estimate to make, and therefore the employees would be paying a greater amount at the present time, or contributing to non-occupational accidents and diseases, than if they paid all the compensation for occupational accidents.

THE COMMISSIONER: I should doubt that very much.

MR. GIBBONS: It covers diseases as well.

THE COMMISSIONER: Oh, yes, it covers diseases.

MR. WOLFE: Now, I won't take time to read all the rest. For instance, architects in Massachusetts are charged \$3.75 for outside work. If they are confined to office work they are charged 15 cents. The German rates for architects are \$1.50; decorators \$3.50 outside and \$1.75 inside, and \$2 in Germany.

THE COMMISSIONER: They average it up in Germany?

MR. WOLFE: Apparently they do.

THE COMMISSIONER: Is the German way not a little better. A painter here is one day inside and two days outside. Is it not better to lump them?

MR. WOLFE: There are a great number of painters who do nothing but inside work, and a great many who do nothing but outside work.

THE COMMISSIONER: In bridge building there is a big difference. How do you account for that?

MR. WOLFE: I can't account for it.

THE COMMISSIONER: Is it that the structures here are larger?

MR. WOLFE: I am unable to give you any definite information about that except I know \$3.30 is not a proper charge for a bridge builder. You see that is only twice as much as for a cabinetmaker, and we all know the relative hazard is much greater.

I just call your attention to the woodworking in Massachusetts, which is \$3 against \$12.50 in Germany, and the demolition of buildings is \$10 against \$20 in Germany.

In the above it will be noticed that the description of some of the German occupations is more or less imperfect. For instance, carpenters who in Class E pay \$3.30, are charged \$6.10 in Class L. It has been assumed therefore, that the latter must refer to carpenters engaged in scaffold work. In the same way the German list charges \$11.50 for "supervision and controlling of building work" and \$4.60 for "supervision of building work." The exact difference is not apparent to me.

It will be seen from the above that in nearly every case when two systems are placed on all fours (as regards the capitalization of future loss payments) the relative cost to the manufacturer is greater under the German plan than under the plan in use in England and in most of the United States, if we make due allowance for the benefits of the first thirteen weeks. It should be borne in mind that while it is impossible to give definite figures, it is an admitted fact that a large part of the cost of accident insurance in Germany is borne by the sickness insurance funds, to which the employer is likewise compelled to contribute. The extent of this additional contribution can be observed by reference to Professor Taussig's contribution to the November, 1909, issue of the *Quarterly Journal of Economics*, wherein it is shewn that the Bergische Stahl-Industri, a large steel manufacturing corporation of Reimscheid, Germany, made compulsory contributions per workman during 1908, as follows:

Sickness fund .. . . . .	\$3 08
Accident fund .. . . . .	6 89
Old age and invalidity fund .. . . . .	2 15

and in addition contributed, voluntarily, large sums. It will be seen that this firm contributed almost half as much to the sickness fund as it did to the accident fund. An item of peculiar interest in connection with this particular firm is that its initial payment in 1886 to the accident fund was \$1.11 per workman and that this amount increased year by year until in 1908 its compulsory contribution to the accident fund was, as shown above, \$6.89, a pertinent fact which should be borne in mind when considering the ultimate cost to the employers. But it must not be assumed that this increase in the cost of accident insurance is peculiar to the firm just referred to; it is the general experience. The cost has steadily mounted upward and has not yet reached its maximum point. In the Diplomatic and Consular Reports (No. 4773, annual series) for 1910, and the first four months of 1911, the British Consul-General (at Berlin I believe) says on page 16:

"An inquiry sent to various leading industrial concerns in Germany elicited the information that since 1888-89 the actual social burden in cash per head of the employed had risen by 100 per cent., that is, the amount has doubled in twenty years. In one concern (a blast furnace works) the answer showed an increase of even 200 per cent. The burden has increased not only because the wages have increased; if to-day it amounts on the average to 3.78 per cent. of the wages, it amounted to only 2.52 per cent. of wages ten years ago, and to only 1.89 per cent. of wages twenty years ago. These data were supplied by three leading machine factories in Cologne.

In the foregoing calculation of the social burden no account is taken of the amount spent in the various establishments upon voluntary welfare schemes, in which many of the leading works take a pride. In some of these establishments the voluntary burden amounts to as much as the legal burden, in others to considerably more. The new insurance scheme, which will materially increase this social charge, comes into operation on January 1, 1912." I am of opinion that this increased cost is due to two factors:

(a) The increase and extension of benefits in order to meet a demand upon the part of the workman, and

(b) The natural increase due to the method of charging each year only the current cost instead of adopting the logical and safe method of capitalizing each year the losses which have occurred during that period and levying among the manufacturers the necessary assessment to meet the losses (both immediate and ultimate) which have occurred in their plants during the year.

It seems hard to believe that any group of manufacturers would be willing to adopt a system so filled with inequalities as to work grave injustice; in fact, it is safe to assume that the adoption of such a plan could be carried through only by a Government so strong and so paternalistic as is the German Government. The inequalities and unfairness of the system can be seen by reference to a specific case. An employer who starts a plant to-day is compelled to join the mutual accident association formed of employers engaged in a similar occupation; his assessment for the first year of his business history is calculated on the same basis as for those who have been in the business for a great number of years and whose employees have been exposed for some time to the hazards of the industry.

THE COMMISSIONER: What does that mean?

MR. WOLFE: That means if a cabinetmaker were to start business and come under the assessment the \$100 pay-roll would be exactly the same as the cabinetmaker who had been in business twenty years.

THE COMMISSIONER: Why should it not?

MR. WOLFE: I think it should not be because he is being charged for accidents which have occurred for the last twenty years.

THE COMMISSIONER: When he goes out he will throw it upon the man who comes after him?

MR. WOLFE: Provided the accidents come in in the same way, but by means of safeguarding devices we are reducing the accidents as we are led to believe we ought to. Then the man who comes in to-day and pays for the accidents that occurred under the bad system is being unduly penalized.

THE COMMISSIONER: You cannot have a perfect system. Would it not be pretty tough for the man who starts to-day and has to pay the capitalized value of all the claims that have occurred during the year, and perhaps next year he goes out?

MR. WOLFE: No, sir, that would be perfectly equitable, because if he is in business for only one year he ought to pay for the losses which have occurred in his establishment for the year.

THE COMMISSIONER: But he is paying for all the losses in the group, not only his own. He may have had none?

MR. WOLFE: Exactly.

THE COMMISSIONER: Supposing it had been a pretty bad year and there had been a number of fatal accidents, and a very large capitalization, and so on, would it not be much harder upon that man to have to pay that when he is going out of business?

MR. WOLFE: I do not think so. I think it would be proper for him. For instance, here is Employer "A" who starts business this year, a year which is unfortunate in having a number of accidents. He goes out of business. Next year Employer "B" starts and it is a good year. Should Employer "B" pay for the bad year when he was not in business and when Employer "A" had been in business?

THE COMMISSIONER: He is not paying the capitalized value. He is only paying the assessment for that year to meet the year's payment.

MR. WOLFE: Yes, but, Sir William, please bear this in mind: the current cost system reaches at one time or other such a point where every man pays an assessment one hundred per cent. of the necessary premiums for his capitalized value. I think I develop that graphically by means of tables within one or two pages. The Commissioner of Labour expresses this most aptly when he says:

"Any newly founded establishment which engages in a business subject to the compulsory insurance, or establishment which increases in size so that it becomes subject to the law, must join the accident association and pay the same charges for assessments as firms which have been in existence since the inauguration of the insurance system. In other words, in any industry there is at the present time a known expense for the cost of accidents which occurred in the past, and any firm which enters that industry must include this expense in its calculations just as it does the taxes on land, taxes for business licenses, etc. To exempt the new firms from the burden of the accidents of the past would, of course, discriminate against the older firms." (24th Ann. Rept., 1909, Vol. I., p. 1012.)

But we might be willing to gloss over this apparent inequality if the current cost system eventually produced satisfactory results. Such, however, is not the case. The solvent, persistent employer is discriminated against. Even after the yearly assessment has reached the point where it is equal to the annual assessment on a capitalized basis, there is still a huge accrued liability in the shape of unpaid pensions. This point may well be illustrated by the following table, which assumes that the act becomes operative in 1912, that four per cent. of the ultimate cost of compensation insurance is disbursed during the first year for medical service, temporary disabilities, slight injuries, etc., and that 10 per cent. is disbursed in each of the following six years, so that at the end of seven years from to-day, for instance, the entire liability for the accidents occurring in the present year, has disappeared. The merits of this comparison would not be affected if any other assumptions were made, *i.e.*, if 30 per cent. were assumed instead of 40 per cent. as representing the current cost, or if the payments were extended over twenty years instead of six years: the shorter period, how-

ever, has been assumed in order that the table may not be too cumbersome and as six years is the approximate period which is used in a number of the United States as marking the time during which death and disability pensions are payable.

## ACCIDENTS OCCURRING IN

A 1912. per cent.	B 1913. per cent.	C 1914. per cent.	D 1915. per cent.	E 1916. per cent.	F 1917. per cent.	G 1918. per cent.	H 1919. per cent.	I. 1920. per cent.	J. 1921. per cent.
40 A	40 B	40 C	40 D	40 E	40 F	40 G	40 H	40 I	40 J
10 A	10 A	10 B	10 C	10 D	10 E	10 F	10 G	10 H	10 I
10 A	10 A	10 A	10 B	10 C	10 D	10 E	10 F	10 G	10 H
10 AA	10 A	10 A	10 A	10 B	10 C	10 D	10 E	10 F	10 G
10 A	10 B	10 C	10 D	10 E	10 F				
10 A	10 B	10 C	10 D	10 E					
10 A	10 B	10 C	10 D						
	10 B	10 C	10 D	10 E					
	10 B	10 C	10 D	10 E	10 F				
	10 B	10 B	10 B	10 B	10 C	10 C	10 D	10 E	10 F
	10 B	10 B	10 C	10 C	10 D	10 D	10 E	10 F	10 G
	10 B	10 B	10 C	10 C	10 D	10 D	10 E	10 F	10 G
	10 B	10 C	10 C	10 C	10 D	10 D	10 E	10 F	10 G
	10 C	10 C	10 C	10 C	10 D	10 D	10 E	10 F	10 G
	10 C	10 C	10 C	10 D	10 D	10 E	10 F	10 G	10 H
	10 C	10 C	10 D	10 D	10 D	10 E	10 F	10 G	10 H
	10 C	10 C	10 D	10 D	10 D	10 E	10 F	10 G	10 H
	10 C	10 D	10 D	10 D	10 D	10 E	10 F	10 G	10 H
	10 C	10 D	10 D	10 D	10 D	10 F	10 G	10 H	10 I
	10 D	10 D	10 D	10 D	10 E	10 F	10 G	10 H	10 I
	10 D	10 D	10 D	10 E	10 F	10 G	10 H	10 I	10 J
	10 D	10 D	10 E	10 E	10 F	10 G	10 H	10 I	10 J
	10 D	10 E	10 E	10 E	10 F	10 G	10 H	10 I	10 J
	10 D	10 E	10 E	10 F	10 F	10 G	10 H	10 I	10 J
	10 E	10 F	10 F	10 F	10 G	10 H	10 I	10 J	10 J
	10 E	10 F	10 F	10 G	10 G	10 H	10 I	10 J	10 J
	10 E	10 F	10 G	10 G	10 H	10 H	10 I	10 J	10 J
	10 F	10 G	10 G	10 H	10 H	10 H	10 I	10 J	10 J
	10 G	10 H	10 H	10 H	10 I	10 I	10 J	10 J	10 J

Now, this table, Sir William, I will try to explain without referring to the text, which explains it. You see the first column is 1912; that is "A." The manufacturers that year have to pay 40 per cent. of the losses which occur in the year 1912, and therefore there is left below the line 60 per cent., making up the 100 per cent. for the accidents which occur in 1912. That 60 per cent. would be paid during the following six years. Now, the next year comes along, 1913. The employers that year have to pay 40 per cent. of the losses which occur in "B," and 10 per cent. which occur in "A," and there is left unpaid the five instalments of the pensions for the losses which occurred in 1912 and the six instalments of the pensions which occur in 1913. Is that clear?

THE COMMISSIONER: Yes.

MR. WOLFE: In "C" he pays 40 per cent. of the losses which occur in "C."

I am presuming this act came into force in 1912.

THE COMMISSIONER: You are going on the assumption that you have to provide for the current cost?

MR. WOLFE: I am only providing for payments which must be made in each year, as the table on page "18" shows.

MR. WEGENAST: I would like to ask where Mr. Wolfe gets his percentages, or on what bases the percentages are estimated? Why is it 40 per cent. of the first year's premium goes for the claims of that year?

MR. WOLFE: Because that is exactly the situation we expect to find.

MR. WEGENAST: Why do you expect to find it?

MR. WOLFE: Because that is what happens. Most of the payments occur in the first year.

MR. WEGENAST: You are basing it on the experience of the liability companies?

MR. WOLFE: On the experience of the Workmen's Compensation Act in Massachusetts that we have had so far, in the last five months.

MR. WEGENAST: Why do you assume you will require that percentage?

MR. WOLFE: I am willing to assume any percentage you wish.

THE COMMISSIONER: It would make it worse if it was a smaller percentage. It would carry on the payments so much longer.

MR. WEGENAST: I am interested in knowing on what basis it is worked out, because it would appear to me, as you suggest, much worse.

MR. WOLFE: I have explained that this is an arbitrary assumption on my part, and whether you took the 40 per cent. now and 60 per cent. afterwards or 20 per cent. now and 80 per cent. afterwards it does not matter at all.

THE COMMISSIONER: This is based upon a stationary body, but these manufacturers are not supplemented by others.

MR. WOLFE: I will refer to that in the very next paragraph.

In the above table, the percentages above the line, which becomes horizontal after 1917, are the "current costs," i.e., the amounts which will have to be disbursed in cash; those below the line represent the accrued and unpaid installments which will have to be met in the future. The letters have been attached in order to show the year in which the accident occurred. For example, in 1915 there will have to be paid *in cash* 40 per cent. of the 1915 losses, 10 per cent. of the 1914 losses, 10 per cent. of the 1913 losses, and 10 per cent. of the 1912 losses; at that time there would remain unpaid 60 per cent. of the 1915 losses, 50 per cent. of the 1914, 40 per cent. of the 1913, and 30 per cent. of the 1912. The important point indicated by this table is that in every year after 1917 every employer would be paying a premium which would be sufficient to pay all of the losses occurring in the current year, but as he paid too little in the past some of the current premiums must be used for paying losses of previous years and the unpaid liabilities of the current year are left to be met from future contributions. Who profit by this arrangement? Only those who were insured prior to 1918. Who suffer from this plan? All employers who are insured after 1917.

The practical significance of the table shown above is that although for every year beginning with 1918 the members of the association are paying one hundred per cent. of the premiums necessary to provide for the present and future payments of all of the accidents which occurred during that particular year, there is left the huge liability shown below the line. This liability will never be removed unless the payments above the line are increased in order to take care of the payments due for losses of previous years. This increase would result in causing the premium for the current year to be in excess of 100 per cent. of the adequate premium. In the foregoing illustration I have assumed that a theoretical condition would exist, vis., that the same number of accidents would occur each year and that the disbursements each year would proceed along in a uniform manner. This of course is a condition which will not be found in actual experience, but whatever variation there will be will not affect the correctness of this exhibit.

In the foregoing illustration I have provided for the accumulation of no reserve fund, for the reason that if a reserve fund be accumulated, it will simply add each year a small amount in order that the larger deficiency need not be collected in one sum at the end. It must be apparent, however, that this is merely a variation for it matters not whether we collect the deficiency in one sum or extend it over a number of years. We are confronted with this particular problem—a certain amount of money must be collected to meet certain losses. We may fool ourselves into the belief that by collecting a smaller amount the first year and gradually increasing the assessments of subsequent years, we will not be feeling the increase, but this reasoning is fallacious. If we collect too little in the beginning we must at some time collect more than one hundred per cent. of the losses of a particular year in order to make good the deficiency.

If, however, the productiveness of an industry remained absolutely stationary so that each year the same amount of work was performed and if there were never any withdrawals from the ranks of those who first entered the industry (either from insolvency, death or any other cause) there might be some justification for assuming that the current cost method would work no injustice; the chief criticism which could be aimed against it would be that it distributed the costs of accidents unevenly. In practical business, however, we find that this assumption is not justified by the facts. Firms come and go, changes naturally take place among employers, large establishments become unwieldy, pass out of the hands of their original promotor, become inefficient and are eventually succeeded by smaller units. Does it seem equitable or just to burden the new establishment with the accrued liabilities of organizations in which it has no interest and between which there exists no common bond save that of being engaged in the same line of work?

**THE COMMISSIONER:** You and I are living under this injustice. Millions are spent to-day and posterity bears the burden. Now, if that is universal for all the people why is it unfair to apply it to this particular class with regard to the accidents happening this year?

**MR. WOLFE:** While we may be spending millions to-day that posterity will pay, we are getting the benefit. I take it you refer to such a thing as the acquiring of a large tract of land.

THE COMMISSIONER: Some of the benefits we do not get. For instance all the money we give to Mr. MacMurchy's railway.

MR. GIBBONS: And for the navy.

MR. WOLFE: The opponents of the current cost system have attempted to draw an analogy between that plan and the assessment life insurance plan, the fallacy of which is now generally admitted. The advocates of the current cost plan retort that the comparison is not a fair one, for the assessment theory in life insurance would be equitable if the insurance were compulsory, *i.e.*, if every man were required to insure his life and pay the current cost of each year. In attempting to distinguish between the current cost plan in accident insurance and the assessment plan in life insurance, the advocates of the former lose sight of one very important point. The current cost plan is compulsory at the *outset*, but there is no known force which can compel an employer to continue after the cost of production reaches the point where he feels that his continuance is no longer worth while. Assessment life insurance would be just as impracticable as it is to-day if we should compel the insured to pay the premiums for the first year only; if they had the right to discontinue at any time we should be confronted with the same unworkable problems as exist in that form of insurance at present.

There is another point of similarity between the early history of assessment life insurance and the German type of accident insurance, viz: the effect of the influx of "new blood." This has served to prevent the full measure of the fallacy of the German system becoming apparent before this. A moment's thought will convince one that if we are able to obtain a great number of new contributors each year, who would help to pay the accumulated liabilities of years gone by, we would have a large number of units paying more than their current cost and thereby reducing the cost to old contributors; that is exactly the situation which we find among the industrial accident associations in Germany. The number of manufacturing establishments contributing during the various years, is shown by the following table, taken from "Amtliche Nachrichten des Reichs-Versicherungsamts, 1887 to 1910:"

1886 . . . . .	269,174	1898 . . . . .	456,366
1887 . . . . .	319,453	1899 . . . . .	465,551
1888 . . . . .	350,697	1900 . . . . .	478,752
1889 . . . . .	372,236	1901 . . . . .	483,578
1890 . . . . .	390,622	1902 . . . . .	578,834
1891 . . . . .	405,241	1903 . . . . .	608,955
1892 . . . . .	415,335	1904 . . . . .	619,449
1893 . . . . .	420,874	1905 . . . . .	637,611
1894 . . . . .	426,335	1906 . . . . .	659,935
1895 . . . . .	435,137	1907 . . . . .	673,118
1896 . . . . .	442,772	1908 . . . . .	696,824
1897 . . . . .	455,417		

The year 1885 has been omitted as it covered the last three months only. Notwithstanding this great influx of new blood, the much vaunted accident prevention systems and the accumulation of a reserve fund, which is still woefully small when compared with the accrued liabilities, the cost each year for the various industries has been steadily mounting, the expenditures for insurance by the various associations per \$1,000

of wages of persons insured, are obtainable from the same source as the previous table—"Amtliche Nachrichten des Reichs-Versicherungsamts," and while it would encumber unduly the pages of this memorandum if I were to give the increase year by year, the general effect can be observed by comparing the expenditures for 1886 with those of 1908, as follows:

Association.	Cost per \$1,000 of wages, 1886.	Cost per \$1,000 of wages, 1908.	Increase.
Mining (Association 1) .....	\$ 8 91	\$26 06	292%
Quarrying (Association 2) .....	8 82	28 65	324%
Fine mechanical products (Association No. 3) .....	3 15	7 03	223%
Iron and steel (Association Nos. 4 to 11) .....	3 61	17 65	488%
Metal working (Associations Nos. 12 and 13) .....	1 60	8 93	558%
Musical instruments (Association No. 14) .....	1 61	8 35	518%
Glass (Association 15) .....	2 02	8 93	442%
Pottery (Association 16) .....	0 97	7 13	735%
Brick and tile making (Association 17) .....	2 85	17 27	606%
Chemical (Association 18) .....	6 18	17 99	291%
Gas and water works (Association No. 19) .....	4 06	13 10	322%
Linen (Association 20) .....	2 53	10 00	395%
Textiles (Associations Nos. 21 to 26) .....	2 16	8 02	371%
Silk (Association 27) .....	1 14	2 98	261%
Paper-making (Association No. 28) .....	5 37	23 26	433%
Paper products (Association 29) .....	1 61	6 26	388%
Leather (Association 30) .....	2 19	13 44	613%
Woodworking (Association Nos. 31 to 34) .....	6 16	20 33	330%
Flour milling (Association No. 35) .....	4 75	42 14	887%
Food products (Association No. 36) .....	3 81	8 28	217%
Sugar (Association No. 37) .....	5 83	29 19	500%
Dairying, distilling and starch industries (Association No. 38) .....	5 28	18 28	346%
Breweries (Association 39) .....	19 14	30 98	161%
Tobacco (Association 40) .....	0 59	1 79	303%
Clothing (Association 41) .....	1 03	3 72	361%
Chimney sweeping (Association No. 42) .....	11 61	16 93	145%
Building trades (Association Nos. 43 to 54) .....	5 41	21 92	405%
Printing and publishing (Association No. 55) .....	1 59	4 81	302%
Private railways (Association No. 56) .....	4 05	16 14	398%
Street and small railways (Association No. 57) .....	2 52	11 38	451%
Express and storage (Association No. 58) .....	3 15	15 45	490%
Drayage, cartage, etc. (Association No. 59) .....	3 28	42 28	1,289%
Inland Navigation (Association Nos. 60 to 62) .....	5 38	32 81	609%
Marine Navigation (Association No. 63) .....	4 42a	29 42	665%
Engineering, excavating, etc. (Association 64) .....	5 36a	18 07	337%
Meat products (Association No. 65) .....	7 66b	14 17	185%
Blacksmithing, etc. (Association No. 66) .....	3 21c	9 65	300%

a For the year 1888, not 1886.

b For the year 1897, not 1886.

c For the year 1902, not 1886.

THE COMMISSIONER: You have already pointed out that the burdens on the fund have largely increased owing to the increased benefits to the workmen. Would that not account for a very large proportion?

MR. WOLFE: I think not for a very large proportion of it, because the increased benefits to the workmen have not had sufficient time to make this increase.

THE COMMISSIONER: Do you suggest that that is no more in the case of the current cost system?

MR. WOLFE: I suggest that that is no more in the case of the current cost system.

THE COMMISSIONER: But surely there must be some factory that would explain

that increase? I thought you said earlier that the cost to the manufacturer had been largely increased by the increased benefits given to the workingman?

MR. WOLFE: I said there were two causes which led to it, and you will find them on page 16.

THE COMMISSIONER: Do you not eliminate one of those causes when you come to make that table?

MR. WOLFE: I do not eliminate it. I give the table for what it is worth.

THE COMMISSIONER: But it ought to have a note to it, or perhaps that ought to be in one's memory when it is only a few pages back?

MR. WOLFE: It is on page 16.

THE COMMISSIONER: You make that one of the causes of the increased cost?

MR. WOLFE: Yes. I do not consider that it is responsible for a very large proportion of this increase. That increase in the case of the mining association is 292 per cent., the case of the quarry association 324 per cent., and the iron and steel 488 per cent.

THE COMMISSIONER: One goes up to 1,289 per cent?

MR. WOLFE: Yes, that is drayage and cartage. I think I can offer a partial explanation of that, although it just occurs to me at this time. No, I can't explain it.

THE COMMISSIONER: Does the Imperial Office make any attempt to explain these increases?

MR. WOLFE: I have seen no explanation. It may have done so.

MR. MACMURCHY: These are the official figures?

MR. WOLFE: Yes.

THE COMMISSIONER: I suppose it must be taken that these are the sums paid in these respective years, but what the reasons were for the large increase we may want a little more information on. Some of it, no doubt, is due to causes which you specify, but there may be others contributing causes.

MR. WOLFE: There may be but I think they all pale into insignificance when compared with the current cost factor.

THE COMMISSIONER: That means, of course, when they have had the insurance too cheap at the beginning.

MR. WOLFE: Exactly. It means, Sir William, that no group of manufacturers can arrogate to themselves the functions of a mint. They cannot coin money.

It would be strange indeed if the employers in Germany did not object strenuously to a plan, the defects in which were beginning to become so apparent. For obvious reasons it is difficult and even impossible to obtain from the authorities in Germany any tangible expressions of this discontent, but fortunately we have access to the testimony of a disinterested witness in the person of the British Consul-General above referred to, who

in his report on the trade industries of Germany (published in September, 1911) in dealing with the labour troubles says:

"A further element of uneasiness was introduced into the industrial life of Germany by the proposed revision of the German insurance schemes. The burden on German industry under the existing scheme already amounts to approximately 800,000,000 marks per annum. Under the new scheme the classes included in the various schemes have been further extended and the additional cost is calculated at 135,000,000 marks, so that the daily burden will in future amount to 3,000,000 marks per working day. A number of Chambers of Commerce (Plauen, Chemnitz, Essen, etc.) in their annual reports complain that the social schemes which have been extended without any reference to employers are approaching the limit of a bearable burden, that the expenditure which they entail is becoming so serious a matter in the cost of manufacture that it must tell against Germany in foreign markets."

THE COMMISSIONER: Who is this man?

MR. WOLFE: He is from the State Department.

THE COMMISSIONER: What is his opinion worth? I would like to know what means he has of judging of these things?

MR. WOLFE: Well, from my own experience I think the British Government has been very careful in the selection of its Consul-Generals. I think I ought to be able to recall the name of this man in a moment, sir.

THE COMMISSIONER: Because he is a Consul-General I would not accept his statement.

MR. WOLFE: His name is Sir Francis Oppenheim or Oppenheimer.

THE COMMISSIONER: I would like to see the reports to see what they say.

MR. WOLFE: Any consideration of the German type would be defective if it did not emphasize two very important points:

*First:* The manner in which the state is regarded by the citizens of Germany and their willingness to recognize its paternalistic rights to an extent which would not be tolerated in this country.

*Second:* The gross inequalities which would result in any country which adopted the German type without having a sufficient number of establishments to permit of a successful operation of the law of average.

To attempt to analyze the willingness of the German people to accept the paternal administration of the Government, would take us far afield and would require us perhaps to dip into the developments of history together with the psychological and political differences of the various elements entering into that great nation. I doubt, however, whether any country in the western hemisphere is prepared so completely to turn over to the Government the supervision of the transactions of every day life as are the Germans. The police system performs important work in the administration of accident insurance; the post office lends its aid in an effective way; every branch of the huge political structure contributes in some way to the administration of this form of indemnity.

THE COMMISSIONER: What objection could a man find to the municipal machinery for the purpose of administering this law? How would that interfere with his democratic ideas?

MR. WOLFE: Well, a very homely illustration occurs to me. Standing on the steps of an hotel in Munich I watched a small boy playing with a ball. The ball rolled on the grass plot in front of the hotel, and he stood and looked at it. I was anxious to see what he would do. He disappeared in a few minutes, then returned from the hotel with a rake, reached over and pulled the ball out. I don't know what the Canadian boy would have done, but I know the average American boy would have simply jumped over and got the ball out, and then if anybody came after him he would have done as a distinguished counsel of New York city said: "he would waggle the fingers of contempt from the nose of derision."

THE COMMISSIONER: What objection is there? Why should not the Post Office lend its aid?

MR. WOLFE: I do not object to it.

THE COMMISSIONER: That is not bureaucratic?

MR. WOLFE: The way in which the Police Department is administered in Germany I think is bureaucratic.

THE COMMISSIONER: They just investigate the accidents, I think?

MR. WOLFE: They do more than that. Every worker has to receive a card from the Police Department. I had a card but I did not bring it with me. This card is ruled into fifty-two spaces, one space for each week, and a stamp has to be affixed each week in one of those spaces, and if a man be out of work that space is open. The police inspect these cards and they are able in that way to keep tab on the unemployed. They watch in every way the registration of the imprudent. As you doubtless know every one of them has to be registered in the Police Department. It is not necessary for me to go into the various details, but it seems to me we are not prepared for quite as bureaucratic form of government as we find in Germany.

THE COMMISSIONER: How does that differ in principle from the registration of births, deaths and marriages?

MR. WOLFE: I think I answer that question within the next two pages. Answering your question I would say the births and marriages probably do not occur as frequently.

In the United States and Canada no such similar inter-dependency exists, and the extent to which the people of Germany are willing (or are compelled) to entrust not only items of administration, but also of judgment to the Governor is best illustrated by the descriptions of the workings of "The Insurance Institute of the Navigation Accident Association" as outlined in the 24th Annual Report of the United States Commissioner of Labour (p. 1081), in which it is pointed out that the accounts of the Navigation Accident Association and its subsidiary body the Institute, are not only kept separate, but the method of raising the funds is entirely different. While the former must defray the administration expenses of the Institute, the funds necessary for the payment of benefits

by the smaller establishments, which the Institute must provide, are collected by a system of advance premiums paid by the communes or federations of communes located on the coast, in accordance with the rules issued by the state government. That seems to me the exercise of unusual power, that some employers may be assessed and some may not be. That, I think, is repugnant to our ideas.

THE COMMISSIONER: We exempt all incomes to a stated amount here.

MR. WOLFE: Is not every man who has an income of that size exempt?

THE COMMISSIONER: Yes, every man.

MR. WOLFE: This does not say that.

THE COMMISSIONER: It is the small one.

MR. WOLFE: I think it is just as they please. They may or may not assess one hundred large ones and ten small ones if they want to.

The communes themselves must bear half of the premium payments and are permitted to assess the other half upon the employers engaged in the industries insured. There is no obligation upon the communes to apportion half of the premiums among the employers in proportion to the benefits, but they "may assess the other half in such manner as they deem proper; they may, for instance, tax only employers with the larger establishments and exempt the smaller ones." The reason for assessing half of the premiums on the communes is that "the profits of the business are so small that assessing the premiums on the employers would create a serious situation, due to the fact that the risk rate of the industry is very high." Are we prepared in our political structure for the exercise of discretionary power of this kind?

This difference in the political make-up of the two peoples is well expressed by the English railway economist, W. A. Aeworth, who, speaking of the management of railroads by the Government says:

"Prussia is Prussia, with a government in effect autocratic, with a civil service with a strong *esprit de corps*, and permeated with old traditions, leading them to regard themselves as servants of the king, rather than as candidates for popular favour. I am inclined to think that the effect of the evidence is that the further a government departs from autocracy and develops in the direction of democracy the less successful it is likely to be in the direct management of railroads."—(Atlantic Monthly, Vol. 110, No. 6, p. 748.)

Now as to the question of having a sufficient number in the various employments to permit of the formation of the accident associations among the different industries as now found in Germany. It has been pointed out in one of the foregoing pages that in 1908 there were 596,821 establishments employing nearly 9,000,000 employees. The number of persons injured in the various associations at that time was as follows:

Mining (Association No. 1) .....	798,378
Quarrying (Association No. 2) .....	439,719
Fine mechanical products (Association No. 3) .....	224,477
Iron and steel (Associations Nos. 4 to 11) .....	1,210,183
Metal working (Associations Nos. 12 and 13) .....	203,039
Musical instruments (Association No. 14) .....	50,333

Glass (Association No. 15) .....	84,798
Pottery (Association No. 16) .....	89,005
Brick and tile making (Association No. 17) .....	277,955
Chemicals (Association No. 18) .....	216,751
Gas and water works (Association No. 19) .....	70,079
Linen (Association No. 20) .....	59,412
Textiles (Association Nos. 21 to 26) .....	761,866
Silk (Association No. 27) .....	69,235
Paper-making (Association No. 28) .....	86,856
Paper products (Association No. 29) .....	131,248
Leather (Association No. 30) .....	76,788
Woodworking (Associations Nos. 31 to 34) .....	428,743
Flour milling (Association No. 35) .....	63,729
Food products (Association No. 36) .....	154,697
Sugar (Association No. 37) .....	93,791
Dairying, distilling and starch industries (Association No. 38) .....	50,020
Breweries (Association No. 39) .....	106,035
Tobacco (Association No. 40) .....	175,894
Clothing (Association No. 41) .....	278,866
Chimney sweeping (Association No. 42) .....	5,662
Building trades (Associations Nos. 43 to 54) .....	1,260,270
Printing and publishing (Association No. 55) .....	174,653
Private railways (Association No. 56) .....	28,714
Street and small railways (Association No. 57) .....	69,129
Express and storage (Association No. 58) .....	368,241
Drayage, cartage, etc. (Association No. 59) .....	104,153
Inland Navigation (Association Nos. 60 to 62) .....	59,242
Marine Navigation (Association No. 63) .....	77,345
Engineering, excavating, etc. (Association 64) .....	306,276
Meat products (Association No. 65) .....	110,251
Blacksmithing, etc. (Association No. 66) .....	151,919
	8,917,772

A study of the above table shows the large and extended exposure enjoyed by these associations, the effect of which is to cause the "catastrophe hazard" to disappear entirely.

THE COMMISSIONER: That is a merit in the German system.

MR. WOLFE: Yes, and one which could not be applied in a place where there was a smaller exposure.

It requires no argument to show how serious a matter to a small community, an unusual fluctuation in the loss ratio can be.

I have devoted considerable time to an analysis of the German type, for there is a tendency among those who advocate the adoption of some form of Workman's Compensation Act in new communities, to place great stress upon the advantages of that system without explaining the defects and the possible entanglements which may result from its adoption in communities not prepared to meet the problems.

#### IV.

The State itself has become the vehicle of distribution in two of the United States—Washington and Ohio. Both of them, however, differ in radical respects. In Washington, for instance, the employers engaged in so-called "hazardous occupations" are divided into classes by the act itself, and the contributions per \$100 of pay-roll are fixed in the same way. This act became operative in the latter part of 1911; the published reports showing its operations do not permit of an accurate determination of the true condition of the fund. Whether enough has been collected from the

fund to enable losses which have occurred during the year to be met in full, or whether the funds on hand will be insufficient for that purpose, are matters which cannot be determined from the published reports.

In connection with that I may state that I think there was an appropriation of \$150,000 made the first year for the expenditures of this Washington Compensation Commission, and this year they have asked that this sum be increased to \$250,000.

It is interesting, however, to compare the number of establishments and the number of employees covered in the various classes for the purpose of comparing them with similar factors in the German scheme for the purpose of determining the question of exposure to which I referred at some length. It would appear that the powder industry furnishes a definite illustration of the danger of limited exposures, for apparently only two or three powder manufacturers are included in this group, and a catastrophe which happened during the early months of the history of the Act has not only exhausted all of the funds belonging to that class, but has created a deficiency. The report shows that only 5,750 firms are listed, and only 130,000 employees covered. In Washington, as in Germany, the operation of the act is compulsory and it must be assumed, therefore, that the number of establishments in Washington represented the maximum exposure obtainable.

In Ohio, on the other hand, we find no compulsory act, but an optional one. If the employer elect to come within it, he contributes 90 per cent. of a semi-annual premium fixed by the State Liability Board of Awards and is authorized to deduct the remaining 10 per cent. from the wages of his employees. The act has been operative since March, 1912, and there has been no publication of the results of the first six months which enable a proper analysis to be made. Strenuous efforts are being made by the Board to induce the employers of Ohio to deposit their premiums with the State Treasurer, but to what extent it has been successful it is impossible to state. In the same way no data are available for determining whether the State Liability Board of Awards intends to capitalize the losses or to use the current cost system of the German type. At the end of the first six months period the Board announced slashing reductions in the premiums to be charged the employers ranging from 15 per cent. to 65 per cent. If the premiums charged originally were calculated on a proper actuarial basis, it is difficult to understand this sudden reduction for it must be apparent to everyone that the experience of six months (especially of the first six months) is not a proper basis upon which to estimate the eventual costs.

**THE COMMISSIONER:** Now, is not all that explainable—these manufacturers in Ohio would not come under the act because the common law liability is retained?

**MR. WOLFE:** The common law liability is retained.

**THE COMMISSIONER:** That was the trouble as I understand it. Were these cut rates not to meet the competition of the insurance companies?

**MR. WOLFE:** I imagine they were. I perhaps hesitate to ascribe such a sordid reason to a State Government, but it might have been that very thing. I see the State Liability Board in its official announcement states that the

employers generally have recognized the importance and justice of this rule, and the State Liability Board of Awards maintains "when the history of compensation insurance is written the application of the new rule will create a red letter day."

THE COMMISSIONER: I think there is a provision there for capitalization.

MR. WOLFE: I think not, not in Ohio.

MR. MACMURCHY: Was that on the assessment plan?

MR. WOLFE: I don't know. I cannot tell.

MR. WEGENAST: They are all worked out on the capitalized plan.

MR. WOLFE: They were originally, but when they reduce a thing 65 per cent. either they must have made a grievous blunder in their first calculation or else they have abandoned it.

MR. WEGENAST: The liability rates are a good deal lower now than the state rates in Iowa. The companies are charging lower rates.

MR. WOLFE: No, I think not. If they were the State Liability Board of Awards would not get any policy holders.

MR. MACMURCHY: I see in the interim report there is a synopsis of the law of Ohio given. (Reads.)

It may be objections are being made to the constitutionality of the statute.

THE COMMISSIONER: No, the Ohio act has been upheld.

MR. WOLFE: In the absence of specific information, however, it is idle to speculate on the lessons taught by the Ohio attempt. It may not be amiss to point out an error which appears in the synopsis of Mr. J. H. Boyd's brief in the interim report at page 474:

In the years 1906, 1907, and 1908 ten employers' liability insurance companies doing business in the State of New York received in premiums from employers .....	\$23,524,000 00
Paid to injured employees .....	8,560,000 00
Waste .....	\$14,964,000 00

To call the difference between the premiums paid and the losses paid "waste" without taking into account the reserves required for the payment of future losses, is an amazing proposition and bears on its face its own refutation.

THE COMMISSIONER: Future losses? I would understand it is not fair not to include claims which have not been either adjusted or paid. But each year washes itself. What future losses can there be? How long is the premium for?

MR. WOLFE: For one year, but sometimes the losses are unsettled for ten years.

THE COMMISSIONER: How could that be?

MR. WOLFE: Why, under these liability policies a large percentage of the claims are dependent upon court decisions, and no payments can be made until they are decided.

THE COMMISSIONER: That would be where accidents have happened and the claims have not been adjusted or paid?

MR. WOLFE: Yes.

THE COMMISSIONER: Those could be accurately obtained?

MR. WOLFE: Yes, but they have not been.

THE COMMISSIONER: What I was quarrelling with was future losses.

MR. WOLFE: The future losses which have accrued on those premiums.

THE COMMISSIONER: They are losses which have occurred but have not been paid.

MR. WOLFE: That is what I mean.

In thus briefly outlining the principal systems, I have not attempted to touch upon all the various forms to be found in the different countries, but I have attempted to confine my discussion to those plans which seem most likely of adoption.

To summarize—I am of the opinion that the methods now being followed in Germany, Ohio and Washington are ill adapted to the needs of Canada, or to any of the United States. I am of the opinion that the maximum benefit can be derived from the adoption of a type similar to that in use in the Commonwealth of Massachusetts, with such modifications as will make it applicable to the particular community which it is intended to benefit.

THE COMMISSIONER: I would have thought that all your objections except in so far as they may rest upon the state creating a monopoly, would be removed if instead of current cost the whole burden were borne in the way that has been suggested, capitalize the payments.

MR. WOLFE: That is only one of the serious actuarial objections.

THE COMMISSIONER: What is the other?

MR. WOLFE: To my mind the greatest one is the question of exposure. For instance, while I am entirely unfamiliar with the statistics of Canada, I think this law is only to apply to this province?

THE COMMISSIONER: To Ontario?

MR. WOLFE: Yes. I seriously question whether you could have an exposure in any particular industry which would enable you to obtain a satisfactory action of the law of averages. For instance, in the pottery association where they have 89,000 employees exposed to risk. I don't know how many you have in Ontario. Perhaps you know, sir?

THE COMMISSIONER: No, but I should think very few.

MR. WOLFE: Possibly some of the gentlemen here could tell me?

THE COMMISSIONER: Mr. Wegenast would perhaps know as to the potteries?

MR. WEGENAST: No. The total number of wage-earners I have estimated at about 400,000. I think half a million would be the largest number.

THE COMMISSIONER: What does that cover?

MR. WEGENAST: All workmen except farmhands and domestic servants.

THE COMMISSIONER: Places like Eaton's?

MR. WEGENAST: Yes, all sorts. Without domestics and farm labourers I think our estimate was 450,000. It is a little over the industrial population of Washington.

THE COMMISSIONER: Explain your proposition about this exposure, please.

MR. WOLFE: I think the Province of Ontario would not have a sufficient number of employees in the various occupations to permit of a proper exposure.

THE COMMISSIONER: Explain what that means.

MR. WOLFE: I mean by that if we attempted to separate the employees, or if we attempted to separate the employers in Ontario into associations such as we have in Germany that we would have a small number in certain occupations. For instance, the one I have just referred to, the pottery, we might have 1,000 or 1,500 employees, and those figures are too small to permit of a satisfactory law of averages.

THE COMMISSIONER: What does that mean?

MR. WOLFE: That means when you have too small a number to present a surface for the usual occurrence of accidents that you become liable to unduly large payments due to catastrophes. For instance, if there should be a boiler extension in some plant which belonged to an association in which there were only 1,000 employees, the loss from that boiler explosion would require so large a payment that the premiums distributed amongst the employees of that association would be unduly large, and it would practically result in a system of self insurance.

THE COMMISSIONER: Well, under the system of individual liability it would be the same thing, only it would not spread over the group.

MR. WOLFE: Exactly.

THE COMMISSIONER: Then you would answer me, "But he can insure against that." Why cannot he, as I suggested earlier, if you have an assessment upon the whole group—why would not some of these insurance companies if they are driven out of that business which they are now doing insure the men of that group against the losses, and so get rid of the difficulty you are suggesting?

MR. WOLFE: Because the very key-stone of the arch of insurance companies is the one which you would remove.

THE COMMISSIONER: What?

MR. WOLFE: Namely, the proper distribution of risks.

THE COMMISSIONER: Well, they know there is a class composed of fifty people and they can estimate, just as they can estimate the chances of their taking a risk upon one, they can estimate the risk on fifty.

MR. WOLFE: Not in liability insurance.

THE COMMISSIONER: Why not?

MR. WOLFE: For this reason, that when you insure fifty people you emerge from the realm of insurance and enter one of gambling.

THE COMMISSIONER: Well, they are in that business now.

MR. WOLFE: They are not in the business of gambling: they are in the business of insurance, and they are enabled to be in that business because they are covering not fifty employees in this class but they are covering two hundred thousand employees of all classes. I think I might perhaps make that point clear if I refer to the manner in which I prepared the rates and classification for the Massachusetts Employees Insurance Association.

THE COMMISSIONER: I do not see how that works out. Leave out the workmen's compensation altogether. They insure you and they insure me; why will they not insure fifty together?

MR. WOLFE: The only reason they would insure you and insure me is because they are also carrying insurance on 100,000 other people, and the number of accidents that occur in any year in a group as large as 100,000 people is well known. If you went to an insurance company that did a fire insurance business and said for the usual premium of \$25 please issue to me a \$5,000 accident policy that company would be extremely foolish to do it, because it would not be insurance, it would be gambling. The company would be gambling against \$25 a possibility of you being the one who was injured.

THE COMMISSIONER: Is it not all gambling?

MR. WOLFE: No, I think not.

THE COMMISSIONER: There is a very eminent man who says that every man who insures his life is betting, gambling?

MR. WOLFE: Well, I take it the English authority Dr. Thorne said, while there was nothing so uncertain as the individual life there was nothing so absolutely certain as life in the aggregate, which is absolutely true, and that is the one thing that distinguishes insurance from gambling that they are establishing a sufficient exposure to justify the proper application of the law of averages. While we can say with certainty that among 100,000 employees there will be 500 injured in the course of a year, if we only took 1,000 employees we could not apply the same percentage with certainty or with correctness.

THE COMMISSIONER: Now, take an insurance company that has been confined to this Province, whose operations were limited to this Province, would it not be in exactly the same position as the case I put that the State would be in?

MR. WOLFE: If an insurance company were confined to this Province?

THE COMMISSIONER: Confined to accident insurance within the limits of this Province.

MR. WOLFE: It would be exactly the same position as state insurance in this Province.

THE COMMISSIONER: Are there not many of those companies in existence and making money?

MR. WOLFE: I know of no company that is confined to the Province of Ontario that issues liability insurance or workmen's compensation. That may arise from my ignorance of the subject. I don't know if there are any.

THE COMMISSIONER: I would not suggest that.

MR. WOODLAND: That is correct; there are none.

MR. MEREDITH: Is it not the fact on the line you have been arguing that you really don't want a Workmen's Compensation Act?

MR. WOLFE: Just the reverse, sir. I am a believer in workmen's compensation. I think it is a crime that up to the present time we have allowed these accidents to go. I am one of the warmest advocates in the states of that, and would do everything possible.

THE COMMISSIONER: Would you like the Government, the state, to assume the responsibility of the compensation? That is what we want to get at. We know there are companies that will insure us any time. What we want now is a practical insurance guaranteed by the Government, so that if a man gets injured when he dies there will be an absolute surety that that man's family will get compensated, that those who are left will get something when he is dead.

MR. WOLFE: That is exactly the thing that I want, and that is the reason why I do not approve of the British system, because under the British system a workman may be injured and if his employer becomes insolvent and has no insurance there is no way in which the payment can be guaranteed, and the workman may be left without receiving anything, or may be left after having received his compensation for one year and unable to get the balance of it.

MR. H. T. MEREDITH: And you would like by your argument to prove that the Government can do something of this kind, by these acts, as you say, in Massachusetts and the State of Washington, and in Germany.

MR. WOLFE: What I would like and what I believe in is this: I believe that the legislature should provide for a scale of benefits for injured workmen, and should require the employer to furnish some evidence of the probable continuance of his financial solvency, either by furnishing a bond, or by becoming a policy-holder in an authorized insurance corporation. That is what I believe in. I believe first of all you should pay compensation benefits to an injured workman with some guarantee that he is going to get the money.

THE COMMISSIONER: Let me ask you this: how does your Massachusetts Association differ from the weak thing you have been telling us about?

MR. WOLFE: The weak thing?

THE COMMISSIONER: Yes, the thing that is too small an exposure.

MR. WOLFE: It does it in this way: I have combined the best elements of the Austrian system with the German system, and have carried it out in the following fashion. Where the German system has fifty-six associations I have only eighteen. The Massachusetts statute provides that this association, with the approval of the Insurance Commissioner, shall divide the employers into groups, according to the nature of their business, and the degree of the risk of injury. Now, I have done this: I have assigned to each employer in Massachusetts an index number. For instance, under index No. 2 you will find a great number of different industries all belonging to the same group.

THE COMMISSIONER: You make larger bodies in your groups.

MR. WOLFE: Not only larger bodies, but those of diversified industries, so that we have a better exposure.

THE COMMISSIONER: Well, why could not that principle be adopted under such a scheme as suggested here?

MR. GIBBONS: That is what I say.

THE COMMISSIONER: But you are still determinedly hostile to the idea of current cost?

MR. WOLFE: Hostile, I think, is not the proper term. I would be opposed because I feel it is unsafe from an actuarial standpoint.

THE COMMISSIONER: If there were the proper capitalization and large groups, such as you have in Massachusetts, is there any objection to the assessment system managed by an honest board?

MR. WOLFE: Yes, there is still a much greater objection, and one which I have expressed frequently, and that is this: I do not consider that we are at the present time equipped to have the Government undertake this work.

THE COMMISSIONER: Well, you are permeated with the idea that the Government can do nothing except manage Government affairs, are you not?

MR. WOLFE: No, I think not. I have been charged by some of my friends in the states with going to the other extreme, so I am between cross-fires here.

THE COMMISSIONER: Well, supposing a province was unwise enough to come to the conclusion that it could do its business as well as any stock company, or any body of gentlemen, is there any objection to a scheme of grouping, such as you have in the Massachusetts scheme, compulsory insurance, and abandoning the idea of current cost?

MR. WOLFE: If we could have a scheme similar to the Massachusetts, and when I say similar to the Massachusetts you will recall that I pointed out that the law specifically provides that the capitalized reserve value system should be employed. To repeat, if we could have the Massachusetts system with a sufficient exposure and with the assurance that we would get as effective service as we would if we permitted free and active competition, there is no reason why we shouldn't.

THE COMMISSIONER: I do not see how the competition would help it any more than to keep down the rates?

MR. WOLFE: That is exactly the point.

THE COMMISSIONER: How is it possible for any company that has to divide profits amongst shareholders to carry on its business in competition with a state body that has no expenditures, the state bearing all the expenses of the administration? How is it possible for them to compete?

MR. WOLFE: If the state bore all the expense it is absolutely impossible for it to compete, but that resolves itself into the proposition that the tax payers of the community generally shall pay for a specific service.

THE COMMISSIONER: Now, is there not a good deal of reason in that proposition from a manufacturer's standpoint? It is pretty hard to make him bear the burden of the accidents when he is in no sense in fault, that are incidental to the industry. Why should not the whole community pay that?

MR. WOLFE: That goes to a question of political economy which I tell you frankly I am not competent to discuss at this time.

THE COMMISSIONER: You are estimating yourself too low?

MR. WOLFE: If it be an admitted fact that the general community should bear the expenses of the administration for such a plan, I see no reason why you should not extend the idea further, why the general community should not pay the expenses of administration for other classes.

THE COMMISSIONER: A little at a time.

MR. WOLFE: Why eventually the state should pay for this and the manufacturer should not. We may come to that.

THE COMMISSIONER: No, because the consumer pays what the manufacturer has to pay. The consumer pays and we are not all consumers. Make everybody pay the other. The only people who say that is not so are the silver mining people. They say they cannot put it on the commodity, the world's market fixes it?

MR. WOLFE: Well, it seems to me, Sir William, there is a great deal of talk about this element being put upon the manufacturer and he being thereby disqualified from competing with his competitors who have not a similar burden. It seems to me every manufacturer uses a margin of safety, a factor which is added to his cost of production to cover unusual and unforeseen expenditures, and I think that is done in this case.

THE COMMISSIONER: But if he has to meet competitors who have not any such burden surely he is handicapped to that extent?

MR. WOLFE: The handicap, apparently, is not a very well recognized one for this reason: We have now in six or eight of the states workmen's compensation acts, and I have not heard that the manufacturers or the employers in those six or eight States have suffered in competition with the manufacturers of those states which have not the acts.

THE COMMISSIONER: These laws are pretty new.

MR. GIBBONS: Would it not work out the same as the tariff does; that in the province where they have to pay compensation they would have a certain profit and the others would raise the amount and have just that much more?

THE COMMISSIONER: That would be pretty hard on the poor consumer.

MR. GIBBONS: Well, that is the way it usually works out. Mr. Wolfe was saying that the manufacturer or employer should furnish some guarantee that the money would be paid. Now, in this scheme we were speaking about, the State insurance, we would compel the employer to pay a certain sum into the commission, or the commission that handled it. You said, Mr. Wolfe, that he should furnish a bond by a guarantee company.

MR. WOLFE: I didn't say a guarantee company.

MR. GIBBONS: Well, supposing it was in the hands of guarantee companies, and that the employer didn't pay his contributions or his insurance into that company, they wouldn't be liable for that amount.

MR. WOLFE: They would be furnishing the kind of guarantee that I would want.

MR. GIBBONS: The employee would be no better off?

MR. WOLFE: Oh, that is not a factor at all. I only know of one place in the whole world, Mr. Gibbons, where the state is guaranteeing the payment to the injured workman.

MR. GIBBONS: The employer will pay his premium into the State, and the State will then be liable and the employee will be sure of his compensation.

MR. WOLFE: Excuse me, which plan do you mean?

MR. GIBBONS: State insurance.

MR. WOLFE: As transacted in what country?

MR. GIBBONS: In Germany.

MR. WOLFE: In Germany there is no state insurance, and the State does not guarantee the payment to the injured workman.

MR. GIBBONS: Well, does not the employer there pay into the State a certain amount on his pay-roll?

THE COMMISSIONER: The state administers the fund there.

MR. WOLFE: The State administers the fund and levies the assessments. While of course it is an almost impossible situation, if we can conceive of the point where chimney-sweeps, for instance, would be unable to meet their assessments levied by the State, the injured chimney-sweep would not receive his compensation.

MR. GIBBONS: Would not the same thing be so if they were insured in liability companies, if they did not pay their premiums the liability company would not pay them?

MR. WOLFE: Yes, it would exactly.

THE COMMISSIONER: What are the penalties in Massachusetts, or the means of enforcing that provision that a man must be insured, that he must be either in the Association or insured in some company? Supposing he is not?

MR. WOLFE: Then he does not come under the act.

THE COMMISSIONER: The workman is left to his common law liability? He might be in the hole then.

MR. WOLFE: No, the three important defences are removed.

THE COMMISSIONER: Still, he has to go to law.

MR. WOLFE: Yes That is the great defect in the Massachusetts system, there is no way of compelling every employer of labour to protect his workmen.

THE COMMISSIONER: Are you speaking now of constitutional difficulties?

MR. WOLFE: Apparent constitutional difficulties. In New York at the present time we are considering an amendment to our State Constitution which will permit us to make this workmen's compensation compulsory.

THE COMMISSIONER: As I understand it, under your Massachusetts law there is some branch of the court—is it the Common Pleas?—that settles all disputes.

MR. WOLFE: No, sir; there is an Industrial Board consisting of five members.

THE COMMISSIONER: From that Board is there any appeal to anybody?

MR. WOLFE: There is an appeal on questions of law but not on questions of fact.

THE COMMISSIONER: To what?

MR. WOLFE: To one of the lower courts.

THE COMMISSIONER: There is one State, and I thought it was Massachusetts, but evidently it is not from what you say, where all these disputes were determined by one of the courts?

MR. WOLFE: Yes, there are in a number of States; in New Jersey and in Illinois.

THE COMMISSIONER: What questions of law, under a properly drawn act, with a system of compensation for all injuries, would be likely to arise?

MR. WOLFE: Well, Sir William, you are getting me beyond my depth.

THE COMMISSIONER: You are neither a political economist nor a lawyer?

MR. WOLFE. Exactly. You have not touched all my limitations.

THE COMMISSIONER: You are discussing the bureaucratic system, which you say could not very well be incorporated into this country. I would like to see this Industrial Board a pretty bureaucratic concern with power to determine all questions.

MR. WOLFE: Both of law and of fact?

THE COMMISSIONER: Yes. There are many questions, but nowadays they arise mainly from this: "Arising out of and in the course of employment," which is a very inaccurate expression.

MR. WOLFE: And then there are further considerations. For instance, "the serious and wilful misconduct," which I think very provocative of litigation.

THE COMMISSIONER: Their disobedience of a rule.

MR. MACMURCHY: Probably you are thinking of the law of Ohio. I see there is an appeal to the Common Pleas court of the county. "The Board shall have full power and authority to hear and determine, and its decision shall be final." but on certain points there is an appeal to the Common Pleas Court of the county, and to a jury if demanded. It is section 36 of the Ohio law.

MR. WOLFE: Then section 18 of the New Jersey Act, the one I referred to, is as follows: "In case of a dispute over, or failure to agree upon a claim for compensation between employer and employee, or the defendants of the employee, either party may submit the claim, both as to the question of fact, the nature and effect of the injuries, and the amount of compensation therefor according to the schedule herein provided, to the judge of the court of common pleas of such county as would have jurisdiction in a civil case, or where there is more than one judge of said court, then to either or any of said judges of such court, which judge is hereby authorised to hear and determine such disputes in a summary manner, and his decisions as to all questions of fact shall be conclusive and binding."

THE COMMISSIONER: Yes, that is the one I was referring to. Now, in the Massachusetts act, which you are partly responsible for, I judge, it is optional whether a man becomes a member of this association. How about the workman; has he any option?

MR. WOLFE: Yes, after an employer of labour has elected to come within the act by giving the statutory notice to the employees and becoming a policy holder in either the association or a liability company authorized to transact business in the Commonwealth, his employees then have the right of election. They may serve notice on him that they do not care to come under the act, and in the event of an injury to them in that case the employer may use those three important defences.

THE COMMISSIONER: Is there no provision as to the proportion of the workmen to determine it, so that a man could not have one workman in and one workman out?

MR. WOLFE: No. It is an individual notice given by the workman. I may say, however, that it is a more or less academic question because among all the employees covered by the association not one of them has given notice, that is, that he desires to retain his common law rights. I understand that one of the lawyers in Massachusetts—we have a term there and I don't know whether it is used in this Province or not, but we call them shyster lawyers—

THE COMMISSIONER: No; we have not got them.

MR. WOLFE: Well, one of those lawyers has been going around and inducing the employees of one or two of the large manufacturing plants to serve notice upon the Industrial Accident Board and upon their employers that they do not care to come under this act. I think that as soon as the advantages of the Workmen's Compensation Act becomes known and recognized no employee will do that.

THE COMMISSIONER: What good does this association do? What was the object of creating it? Why not have left it to the manufacturers to form a voluntary association of that sort?

MR. WOLFF: To enable the manufacturers to obtain compensation insurance at cost.

THE COMMISSIONER: They could do that by forming a mutual insurance company.

MR. WOLFE: They could by forming a mutual insurance company, yes, but there would be no state regulations of an association to see that it would be operated upon proper lines. There are mutual organizations in Massachusetts at the present time which issue liability insurance policies.

THE COMMISSIONER: Well, what is the objection to that?

MR. WOLFE: There is no objection to that that I can see.

THE COMMISSIONER: It seems to me a useless piece of machinery has been created. You do not make it compulsory to form the association as the Germans do. It is voluntary. Unless that association has some privileges over other associations formed voluntarily, I do not see what was the object of creating it.

MR. WOLFE: It has privileges, as I think I can point out. In the first place, an employer coming into it knows that his rates, the method of administration, his dividends, and all matters pertaining to the machinery, are supervised and regulated by the state.

THE COMMISSIONER: Would that not be so if it were an incorporated association?

MR. WOLFE: No, it would not.

THE COMMISSIONER: Now, here in this country the manufacturers, if they chose, could form a mutual insurance company.

MR. WOLFE: And as long as that mutual insurance company was operated in accordance with the laws of this province there could be nothing done by any subscriber or policy-holder to insure his getting just exactly the amount he was entitled to. For instance, the Board of Directors of such an organization as you have referred to might decided to pay all the losses out of the receipts, and simply distribute the same amount.

THE COMMISSIONER: Not if you had a good insurance law and a good inspector.

MR. WOLFE: Yes, but there is no insurance law on any of the statute books of any of the States or Provinces or countries that I know of at present which prescribes that the dividends, the returned premiums of liability insurance must be distributed in a particular way.

THE COMMISSIONER: No, I do not think that there is.

MR. MACMURCHY: Did the state not contribute something towards that association to form it?

MR. WOLFE: Yes, the State appropriated \$10,000 for the preliminary expenses before it was authorized to do business.

THE COMMISSIONER: Which is the State that requires— —

MR. WOLFE: The Liability Commission of the State of Iowa has brought in a bill which will be presented at the next session of the Legislature. They have attempted to make use of some of the provisions of the Massachusetts

act, but have applied them in a very peculiar and unusual way. For instance, in the Massachusetts act, upon my advice, the directors of the Massachusetts Employees Insurance Association created a reserve fund to take care of this catastrophe hazard by setting aside ten per cent. of each premium received. The Iowa commission tried to vary that, attempted an improvement on it, in this way. The Iowa bill, section 50, provides that when the membership represents 15,000 employees there shall be \$30,000 re-insured, and when the membership represents 25,000 employees \$50,000 shall be re-insured, and when the membership represents 50,000 employees \$75,000 shall be re-insured. In other words, the greater the number of employees and the greater the exposure the more insurance shall be carried.

THE COMMISSIONER: They are looking at the amount of risk?

MR. WOLFE: Exactly.

MR. WEGENAST: Mr. Wolfe, was it not the original intention of the Massachusetts system to displace the liability companies by having all the employers who join the association, or who come under the act, come under this State system?

MR. WOLFE: There has been a change there, and I do not remember which came first. I do not remember whether the first act provided that the liability companies should be excluded or whether the first act did not provide for it and the second act injected it. I know there have been two or three or four changes in the Massachusetts act.

MR. WEGENAST: You did not have anything to do with the agitation?

MR. WOLFE: I had nothing to do with the act until it was created.

THE COMMISSIONER: They are on the ground yet, the liability companies?

MR. WOLFE: Yes, under regulation. In connection with that statement I want to point out this, that there is necessity for the provision requiring their rates to be approved by the Insurance Commissioner, because if it were otherwise the rates issued by the liability companies would be much lower than the ones prepared by the association.

THE COMMISSIONER: Why are they not uniform?

MR. WOLFE: I promised to explain that, Mr. Commissioner, and I will touch upon it briefly. I have held this, that the entire method of calculating premiums by liability companies is incorrect, for this reason: that while in the case of liability insurance there is a perfectly sane and actuarial reason for expressing the premium in a percentage on the pay-roll, that reasoning does not hold good when he comes to workmen's compensation.

THE COMMISSIONER: You explained that in what you said as to Iowa. You gave as an illustration a man having a thousand on his pay-roll.

MR. WOLFE: Yes. The reason for that can be illustrated in this way. One of the principal benefits under the Workmen's Compensation Act, and some people maintain that it will be the principal one, is the granting of medical service. It must be admitted that medical service is a function of the number of employees and not of the pay-roll. In other words, that it will

cost just as much to give medical attendance or benefits to a clerk getting \$5 a week as it will to a man getting \$20 a week, so that we ought to charge for medical service on the basis of the number of employees exposed and not on the amount of money they are receiving. When we come to the compensation payments, we find that in Massachusetts no payment may be less than \$4, or more than \$10 a week, irrespective of the amount of wages which the injured workman had been receiving. Therefore it is incorrect to charge a premium based solely on the pay-roll without taking into account the maximum limits. Take for instance two manufacturing establishments side by side, having identically the same risk, having identically the same accident prevention methods, being engaged in identically the same industry and having the same number of employees. To make it clearer, I will say that each had one thousand employees. Factory "A" has a pay-roll of \$8,000. That is, each employee receives \$8 a week. Factory "B" has a pay-roll of \$7,000. That is, each employee receives \$7 a week. In case of an accident to the employees of both plants the same payment would be made exactly, namely \$4 a week. Now, why should factory "A" be compelled to pay a larger premium than factory "B" when he has exactly the same amount of risk?

THE COMMISSIONER: Have you any labour organizations in your country?

MR. WOLFE: Yes.

THE COMMISSIONER: How is it possible for that state of things to exist.

MR. WOLFE: It is not only possible, but it is the actual fact. For instance, in the case of this association there were four boot and shoe factories. The boot and shoe industry is a very active one in the Commonwealth of Massachusetts. The figures are as follows: the premium calculated on my basis for plant "A" amounted to 92 cents per \$100 of pay-roll; plant "B" \$1.02; plant "C" \$1.05; plant "D" \$1.24, due to the fact that plant "A" has a great number of highly paid employees, men receiving more than \$20 a week, and the man who receives more than \$20 a week in case of accident receives only the same benefit as the one who is getting only \$20.

THE COMMISSIONER: Well, if you have no limitation I suppose it all comes out of the consumer?

MR. WOLFE: Yes, except so far as the medical service is concerned.

THE COMMISSIONER: I was told of a case which happened, I believe, in one of your States, where the foreman was directing the operations in a shop, and in doing it he gave offence to a man who was working under him, and the man picked up something and hit the foreman over the head and killed him. Of course the decision went against him; but it was thought to be an outrage, and that the man was more entitled to compensation than if it had been an accident. He got no compensation. I like the German definition of it a little better than the English, which gives rise to a great deal of trouble. You say you are not a lawyer, but do you see any reason why, if you use the English term "arising out of and in the course of the employment" to make both cases *prima facie* in favour of the workman; if it happens during his employment the onus is upon the employer to show that it did not arise in the course of his employment, and if it arises out

of the employment to have a similar presumption that it arose during the course of employment? There are so many cases, especially among sailors, where it is impossible to show how the thing happened, such as a case where a man is found drowned. He may have gone to the edge of the ship to relieve himself, and fallen overboard, and therefore it would not be under the law. More probably the thing referred to happened while he was doing his duty on the boat; but they held it was conjecture, and they could not recover. Now, if there were such a presumption as I suggest then the burden of proof would be shifted, and the employer would have to show that it did not arise out of the course of his employment?

MR. WOLFE: Expressing merely a layman's opinion, I believe we should do everything possible to make sure of the payment of compensation in all cases to the injured workman. I think there is a necessity for a better definition of what constitutes an accident.

THE COMMISSIONER: You see in this case I gave as an illustration it was not an accident at all. It was a designed thing. I believe they did not put it on that ground, but that it did not arise out of his employment.

MR. WOLFE: If I remember correctly in the language of the Massachusetts act it is a "personal injury sustained by an employee in the course of his employment," and that is very indefinite. A man's feelings might be hurt, and while I take it that the Industrial Court would not award him any compensation for that, I think the term "accident" certainly should be used.

MR. MACMURCHY: Do you remember a case in November, 1910, where there was a decision——

THE COMMISSIONER: I did not see it reported.

MR. MACMURCHY: Do you remember hearing of the case in 1910, where a man was taking money to pay the employees of a mine and was murdered?

THE COMMISSIONER: Yes, they recovered there.

MR. MACMURCHY: And quite rightly. I do not think that was reversed.

THE COMMISSIONER: I will tell you something that may jar a little on your views, I don't know. The Mining Federation is a mutual association of the miners in England, and they found that the risks were very much greater in some mines than in others, so that in regard to that class each employer bears in the association the burden of the accident, but with regard to fatal accidents they found there was uniformity and there they made an assessment on the whole group. According to the tables in one year there were some very bad accidents. That seems to work out all right there, and that is not a very large exposure.

MR. MACMURCHY: Is there not some provision in the case of a catastrophe?

THE COMMISSIONER: No.

MR. MACMURCHY: I have seen a statement to that effect.

THE COMMISSIONER: Then there is the shipping federation. That is based on the tonnage, not on the pay-roll. Then the building trades have an association, and the boot and shoe trades have an association. Mr.

Armstrong of the Ocean Accident, used an argument regarding the question of cheapness. He said of course we can afford to do it a great deal cheaper than the state for that is only one branch of our business and you will have to charge the whole cost of your staff to that department. He said: "Our head department practically costs nothing—perhaps I am putting it too strongly—to the accident branch, and therefore we can do our business cheaper."

MR. WOLFE: The Commercial Union has bought all the capital stock of the Ocean.

THE COMMISSIONER: Well, something ought to be done, I think, as a result of your statement, Mr. Wolfe, to prevent these accidents taking so much toll out of the people.

MR. WOLFE: Well, I would be very glad if I could feel that any of my efforts had helped to a satisfactory solution of this workmen's compensation in your province.

THE COMMISSIONER: I think if you had been there when they were framing that act you would have said: "Instead of making this a voluntary association, make all that are under the act come in and give the association a monopoly of the business."

MR. WOLFE: No, I wouldn't have done that; I will explain why. In Iowa that is exactly what they have done. They have provided that every employer of labour having more than five employees shall on a certain date be presumed to come under this act unless he gives notice to the contrary and both he and his employees must renew that notice each year within thirty days of its expiration. Furthermore that all employers who have not given this notice thereby become members of the Employers' Indemnity Association and, if I may take a few minutes of your time, I would like to just read to you section 48 and tell you what is going to happen if this bill becomes law, "Any employer coming under the terms of this act for the payment of compensation for injuries sustained by any of their employees coming under this act shall be conclusively presumed to have elected to secure the payment thereto as by the terms, conditions and provisions of the act, and any employer coming under this act employing five or more employees coming under this act, thereby elects to and becomes a member of the Employers' Indemnity Association, except the State, county, and municipal corporations and school districts, including cities under special charter and under commission form of government. The Board of Directors appointed by the Governor shall within ninety days after this part of the act takes effect, call the first meeting of the members of the association by a notice in writing mailed to each member at his place of business not less than ten days before the date fixed for the meeting." A subsequent section provides that at this meeting the employers shall be divided into groups and assessments levied in accordance with the nature of the business and the risk of injury, and the premium shall be collected. I want to direct your attention to the practical impossibility of that bill. In the first place how can any Board of Directors know who are the members to whom this notice shall be sent? There is no method of registration in the State of Iowa at the present time, although every employer of more than five workmen is compelled to register, but assuming that in some occult way this

Board of Directors knows the names and addresses of all the employers in Iowa who come under this act and notice is sent to them, I estimate conservatively there would be 15,000 coming under the statute. Where will 15,000 employers meet for the purpose of transacting this very important and technical business? Assume, however, that they have met. Where is this Employers' Indemnity Association going to obtain the necessary actuarial underwriting and clerical assistance to inspect at once and take care of 15,000 risks. That is something that has to be done at once; then collect those premiums, and inspect the plants for the purpose of properly differentiating for paying the losses. It is a practical impossibility.

THE COMMISSIONER: Well, under your system, supposing you got all the manufacturers in Massachusetts, and they gave that notice, that would be the same thing?

MR. WOLFE: There is a provision in the by-laws to which I would like to call attention: "No policy shall be issued by this Association to any member until his plant, workroom, or shop, shall have been inspected by a duly authorized representative of the Association, but the Association may issue a binding receipt upon the payment of a year's premium at a tentative rate agreed upon which will protect the applicant until the inspection has been completed."

THE COMMISSIONER: Well, these are all matters of detail?

MR. WOLFE: This provision would have been impractical if 15,000 or 20,000 employers were suddenly thrust into an organization. A thing of this kind is only possible where you have the employers coming in gradually.

THE COMMISSIONER: That would all be met by providing that it should not be compulsory but all should be in for a stated time, say three or four years. That would meet that difficulty.

MR. WOLFE: That it should not be compulsory?

THE COMMISSIONER: That they could all be bound to be in this for a stated period?

MR. WOLFE: Well, what would you do in case of accidental injury during that period?

THE COMMISSIONER: Supposing they did not agree upon a premium in your case what would happen? It would be under the common law liability?

MR. WOLFE: But the premiums have already been prepared and the classification filed.

THE COMMISSIONER: How could they do that until they know who were to be the members?

MR. WOLFE: Well, I have prepared rates for every possible form of employment?

THE COMMISSIONER: Do your rates not differentiate according to the plant and the way it is managed and the way it is conducted, or do you put them all on a flat rate?

MR. WOLFE: No, sir. In answer to that I would like to read from the report which I made to the Directors of the Massachusetts Employees Association when I submitted my rates: "The sum of these three results—that is the three factors in the premium—will give the annual premium which it is necessary to charge to a first class risk in any of the specified occupations. If, however, it should be found upon inspection that the amount of the risk is increased, not owing to occupational causes, but due to defective installation, the absence of recognized safety devices, or any other defect which may be removed, the imposition of a differential should be insisted upon." In other words the inspector goes around and he finds the gears unprotected, he finds places where there is an exposed electric switch, and so on, he reports to the Association, and this employer is notified that there is a differential of 20 per cent. placed upon him until he complies with all the requirements of the inspection.

THE COMMISSIONER: Then he comes in at the normal rate?

MR. WOLFE: Yes: His inspection takes place within twenty days of his coming in.

THE COMMISSIONER: Why could that not all have been done under the Iowa law? Why couldn't you make your groups under the Iowa system?

MR. WOLFE: It could be done theoretically, but practically it could not be done when you are dealing with a huge mass which in one day is forced into the membership.

THE COMMISSIONER: I do not know that it is necessary to bring them all in together. Why could you not have your State Board regulate it?

MR. WOLFE: You would still be exposed to the same difficulty by having a great number of risks.

THE COMMISSIONER: You would have the rate and you would know what they were to pay?

MR. WOLFE: Even so the task of taking care of a great number of risks on one day is an impractical difficulty.

THE COMMISSIONER: Well, there ought to be some method of getting around that. According to that you have to begin small and grow.

MR. WOLFE: According to my idea what you have got to do is to evolve some method which would not immediately throw an impossible burden upon any corporation that you create.

THE COMMISSIONER: What would you think of a scheme by which side by side workmen's compensation, elaborated with a provision that you should start with certain groups of industry, whether collective or on the capitalized plan, and add to those groups from time to time as experience suggested or was convenient, and then when the men came under the board and that part of the act he would cease to be under the individual liability?

MR. WOLFE: Let me see if I understand your question correctly. You mean, for instance, if the Province of Ontario should decide that the mining and the steel industries should have compulsory workmen's compensation laws.

THE COMMISSIONER: A compulsory insurance managed by the state.

MR. WOLFE: And that such insurance should be on the capitalized reserve value plan?

THE COMMISSIONER: Assume that to be the proper basis.

MR. WOLFE: Would I still find any objection?

THE COMMISSIONER: Yes.

MR. WOLFE: I would still urge my objection that in my opinion the State is not equipped at the present time.

THE COMMISSIONER: I understand that. Assume that the State is competent. You see we have a very good State here.

MR. WOLFE: I realize that. No statement that I have made I trust will be taken as a reflection upon it.

THE COMMISSIONER: But leaving that out of the question, and assuming it is advisable that a board appointed by the state should act as a Board of Directors, if you chose to call it that, do you see any objection to first putting the obligation of the employer and the right of the employee upon a sound basis?

MR. WOLFE: No sir, I do not.

THE COMMISSIONER: Leaving them to their ordinary remedies for recovery of whatever their claim is, and then from time to time as expediency or convenience suggested bring in different groups and let them put their mutual assessment plan on the capitalized value, if you like on that principle. Do you see any objection to such a system as that?

MR. WOLFE: There would be two objections; first, that there would not be sufficient exposures in the province in any particular industry to form associations the same as in Germany.

THE COMMISSIONER: You are destroying your own proposition. You made the groups big enough.

MR. WOLFE: Yes.

THE COMMISSIONER: Let the State Board make the groups big enough to give a proper exposure.

MR. WOLFE: Then there would be no objection except the question of administration expenses.

THE COMMISSIONER: What does that mean? We have not touched that.

MR. WOLFE: That means the cost of administering the expenses of this association would be unduly large if you only had one association, one group.

THE COMMISSIONER: If you had only one group, but I do not say one group. Perhaps there would be several groups. But had you not the same difficulty in Massachusetts?

MR. WOLFE: No, there, if you recollect, I stated that this Association could not

become operative until it had one hundred subscribers with ten thousand employees. That was the minimum.

THE COMMISSIONER: Well, supposing they were put in under the various department groups that represented that number, there could be no objection?

MR. WOLFE: Absolutely none.

THE COMMISSIONER: Then I suppose there could be added to the general law a provision requiring a man if he was not in this Association to insure to the satisfaction of the Board?

MR. WOLFE: Yes, which is similar to the provision in Massachusetts at the present time.

THE COMMISSIONER: Have you told me yet whether in Massachusetts they could make use of the common law right?

MR. WOLFE: An employer coming under this act gives a statutory notice to his employee, and unless the employee gives notice of his desire to reject that act he waives his common law rights.

THE COMMISSIONER: Well, in this province, I fancy, it would not obtain to the same extent, because there are recoveries on your side where there are not here. The number of recoveries at common law are practically a negligible quantity. I do not suppose there is one in a thousand in Ontario. I can count on the fingers of my hands the cases in which the common law liability has been maintained. Then the difficulty is that as long as that common law liability exists it encourages litigation, and it increases the cost of insurance.

MR. MACMURCHY: Yes, I have offered double the amount under the Workmen's Act to get rid of the common law, and after that the action has been dismissed with costs in several cases.

THE COMMISSIONER: You framed the groups of Massachusetts. I suppose our conditions are not very different. I suppose we could use your figures.

MR. WOLFE: I should be pleased to have you use them because that would be proof positive that they existed, but the conditions are different and my framing would not be applicable. It is worked out with the limits of \$1 minimum and \$10 maximum.

MR. MACMURCHY: What is the number of employees covered in Massachusetts?

MR. WOLFE: Approximately 80,000 in the Association.

MR. MACMURCHY: What is the population of Massachusetts?

MR. WOLFE: I think it is between three and five millions.

MR. MACMURCHY: And the workers?

MR. WOLFE: I don't know that.

MR. MACMURCHY: So it is less than twice that of Ontario.

THE COMMISSIONER: How would you propose to divide the cost of handling the fund?

MR. WOLFE: I made my premiums consist of three factors, the cost of the weekly disability; second, the cost of death and of dismemberment; and third, the cost of medical service.

THE COMMISSIONER: What do you mean by dismemberment?

MR. WOLFE: If a man's arm is cut off he gets under the Massachusetts act one hundred weeks or fifty weeks.

THE COMMISSIONER: Assuming that is left out. In the British act it is based on the extent of the injury.

MR. WOLFE: Well, it would be simply the two factors.

THE COMMISSIONER: How do you bring in that medical part? What is your basis?

- MR. WOLFE: I have prepared a table for the Association which shows that for index No. 1 there should be charged \$1.85 per annum for each employee.

THE COMMISSIONER: Per annum?

MR. WOLFE: Yes. Index No. 2, there should be charged \$2.32 per annum for each employee. Now, all they have to do after finding out in which group an employer is, to obtain the medical factor simply multiply the number of employees by the cost opposite his index.

THE COMMISSIONER: What is your medical allowance?

MR. WOLFE: In Massachusetts the medical allowance is the cost of medical and hospital service and supplies for the first two weeks, not to exceed, I am not sure whether it is \$100 or \$200. It does not matter much about the use of the words "not to exceed," because the doctors of Massachusetts manage to consider that every case is worth the maximum fixed by law. We also have a provision there that the funeral benefits shall be paid in case the injured workman is killed and leaves no dependants. The funeral benefit is limited to \$200. The other day they called my attention to a case where a workman in an automobile factory was run over by an automobile and killed. He left no dependants. What the undertaker did for that poor Italian I don't know, but he must have had a magnificent funeral. He had charged for slippers and candles and all that sort of thing.

THE COMMISSIONER: Let me ask you one question more. What objection is there instead of your method of collecting the premium, if you find you have taken too much and paying it back, of substituting for that commencing with an initial premium based on a rate, and then at the end of the first year to make an assessment for the loss, the actual loss, without anything to be repaid, except possibly in respect to the first premium?

MR. WOLFE: There would be no objection because that is exactly what the Massachusetts act does.

THE COMMISSIONER: It does in effect but in a roundabout way.

MR. WOLFE: No, I do not think so.

THE COMMISSIONER: You collect it and pay it back?

MR. WOLFE: Yes. What happens is this: the employer in Massachusetts makes his initial deposit for the year, and instead of at the end of the year they cast up his account and find what amount should be returned to that group, and they return it, and he makes another deposit for the coming year.

THE COMMISSIONER: I do not see why he should continue to do that. He makes an initial deposit, and at the end of the first year the loss amounted to so much. You assess then according to the proper proportion that he should bear. If his initial payment is not enough he has got to add to it and if it is too much he hasn't to add. Then he pays exactly what he ought, and there is nothing repaid.

MR. WOLFE: Well, the reason is that the method used by the Massachusetts Association is a safer form and furnishes better protection to the injured workman in this way, that if there is any overpayment it is kept for one year, which in case of a catastrophe would be paid for the losses.

THE COMMISSIONER: You have your surcharge, as the Germans call it, for that purpose?

MR. WOLFE: Yes, but that surcharge as in Germany does not deal with that.

THE COMMISSIONER: Then you do not provide in a case of the premium being too little?

MR. WOLFE: I thought I had explained to you that we provide for the payment being too little in this way, that every employer can be assessed one hundred per cent. of his cash premium in case it should be necessary.

THE COMMISSIONER: I understand that, but the way it occurred to me would be the better way to do and all that would be avoided. The man pays down his initial payment, and at the end of the year there is an adjustment, and then the next year he pays.

MR. WOLFE: I see no objection to that. It is practically what is being done in Massachusetts. It is not a vital element.

THE COMMISSIONER: Have you discussed with Mr. Wegenast this question of current cost?

MR. WOLFE: I have not had the pleasure of any talk with Mr. Wegenast.

THE COMMISSIONER: Mr. Wegenast is very much wedded to the current cost plan. Have you seen anything, Mr. Wegenast, to shake your faith in that?

MR. WEGENAST: Certainly not.

THE COMMISSIONER: Your faith must be able to remove mountains.

MR. WEGENAST: Of course some of the statements that Mr. Wolfe has made with regard to the German system would lead one to believe that there were inherent objections to it, and that they were being realized in Germany, but as a matter of fact, it is pointed out by Dr. Zacher that the German system is gradually being placed in the position of a capitalized plan. The whole trouble with Mr. Wolfe's figures there is that he does not allow for any percentage being added to it. The minute you begin to add even a small percentage, even one per cent., you at once start it on your capitalized basis,

because there will arise a time when that percentage will have rolled up a fund so large that it will reach the capitalized basis and in Germany that is in fact what is being done, and Dr. Zacher says that is the intention.

THE COMMISSIONER: The date has been put forward a bit to what was originally anticipated.

MR. WEGENAST: Yes, but there comes the factor of higher degree of industrialization.

THE COMMISSIONER: I am not sure whether it was he or somebody else who said in twenty years.

MR. WEGENAST: Well, Mr. Dawson pointed out that in most of the industries in fact it has been reached long since.

MR. WOLFE: What industries?

MR. WEGENAST: Well, take the second one given here, the beer-bottling industry. In 1892 the rate was higher than it was in 1898. (Interim Report, p. 112.)

MR. WOLFE: My tabulation of the industries the first time will be found on page 23.

MR. WEGENAST: It was very clearly pointed out by Mr. Dawson that the maximum had been reached in one case as early as twelve years, and fifteen years and twenty-five years, and it has been running along on the level ever since, the reason being, of course, that that percentage added was between nine and ten per cent. Take general contract carpentering because there are two divisions. In 1893 the rate was \$2.46. That is nearly twenty years ago.

THE COMMISSIONER: Take wood-working, as that is in Mr. Wolfe's.

MR. WEGENAST: Furniture factories, wood-working, that was \$1.99 in 1894. In 1908 it was only \$1.93. It has not risen since 1894.

MR. WOLFE: I have the record each year for the number of persons insured, the total amount of wages, and the total expenditures for insurance, with the average expenditure per person and per thousand dollars of wages of persons between 1885 and 1908, by the industries in Germany and then follows the sixty-six associations.

THE COMMISSIONER: If you notice, Mr. Wolfe, under some heads there are two or three different ones grouped. Perhaps they may be reduced while on the whole it may not.

MR. WOLFE: Perhaps so.

THE COMMISSIONER: There are included in the table numbers 43 to 54. If carpentering were in that and your figures are accurate it would indicate that while there has been a decrease in that particular branch upon the whole of the building trades it has increased.

MR. WEGENAST: Well, it is quite certain that there are some industries in which there has been an increase. I do not know that I am competent to speak on the average over the whole system, or even in groups. But I simply point out it is quite well understood in some industries there are some groups

which have not risen for very many years. They base it on a percentage basis, and this is taken from the twenty-fourth annual report. I have not taken the trouble to verify the figures by referring to the German report; I am assuming that they are correct. These figures are taken from the same schedule as was presented to the Federal Commission at Washington.

THE COMMISSIONER: Would it be possible for Mr. Wolfe to allow Mr. Wegenast to go over the statement and send him his views, and then Mr. Wolfe send in his reply?

MR. WOLFE: I will be very glad to do that.

MR. WEGENAST: I would also ask Mr. Wolfe to answer that portion of my brief dealing with liability insurance.

MR. WOLFE: If you ask me the questions I can perhaps answer them.

MR. WEGENAST: I am afraid it would take too long. It is dealing also with the current cost plan, pages 101 to 111.

MR. WOLFE: If there is anything I can answer I will be glad to do so. I am not competent to go into the law of the subject, but there is one thing I would like to say to Mr. Wegenast, and that is this, if they include in the assessment a percentage for a reserve fund in each year the cost must at some time go beyond 100 per cent., because you cannot lift yourself up by your boot straps. If you have to provide for a back liability you have to contribute money at some time to pay for that.

MR. WEGENAST: If you add to the regular yearly cost say 10 per cent. there will come a time when you have to drop that 10 per cent.

MR. WOLFE: Yes, but do you not see that at some time you have to pay 110 per cent.

MR. WEGENAST: Precisely.

MR. WOLFE: I tell you frankly you can get rid of those back liabilities whenever you are willing to pay more than 100 per cent. to do it, but until that time you cannot.

THE COMMISSIONER: In the last two lines of page 103 there seems to be a clerical error.

MR. WEGENAST: Yes, it should be "more careful." I do not want to spoil Mr. Wolfe's case, or appear to spoil it. I realize that he represents interests adverse to our proposition.

MR. MACMURCHY: As far as I am concerned Mr. Wolfe has been brought here as an independent actuary. He does not represent anybody, as far as I am concerned.

MR. WOLFE: I do not look upon the subject of workmen's compensation as touching, except in the most remote degree, the question of liability insurance.

MR. WEGENAST: If you impose the liability on the individual employer he has to find protection somewhere.

MR. WOLFE: Yes, but liability insurance is simply holding the policy holder free from any recoveries in actions at law arising from accidents in which he has been negligent.

MR. WEGENAST: Not necessarily. It is a question of what you include in your terms. By liability insurance I mean the insurance of the liability of the employer, whatever that liability may be, and if you throw it on the employer he must look for protection somewhere.

MR. WOLFE: But that would apply to fire insurance, and personal accident insurance also.

THE COMMISSIONER: Under the British act a man insures for whatever he is liable under that act or at common law.

MR. WOLFE: That is not liability insurance.

MR. GIBBONS: Would that state of affairs allow some to take out a policy in one company and some in other insurance companies? Would that not create a state of affairs that would make what you regarded as too small a group?

MR. WEGENAST: You have twenty-five or fifty companies doing business and divide the insurance in each occupation amongst those companies, or a number of them, and the splitting of the exposure is just as great or greater.

MR. WOLFE: I beg leave to differ with you. In the first place liability accident insurance companies in the past have not divided their risks in the industries. They have put them all in one big policy and paid out the benefits.

MR. WEGENAST: How do they strike the proper rates?

MR. WOLFE: By the statistics of all the companies.

MR. WEGENAST: Which, it is recognized, are entirely inadequate.

MR. WOLFE: The premiums are inadequate, but the statistics are not.

MR. WEGENAST: Mr. Wolfe has assumed, of course, the system to be a lump sum system, or one like the Massachusetts system where it is ended at a certain time. But where the payments may be extended over a generation, and where the factor of the probability of a man being married, the probability of the number of children, and all these factors, how can you possibly determine the premium?

MR. WOLFE: Where do you get any authority for saying that I have based my ideas upon the lump sum? My calculations are not based on that at all.

MR. WEGENAST: What rules are there for capitalizing the probable amount for which the company would be liable extending over a generation under periodical payments?

MR. WOLFE: Very easily. It is not a question of theory, it is a question of what is actually done. You will see if you refer to my statement. Those things balance themselves very easily.

MR. WEGENAST: There is no way for the insurance company to determine what the extent of its liability will be finally.

MR. WOLFE: Oh, yes. There have been laws passed or projected that will take care of that. For instance they are discussing now just what safe estimation shall be made, whether they shall assume that 60 per cent. of the premium charged shall be used, and that the capitalized value therefore shall be the difference between 60 per cent. and what has been paid out as losses.

MR. WEGENAST: But with all the inspection and the examination by yourself and other expert actuaries you say: "An examination of the rules laid down by the statutes of the various states for determining the value of the unpaid claims of liability companies shows that companies which have not been in business for a certain number of years have required to set aside for the first year fifty per cent. of the earned premiums, less loss payments and modified by the suit experience, as the value of the unsettled claims. If we were to follow this rule for workmen's compensation we should in all probability have to face the same *deplorable conditions which we now find among the liability companies*, for I seriously question whether 51 per cent. or 55 per cent. or 60 per cent. of the earned premiums, as now charged, will be sufficient to meet the claims in the future." You admit frankly that there is no certainty.

MR. WOLFE: Then I go on to show what is the proper way to do it. You ought to read that too.

THE COMMISSIONER: Take a thousand men who have been partially incapacitated, some more and some less, how is it possible to get per thousand at the probable duration of the payment? The amount that will have to be paid will depend upon the duration of the disability.

MR. WOLFE: Yes.

THE COMMISSIONER: How is it possible to ascertain that; or is it almost a pure guess?

MR. WOLFE: The same way in which the personal accident companies, and the life insurance companies to-day do that for the purpose of their annual statement, for instance.

THE COMMISSIONER: Do not they too only guess at it?

MR. WEGENAST: That liability is a liability once and for all at the time of the accident.

MR. WOLFE: No, we pay \$25 a week for a certain number of weeks.

MR. WEGENAST: You do not extend it over six or eight years?

THE COMMISSIONER: I am afraid I am very much prejudiced against these accident companies, pure accident. They put insurance on you and charge you a premium of so much a thousand for a number of years, and when you happen to reach a particular age not only does your premium go but the whole of your insurance goes, and they won't carry you at all.

MR. WOODLAND: That does not apply to our company. I will take you at your present age.

MR. WEGENAST: My point was that there was always a limit of from four to six

years, and as soon as a period of that length has elapsed the experience over that period will govern the rates.

THE COMMISSIONER: It is within a circumscribed space.

MR. WOLFE: If you have to pay an annuity of \$5 a week during the life-time of a person it is very easy to determine what is the present value.

THE COMMISSIONER: Suppose you have to pay me \$5 a week so long as I am under a disability that I am suffering from now.

MR. WOLFE: Yes, unquestionably the Department of Insurance will bring with it tables which will enable us to calculate that with the same degree of mathematical accuracy, as we have at present with cases involving death.

THE COMMISSIONER: You do not believe in malingering at all?

MR. WOLFE: That is a great problem.

THE COMMISSIONER: Do you know Mr. Biggar? He represents some of the shipping people in Glasgow. He points out as a result of the British act that it may pay a man to be off work, because he gets so much from his insurance and so much from friendly societies. He gave me a case where a man was actually better off when he was out of work than when he was working. I do not suppose that there are many but there are some such cases.

MR. WOLFE: Then as you doubtless know in Germany a great number of peculiar diseases have arisen owing to the workmen's compensation act. For instance there is one called "pension hysteria," and a man is perfectly honest about it too.

THE COMMISSIONER: That occurs to-day; it is one of the things that juries are told about. When the litigation is over and the man gets his money his hysterical condition disappears. That is not incident to workmen's compensation alone.

MR. WOLFE: He is perfectly honest about it. The idea of the pension constantly appearing before his eyes has a peculiar effect upon his nervous system.

THE COMMISSIONER: That is all caused by the original wrong that was done him. If he had not been injured he would not have got the hysteria.

MR. WOLFE: And if he had not been employed he would not have got injured.

MR. WEGENAST: You do not believe in a pension or periodical payment system; you would rather settle it in lump sum?

MR. WOLFE: No, I would not. I believe firmly in a pension system.

MR. WEGENAST: Do the liability companies at the present time believe in administering a pension system?

MR. WOLFE: If you care to read this pamphlet which you have in hand you will find that I maintain it as my opinion that this workmen's compensation is more akin to personal accident than to liability. For a great many years personal accident companies have paid claims of \$25 per week to injured policy-holders.

THE COMMISSIONER: But there is a time within which that ceases. Mr. Wegenast's point may be emphasized by this, that the contract is between the employer and the insurance company. What power has the insurance company to compel the workman to submit to a periodical examination?

MR. WOLFE: In the case of Massachusetts the statute insists upon the workman being paid by the association and not by the employer. I think this is a very desirable thing.

THE COMMISSIONER: But supposing the association is willing to pay and the insurance company says, "No; this man is not injured." What means would they have of compelling the man to submit to examination?

MR. WOLFE: The statute provides that every claimant must at reasonable times, upon demand, submit himself to proper medical examination.

THE COMMISSIONER: That only applies when the employer is insured in the Association.

MR. WOLFE: No, that applies generally, and payment ceases during his refusal.

MR. WEGENAST: Then what if the liability company goes under, as you indicate in your pamphlet there is some danger of its doing, after the man has been injured and the employer has paid his premium? Does the man have recourse against his employer again?

MR. WOLFE: No, he does not. The workman does not get his money; exactly what would happen under the German system if for any reason the Association were unable to pay him.

MR. WEGENAST: You have omitted to state there, Mr. Wolfe, that the Government has power if the Association goes under to levy on the members of the Association whatever is necessary to make up the premium, and to that extent it is a state system.

MR. WOLFE: Yes, but if they cannot collect the premium.

MR. WEGENAST: Of course you cannot get blood from a stone, but the group is liable, and the state has the means of enforcing payment.

THE COMMISSIONER: It is a complex subject.

MR. GIBBONS: The whole group will have to fail, while in the other case the liability company only would have to fail to take the compensation away from the workman.

MR. WEGENAST: In connection with the danger of small groups, have you seen the statement of the Washington system for the first year? They state, and I think there is no question about their figures, that if that large powder company had paid its premium notwithstanding that catastrophe which killed eight girls and injured two more, the rate would have been only five per cent. on that very small group, and it leads to the inevitable conclusion that the danger of having too small a group is a very slight one. Of course the smaller they are the greater the fluctuation in the rate, but the averages would still work out over a period of years.

MR. WOLFE: I do not subscribe to that at all, that with a small group the danger of

a catastrophe hazard as a disturbing factor is not very vital. I disagree with that. Look on the top of this page and read what it says about the number of employees.

MR. WEGENAST: The number of firms listed and assessed 5,750; employees listed and protected 130,000.

MR. WOLFE: That shows the exposure you have in the whole State of Washington. You have there about forty odd groups and you have only 130,000 in all the groups.

MR. WEGENAST: I do not know that that makes any difference. It could be done by making them inter-dependent, which would be quite possible by setting up a reserve fund as in Germany, and allowing the unfortunate group to have recourse to the reserve fund.

MR. WOLFE: That means the unfortunate group using the reserve of the more fortunate group.

MR. WEGENAST: Temporarily. The group would restore the portion of the money it has borrowed. I am quite willing to take up Mr. Wolfe's brief in the way you have suggested.

THE COMMISSIONER: What do you say to that, Mr. Wolfe?

MR. WOLFE: I will be very grateful for an opportunity to do it.

MR. MACMURCHY: Mr. Wolfe is not here to withhold any information, but to give it in any way that will be of assistance to the commission.

MR. WEGENAST: You will find the portion at pages 101 to 111 of the interim report. I have stated for instance that it is a recognized fact that employers' liability companies have been operating in the United States and in England at a loss, and notwithstanding that they have not paid to the workmen more than 50 per cent. of the money that has been paid into them. I am putting it at the most conservative estimate. Some say as high as 75 and 80 per cent. has been wasted.

MR. WOLFE: If these statistics show that not one cent was ever paid to the injured workmen I do not understand that that would have any bearing on the subject at all and for this reason: the liability policies issued by the companies protect employers against their common law liabilities for accidents. We can readily assume a situation where an employers' liability company was successful in every litigated case, and therefore not one cent would be paid in the shape of a judgment to an injured workman, but every cent would be paid for attorney's fees and court costs. Therefore, the mere statement that only 50 per cent. or 20 per cent. of the premiums received by liability companies went to the injured workman to my mind does not mean anything at all.

THE COMMISSIONER: It means this, that if the group is mutually insured and can save that it is so much gained.

MR. WOLFE: Yes, but I wish to call your attention to the fact that no group is proposing to do liability insurance. The group is proposing to do workmen's compensation, which is an entirely different proposition.

If Mr. Wegenast's brief is merely citing these things to show the advisability of workmen's compensation instead of employers' liability, why, we agree.

MR. WEGENAST: There is really a workmen's compensation act in Great Britain, and the same conditions apply there.

MR. WOLFE: You also have a liability act concurrent with it.

THE COMMISSIONER: Very little comes under that.

MR. WEGENAST: How can you eliminate that waste so long as you have the circuitous form of liability? You have two chances of litigation and two chances of loss. Why not have it direct?

MR. WOLFE: You do not find that situation in Massachusetts.

MR. WEGENAST: You impose the liability on the employer in the first instance and he turns round and insures.

MR. WOLFE: No, in Massachusetts there is an act which provides that there shall be a Massachusetts employees' insurance association formed.

MR. WEGENAST: You are not here to boost that part of it.

MR. MACMURCHY: I object to that.

MR. WOLFE: I am not boosting anything.

MR. WEGENAST: It is the last thing in my mind to be offensive. My point is that you want to preserve the liability companies in business.

MR. WOLFE: No, I do not want to preserve them because they are liability companies, but I want to prevent the State from doing something which, in my opinion, it is not equipped at the present time to do. I say I am in favour of doing it to the extent that it is being done in Massachusetts, but not exclusively. I do not think the State is equipped at the present time to do it. If you will be good enough to refer to my address before the liability convention in October, 1911, you will find that I pointed out very specially in that address, which is entitled, "Is the State to compensate the Workmen," the fact that the State is not in a position at the present time to do that, but that it might in the future become so. This is merely an attempt on my part to prevent the State rushing into something which, in my opinion, it is not equipped to handle properly.

MR. WEGENAST: Then you agree with another statement I make in that portion of my brief, that no system of individual liability can be permanent, or is likely to be permanent from present indications; that it must be a case of the State institutions driving the others out of business; and that no form of act should be passed which imposes liability on the employer and leaves him to shift it on to somebody else.

MR. WOLFE: I think that is fundamentally wrong and should not be allowed to exist at all.

THE COMMISSIONER: How is the State equipped to manage old age and invalidity? That is a bigger proposition.

MR. WOLFE: I do not think it is equipped.

MR. WEGENAST: I would like to point out this: I have here a letter written to a friend of mine by the Casualty Company of Canada, and it quotes certain Government figures. It was written for the purpose of inducing this friend to subscribe for shares in this company which it is proposed to organize to do liability business in Canada. I asked Mr. Wolfe whether he agreed with me that the companies in the United States were running at a loss in order to refer to this. (Reads letter.) "In the year 1910 these companies paid dividends ranging from ten per cent. to sixty-two and a half per cent." Now, I wanted to ask Mr. Wolfe if the companies, and all these companies are American in their origin, or possibly some English companies—I do not think there is a purely Canadian company doing liability business exclusively—if these companies are making these profits on their Canadian business they must have been making them at the expense of the Canadians.

THE COMMISSIONER: But Mr. Wolfe admits that if the State could properly manage the thing it would be a benefit. He has no faith in state management.

MR. WEGENAST: It is with a view to pointing out that there is an inequality which is practically inseparable with companies covering various jurisdictions. They discriminate between the employers in one jurisdiction and those in another.

MR. A. W. BALLANTYNE: I am informed that that prospectus was written by a man who failed in business.

MR. WEGENAST: I don't know.

MR. GIBBONS: Mr. Wolfe, is it not the experience that municipal machinery can be used for the collection of assessments without any special cost? They levy taxes for different purposes, and they could levy a tax for the workmen's compensation.

MR. WOLFE: Well, I do not know anything about the operation of these bodies in Ontario. I do know in other localities great injustice is done to some people by means of imperfect taxing machinery.

MR. WEGENAST: Would it be essentially more difficult than to run a Government railway, or run Government enterprises of other descriptions?

MR. WOLFE: I think it would be for this reason, that the operation of a company transacting workmen's compensation business constantly presents new problems which require treatment by a skilled underwriter. For instance in passing upon claims, whether it is a proper claim or not, and in passing upon questions of malingering, and a great number of problems.

THE COMMISSIONER: We are very much obliged to you, Mr. Wolfe, for the information you have given us.

MR. BALLANTYNE: Some of the insurance companies, Mr. Commissioner, would like to present a statement, and they propose also to call witnesses. We would like to get an appointment for some time ahead so as to make our arrangements. We propose having Mr. Sherman of New York.

THE COMMISSIONER: I will be glad to arrange that.

## EIGHTEENTH SITTING

THE LEGISLATIVE BUILDING, TORONTO.

Friday, 27th December, 1912, 11 a.m.

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner*.

MR. F. N. KENNIN, *Secretary*.

MR. W. B. WILKINSON, *Law Clerk*.

MR. HELLMUTH, K.C.: Will you please tell the Commissioner your qualifications, Mr. Sherman?

MR. P. TECUMSEH SHERMAN: I have studied the subject of compensation in Europe for several summers, 1901, 1902, and 1908. I was Commissioner of Labour for the State of New York for about three years, from 1905 to 1907, and studied the subject of compensation intensively from the standpoint of accident prevention. Since I resigned that position I have been Counsel for the National Civic Federation of New York City, which is a national organization of employers and workmen, and I have been in charge of their investigations of this particular topic. I have been consulted by quite a number of the American State Commissions and by the Congressional Commission. I have been retained by the Connecticut Commission, and during the last six months I have been retained by a number of casualty insurance companies. All the time I have been in constant correspondence with foreign authorities and getting foreign literature on this subject. I think that covers my qualifications.

THE COMMISSIONER: You have omitted one qualification—alderman of New York City.

MR. HELLMUTH: You have, I believe, prepared a memorandum on this subject?

MR. SHERMAN: Yes, I have prepared a memorandum which I would like to present.

THE COMMISSIONER: Certainly. Just read it.

MR. SHERMAN: "I was formerly Commissioner of Labour and ex-officio Chief Factory Inspector of the State of New York; and approach this subject from the standpoint of the factory inspector and with particular emphasis upon accident prevention and better industrial relations as well as from the standpoint of a lawyer and economist.

The existing law of negligence (technically called the law of tort) is as between employers and their employees generally unsatisfactory. It engenders class feelings of mutual hostility. It is slow, uncertain and wastefully expensive in operation. It is unjust: (1) because its rule of assumption of risks is wrong. To the extent that the unavoidable risks of the employment are the cause of injuries, the business of the employer and not the injured workman should bear the loss therefrom. (2) because

the tort law does not carry out its theories into practice. Wrongful claims as often as not prevail; and rightful claims as often as not are defeated. In fact the very idea that the responsibility for the causation of each of the mass of work accidents occurring can be correctly ascertained is absurd; and the further idea that responsibility can be ascertained and abstract justice done in each case by the slow and lumbering wheels of judicial machinery is doubly absurd.

Therefore to do anything like justice in practice it is necessary to resort to some simple rule of *average* justice, and to substitute it for the law of tort as between employers and their workmen. Such a rule is the compensation law, which holds employers responsible for half of the accidental work injuries in the mass, or for half the wage loss from each injury in the particular, and accordingly makes each employer liable for half the damages in the way of wage loss from every ordinary work accident to his workmen. That rule, with various modifications, has been adopted pretty generally throughout the civilized world (America, however, is as yet only in a stage of transition to it); and it has been found in actual practice to be more *just* both to employers and to workmen than the older law which it has replaced.

But there is another reason besides justice for the change. It is the prevailing opinion of European industrial experts that to relegate liability for injuries caused by employers' real torts to the *penal* law, and so to frame the *civil* law as to hold each employer and workman jointly and equally responsible for all ordinary work-accidents in the mass. To make the employer pay half the wage loss from every ordinary work-accident, certainly and without chance of escape by the gamble of a law suit, is the best known way to reduce accidents in organized employments.

To be most effective for accident prevention the scale of compensation should follow the theory just stated, and be approximately 50 per cent. of the wage loss, and this should be proportionately increased where workmen contribute to the insurance or where limitations on the pension payments are short or low. Some of the European laws give low flat rates of compensation without relation to wages; but they are more properly to be regarded as measures for poor relief; they have no relation to justice and no effect in the way of accident prevention. Others of those laws combine the two purposes.

The compensation law, therefore, is both a measure of average private justice (modified from abstract and exact justice so as to be prompt, certain and economic in application), and a public regulation for accident prevention. Such compensation laws as do not fulfil both of these purposes, (e.g., the laws of Norway, Washington and Ohio) are defective and in some respects very harmful.

Now, as to insurance. Insurance is no more an essential feature of the compensation law than it is of the tort law. Where insurance is required in a compensation law, that requirement is simply an ancillary method of effecting the purpose of the liability thereby imposed upon the employer.

But there is a specific danger under the compensation law that insurance may thwart the purpose of that law as a regulation for accident prevention. If the employer with a high risk is enabled to insure his

liability at the same rate as a competitor with a distinctly lower risk; or if an employer with a low risk is compelled to pay for his insurance the same rate as a competitor with a distinctly higher risk, the effect of the compensation liability, as an incentive to the employer to study out methods and to incur expense to decrease his risks in order to cut down his rate for insurance, will be defeated. The cost of his insurance is the civil penalty each employer pays for maintaining the hazards of his business; and to be effective it must be closely proportionate to those hazards. Insurance rates therefore must be differentiated fairly according to comparative risks, as determined (1) by experience, and (2) by physical and moral conditions, which can be ascertained only by expert inspection. Such inspection is a requisite to proper rate making, and in turn the provision of such inspection service is a most beneficial attribute of proper insurance. Insurance schemes, like those of Norway and of Ohio, which eliminate inspection are, therefore, seriously defective.

Finally, insurance must be sound. Employers should not pay for insurance and then have it happen either that they are subjected to further and unexpected charges, or that their injured workmen do not receive their compensation from the insurance.

We have, therefore, two problems which are logically absolutely distinct. The first problem is to frame a just and beneficial compensation law. The second problem is to determine how far and in what way insurance should be required in order to effect the purposes of the compensation law. Great care must be exercised not to confuse these two problems; otherwise you are apt to sacrifice much of the good to be derived from a proper compensation law by muddling it in a harmful experiment in social insurance.

Whether insurance should be compulsory or optional under the compensation law is, in my opinion, a question to be determined by experience. It should be made compulsory only if and where reasonably necessary in order to assure to injured workmen the payment of their compensation. In no event should those concerns that are amply able to carry their own insurance be required to buy insurance or to contribute to a State scheme—that would be pure economic waste.

In my opinion the best system of insurance must develop through competition and experience.

Where subjected to the test of competition (in The Netherlands, Italy, Sweden, France and New Zealand) state managed insurance has demonstrated its inferiority to stock company and voluntary mutual insurance. It may have a use: but certainly it is not a factor in accident prevention and is not economic.

Monopolistic state insurance eliminates the expenses of competition and effects a small further saving through the free use in administration of established governmental machinery. This is the sole merit of the Norwegian law. Against that form of insurance law are the following objections:

(1) Although the conditions in Norway are most favourable, State insurance there has not actually resulted in particularly cheap insurance. The Norwegian State office started off with rates unduly low; a deficiency was soon incurred and a row resulted. Since then the rates have been steadily jacked up, until now they are comparatively as high on the average

as the English rates which cover all the cost of administration. The Norwegian rates do not cover the expenses of administration which are paid out of general taxation, and for the better classes of risks the Norwegian rates are much higher than the English.

(2) The Norwegian system has resulted in complete official indifference to a proper discrimination in rates according to hazards. Experts agree that the effect of such a practice on the accident rate is bad and in an industrial country would be serious. The Norwegian officials refuse to discriminate in rates between different establishments on the ground that if they did so they would be subject to accusations of and appeals for favouritism. They could not discriminate properly without such an addition to their force as would make the expense of their scheme unbearable.

(3) The Norwegian system places employers at the mercy of political officials in the matter of assignment to trade classes, and consequently as to the rate at which they shall be taxed. Since the variations in rates between different trade classes are most material, this is a power which if abused would be seriously harmful and oppressive.

(4) The allowance of claims and the adjustment of awards is absolutely in the discretion of political officers. Employers have nothing to say about the management of the fund or the allowance of claims against it. They merely foot the bills. European experience indicates that this practice results in extreme laxity in precautions against fraud and exaggerations, and in a tendency on the part of officials to misuse their powers to distribute political favours or charitable relief at employers' expense.

Without going further into details, this method of insurance may be fairly described as a crude scheme to avoid the difficulties of adjusting and securing private rights and liabilities between employers and employees by turning the whole matter of compensation over to a political bureau with power to tax employers and to distribute the proceeds among employees about as it pleases. If this be good practice in regard to compensation, why should it not be good practice in regard to life and fire insurance, and in regard to all other private rights and liabilities?

The Washington law is somewhat like the Norwegian law, except that the state does not itself guarantee the payment of the compensation, but workmen must look to the funds. All employers must insure with the State Board. Employers are divided into trade classes, and those in each class are taxed for a special fund out of which compensation is to be paid to all workmen injured in that trade. If a class fund is exhausted the employers in that trade class are subject to assessment to make good the deficiency. The rates for each class are fixed by statute, but the officials are empowered to increase the rate for unusually dangerous conditions but not to reduce rates for unusually good conditions, or for improvements, and no provision is made for inspections. This law is grossly unjust to employers, and particularly to the better classes of employers, and for this reason.

The compensation law in its simple form as in Great Britain and in the majority of foreign countries, makes the employer an *insurer* of his workmen in limited amounts. That liability subjects the average employer to a serious peril of a ruinous loss without fault, unless at a reasonable rate he can re-insure and distribute his risk. The Washington law makes

each employer not only an insurer of his own workmen but also an insurer of all the workmen of all his competitors in the same trade; it multiplies his risk, and then taxes him a heavy premium as if for insurance; but it does not insure him; does not indemnify him; does not distribute his risk. Take the case of the Dupont Powder Company which is in the same class with two other and smaller concerns. In the first year of the Washington law it was taxed ten per cent. on its pay-roll, or \$14,400, as against some \$2,000 from its two competitors together. One of those other concerns blew up and killed eight persons. The amount of the liability to their dependants, so far as I can find out, is not yet settled: it might have been \$32,000. And whatever the excess of that liability over the sum of the original ten per cent. assessments—be it \$15,200 or less—85 per cent. of it is to be assessed back upon the Dupont Company. The Dupont Company then for its \$14,400 assessment did not procure indemnity, but remained liable for 85 per cent. of any deficiency in compensation that might become due by the fund to all workmen in powder mills in the state of Washington. To procure indemnity such as the English employer gets when he buys insurance the Dupont Company must still go into the open market and buy real insurance, under the same conditions—but for a much larger risk, and therefore at a higher cost—as before the adoption of this fanciful scheme. Whatever may be said in criticism of the State insurance schemes of Europe, none of them are as bad as this.

The Ohio law is very similar to the Washington law. The State guarantees nothing, but there is only one fund for all injuries.

Both the Washington and the Ohio laws have been made attractive to employers by their exceptionally low rates; and yet these, through lack of discrimination, are grossly excessive in some cases. Those rates are merely initial, experimental for the first year, and cannot be maintained. Neither the Ohio Board nor the Washington Board has published a report, in form and in detail required of private insurance companies, nor in sufficient detail to lead to any deduction other than the deduction that such public reports and statements as are issued are indicative of mismanagement. Under neither law has there been sufficient experience to justify any conclusions as to the sufficiency of rates or of the cost of the scheme. Unduly low rates at first resulting in deficiencies and in unduly high rates later have been the common experience with foreign state insurance offices; and the Washington and Ohio Boards are simply following in the path of those unsuccessful foreign essays in the way of cheap rates. Insurance cannot be sold below cost without laying up trouble and loss for the future.

In Germany, Austria, Hungary and Luxemburg the state does not manage the insurance, but absolutely prescribes its form, by requiring employers to join certain mutual insurance associations. In Germany the industrial associations are formed on trade lines; in Austria they are organized territorially. Of these two forms the German is undoubtedly far preferable.

The British compensation law makes the employer directly liable for compensation to his injured workmen, and permits him to insure it or not as he chooses, and how he chooses. The laws of Russia, Spain and Denmark are similar. Another common type of compensation law goes

one step further than the British law, and requires the employer to insure the payment of compensation in some one of several specified ways, in stock companies, mutual associations, joint benefit funds or in state insurance offices. The distinctive feature of these laws is that there is no monopoly of insurance; each employer is free to choose insurance as he may deem best, and is not by law placed at the mercy of a political board or of a badly run mutual association. He may bargain for rates among competing insurers; may change his insurance where it is unsatisfactory; can secure a reduced rate in return for improvements; may join a mutual association if conditions suit him; by agreement with his workmen, may establish a mutual benefit scheme of insurance; or, where his risks are sufficiently distributed or where he furnishes security, may carry his own insurance. Under this system, in Great Britain for example, where there are no political abuses and malingering, the bane of State insurance, is kept in check, there has developed a system of rate differentiation based upon expert inspections that has been a powerful factor in reducing the hazards of industry; and insurance rates are relatively as low as anywhere else, in spite of the fact that in Germany and in the State insurance countries the State pays a large share of the expenses of administering the insurance.

When it comes to adapt a compensation law to conditions in this country, the choice of a model lies in my opinion, between some one of these last prescribed types of law and the German law. Studying that choice in detail, my opinion is overwhelming and emphatic in favour of the British type. I will now explain more in detail these two systems and give reasons for my preference. Before doing so I premise that the sentiment of some employers in this country in favour of the German law is based not on any of its merits, but on its principal demerit, namely, the practice of conducting insurance on the deferred assessment plan. To follow German precedent in that would be, I think, a great mistake. No other country where insurance is required permits that method. It was allowed in Germany only as a political concession to the employers of the last generation and as a means by which they were permitted to shift a large part of the cost of compensating their workmen upon a later generation. It has involved German industries in a dangerous economic experiment that has not yet passed its crucial test. For us to think of following the German law in that detail would be foolhardy.

The British law is comparatively simple and its operations are readily comprehended. The German law, on the contrary, is extremely complex: it is difficult to acquire a correct understanding of its essential details. In explaining the two laws, it will be necessary to dwell at greater length upon the German law, the better to elucidate its weaknesses and dangers and the difficulties in the way of adapting any part of it to American conditions. We can then compare the respective merits and demerits of the two systems.

The British Workmen's Compensation Act, 1906, applies to wage earners in practically all employments. It replaces the act of 1897, which applied to certain enumerated industries, and the act of 1900, which applied to agricultural employments. This act imposes upon the employer a direct liability to compensate his employees for accidental injuries arising out of and in the course of their employment. Some enumerated occupa-

tional diseases are treated as injuries and must be compensated for as such. The scale of compensation is approximately 50 per cent. of the estimated wage loss from injury, beginning at the end of the first week, and under conditions reverting to the date of injury.

The statute does not relieve the employer from liability for full damages at common law, nor from liability for limited damages under an earlier statute; but those liabilities are incurred only where the employer, or a vice-principal, has been guilty of serious and certain fault, and are practically negligible.

The employer may insure or not at his option. If he does insure, the insurance does not relieve him from his individual liability.

Disputes may be settled by arbitration—either by a standing board voluntarily organized by an employer and his employees or otherwise—or by a judge of the proper county court, sitting as arbitrator and under summary procedure.

An employer and his workmen may by agreement substitute a scheme of mutual benefit insurance in place of the law, provided that the benefits to the workmen thereunder are equivalent to their benefits under the law, plus their contributions, if any.

The German Workmen's Insurance Law (codified in 1911), is divided into three branches:

The Sickness Insurance Law.

The Accident Insurance Law.

The Invalidity Insurance Law.

This system of social insurance legislation was in large part a development of old established usages and institutions. Workmen's sickness insurance associations were quite general throughout large parts of Germany, and the Sickness Insurance Law simply made such insurance universal and compulsory, and required employers' contributions. The requirement of employers' contributions is based upon a pre-existing *legal liability* of employers in many occupations to care for their sick employees, a liability similar to that in our maritime law. The Accident Insurance Law is, to a degree, a development and amendment of the pre-existing Employers' Liability Law.

The sickness insurance is the basis of the entire system. Although it provides for the care of the sick for twenty-six weeks only, it yet disburses annually more than double the sum expended by the accident insurance. In 1909, the sickness insurance fund disbursed 333,000,000 marks as against 161,000,000 marks disbursed by the accident associations. It takes care of injured workmen for the first thirteen weeks after accidents without expense to the accident insurance; and, under certain conditions, for further periods at the expense of the accident insurance. It thus relieves the accident insurance of nearly all care and expense relative to injuries lasting less than thirteen weeks.

These three branches of the Workmen's Insurance Law are so intimately correlated and interdependent that we cannot extract the Accident Insurance Law by itself and then expect it to work satisfactorily. Both in theory and in practice it is an organic part of a system and not an independent unit.

This code of laws is elaborately formulated (in over 1,800 sections). is carefully framed and fitted to suit the peculiar usages and conditions in

Germany; is founded upon a system of close control by Government over the conduct of individuals; and has been usually well administered. In many respects it has been highly successful, and as a whole deserves admiration and respectful consideration. There are, however, increasing doubts as to its permanent success, and very serious difficulties and objections to applying it, or any integral part of it, to the radically different conditions existing in our country.

The accident insurance branch of the Workmen's Insurance Law as originally proposed by Bismarck was to have been a bureaucratic State insurance law, to be maintained by the *taxation* of employers and workmen. Under the criticism of jurists and industrial experts, however, it became before its enactment in 1884 a collective employers' liability law, secured by insurance in highly autonomous employers' trade mutual insurance associations subject to state regulation. Workmen's contributions were omitted except as received indirectly through the sickness insurance; and the German *Accident* Insurance Law now rests and always has rested upon a judicial principle of employers' liability for compensation as a substitute for employers' liability for damages in tort. That liability is the basis of the law; the insurance is merely an ancillary method of effecting the purpose of the liability.

The Accident Insurance Law is sub-divided into three branches:

The Industrial Accident Insurance Law.

The Agricultural Accident Insurance Law.

The Navigation Accident Insurance Law.

These three laws do not cover wage-earners in all employments.

To the Navigation Accident Law it is unnecessary to discuss. As to the Agricultural Accident Law, it is sufficient to note that German experience shows that insurance of agricultural labour presents a problem radically different from the insurance of industrial labour; and the German law devotes to the former a distinct code of about 130 sections. The disposition of American admirers of the German law seems to be to follow exclusively the Industrial Accident Law and to apply it generally to all employments. It is, therefore, appropriate to elucidate particularly that branch of the accident law that we may understand the machinery and conditions requisite to its successful operation, and that we may judge of its applicability to non-industrial employments.

With special provisions covering public employments, the Industrial Accident Insurance Law places the liability for compensation upon employers' trade mutual insurance associations, there being generally a separate association of all employers in each trade or group of allied trades throughout the empire or in each of some large territorial divisions. Membership in the proper association is compulsory. These associations are highly autonomous. Some of them are divided into almost equally autonomous "sections," the sections being substantially voluntary divisions of the associations. There are 66 associations, comprising 593 sections.

Some have "branch institutes." These organizations are established in some trades to take care of the small irresponsible employers, who are likely to run up liabilities against the associations without adequate return. Members of the branch institutes are charged premiums high enough to maintain "capitalized value reserves," and have little or no voice in the management of the associations.

Subject to governmental control and regulation, the associations or sections: (a) have framed their own constitutions and make their own by-laws; (b) fix the insurance rates charged to their members; (c) make and enforce safety regulations. Workmen have some representation in the conferences for the adoption of safety regulations.

Except in the "Engineering and Excavating Association," and in the "Branch Institutes," the funds to pay the liabilities of the associations are raised upon the *deferred assessment basis*, without reserves to cover outstanding liabilities, but with provisions for small reserves to provide for emergencies and periods of depression.

Payments are made through the Post Office.

Benefits begin at the end of the thirteenth week after injury, and consist of periodical payments amounting to 66 2-3 per cent. of the wage loss upon wages up to \$428 and upon one-third of any excess. There are also some complex provisions for medical care, to be explained later.

The procedure after an accident is about as follows: In the first place the police investigate all injuries. The injured workmen are cared for during the first thirteen weeks by their sickness insurance associations, and thereafter, if still disabled, receive pensions and necessary medical care from their employer's accident insurance association. That association makes an ex parte investigation (to which witnesses may be subpoenaed, etc.), decides what it deems to be due the injured workman, and makes an offer of award. If that offer is unsatisfactory to the workman, he may appeal to the local insurance office (formerly to a Board of Arbitration), and from the decision of such office a second appeal lies to the highest insurance office of the empire or of the State. Under certain conditions, the accident association may revise its award, and from that revised award a new series of appeals lies.

Some objections to and difficulties with the German Industrial Accident Insurance Law are:

(1) The correct marshalling of all employers and their organization into trade associations is a difficult task, and entails not only much initial trouble and expense, but also continuing disputes and litigation. Classifications by trades are necessarily arbitrary, and it is frequently doubtful in which of several associations a particular establishment rightly belongs, and between such associations there are often very serious differences of rates. The matter of assignment to an association and of transfer from one association to another rests in the discretion of the Insurance Office. This gives rise to many disputes, and the officials are subject to political influence in regard thereto. Transfers entail serious difficulties and considerable injustice in the adjustment of outstanding liabilities as between the associations.

(2) The practice of the majority of the associations of omitting to maintain reserves to cover outstanding liabilities—the reserves maintained being sufficient merely for emergencies and periods of depression—and of levying assessments sufficient merely to meet payments falling due during the current year, incurs such serious economic danger and has so many inherent disadvantages that Germany alone has ventured to permit it. Its disadvantages and the objections to it are as follows:

(a) While it starts off with pleasingly low rates, it must eventually result in unduly high rates. The universal satisfaction at first felt with the

German law was consequently ephemeral. That condition is passing away. There are now some loud complaints from employers; and their dissatisfaction will increase as rates continue to rise, as they must for many years to come. The rates in Germany to-day average about treble what they were in the beginning. It is calculated that they will not reach their stable maximum for some twenty years or more. How much higher they will then be no one knows, but the majority guess is that they will double.

(b) This practice conceals the cost of insurance. No one in Germany to-day knows what is the true cost as distinguished from the current prices charged for insuring compensation in any given trade.

(c) This practice once embarked upon, the law cannot be changed without serious embarrassments, for there will be heavy liabilities to be liquidated. The figures for the *industrial* associations alone are not available; but the outstanding capitalized liabilities of all the German accident associations in 1910 were estimated at \$271,900,000, their reserves at \$75,930,000, and their deficiencies at \$195,970,000. Our hazards and rates of wages being approximately double those of Germany, we can estimate the probable deficiencies under an application of this practice in America at about four times those of Germany, relatively to the number of workmen affected. Under the British law, on the other hand, there are no deficiencies to be liquidated, and that law could be radically changed to-morrow, if deemed desirable, without disturbing existing insurance liabilities.

(d) This practice handicaps new establishments by compelling them to assume the liability for and to pay a material proportion of the losses of their pre-established competitors. And it imposes upon successful establishments the burden of liability for pensions for injuries incurred in establishments of defunct and insolvent competitors. It is obvious that if a large proportion of the establishments in any trade should shut down, the financial liability thereby shifted upon the survivors would be ruinous. In this respect the dangers and defects of the German industrial accident insurance are analogous to those of voluntary mutual life insurance.

(e) Finally, this practice is subject to the danger that the accumulated liabilities of the associations, which are in effect mortgages on the various branches of industry, may become so burdensome in a period of general and prolonged depression and contraction, as to crush the industries of the country or State affected in competition with the industries of other countries not similarly burdened. To meet the increasing cost of overhead charges for past indebtedness in a period of continued prosperity, rising prices and expanding industry is comparatively easy; to liquidate a heavy indebtedness carried over from the past under opposite conditions, is an entirely different matter.

(3) This law compels insurance where insurance is unnecessary, and thus imposes a useless expense merely to round out a paper scheme. Railroads and large companies with many separate establishments, having their assets and risks well distributed may properly meet their compensation liabilities as current expense, and have no need of insurance. To force them into a mutual scheme is an imposition upon them.

(4) The arbitration provisions of this law result in far more litigation than the judicial procedure provided for in the British law; and the process of adjustment with the insurance associations is more irritating to workmen than the direct negotiations with the employers or their insurers, which are the primary mode of settlement in England.

Litigation under the German and British systems compared: In Germany, in 1909, there were 422,076 cases wherein compensation was awarded by the associations, of which 76,352 (18.9 per cent.) were appealed, and of these appealed cases 22,794 (5.4 per cent.) were again appealed to the highest insurance offices. In Great Britain, in 1909, there were 335,953 new compensation cases. In all, 8,254 cases (2½ per cent.) went to Court under the compensation law (besides 298 cases under the tort law). Of the compensation cases, the majority were settled by simple orders, etc., and only 4,105 (1¼ per cent.) were tried. Of these latter cases, only 135 were appealed to the Court of Appeals (the majority upon the construction of the clause "arising out of and in the course of" the employment); 25 of which, however, were withdrawn. Two cases only went to the House of Lords.

Both the German and British experience under their compensation laws compare favourably with their previous experience under the tort law—in spite of the fact that by the change from the law of tort to the law of compensation the total number of cases in which injured workmen are entitled to relief, and about which consequently litigation may legitimately arise, has been multiplied—in England at least—about nine or ten times.

The foregoing figures show how ridiculous are the frequent accusations of the critics of the British Compensation Law that it "has resulted in enormous litigation" and "fills the law reports with cases of statutory construction." They also show how unjustifiable is the belief, entertained by many of the advocates of compensation laws, that the substitution of official boards of arbitration or of administrative officers in the place of courts of justice would reduce litigation. Issues of law and fact would still arise and would have to be tried very much in the old way, or injustice, abuse, and general harm would result. To abandon the existing judicial machinery for a novel substitute, with its procedure, practice, precedents, etc., yet to be worked out, would be a perfectly useless change from one kind of courts to another kind of courts, and would result simply in a duplication of expense. It should be borne in mind that the method of arbitration proposed is compulsory, by standing boards of political appointees, and would give none of the satisfaction of voluntary arbitration.

(5) The adjustment and final determination of awards by administrative officers has led in Germany to many abuses complained of, with some exaggeration perhaps, by Herr Friedensburg,<sup>1</sup> and later by Dr. Bernhard.<sup>2</sup> All the facts available indicate that the administration of the insurance law has been powerfully influenced by a desire to exercise liberality towards the unfortunate and has been governed by the spirit of benevolence rather than of law. Experience everywhere demonstrates that such a policy produces demoralizing effects and carries with it grave dangers of fraud and of abuse. With us, such questions as are involved in the making and review of awards always have been determined judicially, that is by courts of justice. And every lesson of experience is against depriving the parties affected of their *rights* to judicial determination of such questions, if desired, for administrative boards do not furnish adequate guaranty of impartiality

<sup>1</sup> "The Practical Results of Working Men's Insurance in Germany," Ferdinand Friedensburg. Translation, The Workmen's Compensation Service and Information Bureau, N.Y., 1911.

<sup>2</sup> "The Future of Social Policy in Germany," Ludwig Bernhard, Prof. of Pol. Science, University of Berlin, "Stahl and Eisen," April 18, 1912.

or of strict adherence to law.<sup>3</sup> The contention in mitigation, that the perversion of a law of private rights to purposes of public charity reduces the volume of necessary poor relief, is not supported by figures.

In Germany this tendency to administer public charity out of private funds is to some extent checked by the powers of the employers' associations. The prevailing idea of American imitators of the German law is to raise the insurance funds by taxation. Such funds would be public funds. It is further their idea that the original awards against the funds should be made by political officers. Under such conditions the rights of the employers' associations in and to the funds or otherwise would be far different and far less effectually safeguarded than in Germany.

(6) There are serious political dangers incident to the control of the associations, of their funds and of the rate-making. In the first place, the public functionaries having the regulation of the insurance, have the individual employers at their mercy; they may mould the constitutions and by-laws of the associations so as to favour their friends and ruin their enemies; in assignments to associations they can dispense favours; by their control over rate-making they can likewise dispense favours and mar the whole scheme for accident prevention. In the second place, assuming that the public officials exercise their powers of control properly, there still remains the certainty of bitter political struggles between the private classes affected for the control of the associations—such control carrying with it the control of the common funds and of the rate-making. This is best illustrated in Germany by the use that the Socialists have made of their control of the sickness insurance associations as means for the propaganda of socialism, and the consequent struggle on the part of employers (aided by a minority of the workmen) to secure equal representation in the management of those associations, even at the expense of higher contributions. Even among the employers all is not harmonious, the different classes are constantly wire-pulling for control. The German policy has been to form the associations of as harmonious elements as possible; and as between the smaller and greater employers so to frame their constitutions as to give control to the latter. Will American politics permit the adoption of that policy? If not, the smaller will outvote the greater employers and unjustly impose the bulk of the cost upon them. Whichever born of the dilemma we might elect, an industrial civil war would almost inevitably result.

In addition to the foregoing objections inherent in the German law is the further objection that it does not fit our local conditions:

(1) It is suited to a people who are accustomed to paternalistic government control of all their actions. It is impossible to explain or for the average American mind to comprehend the multitude and minuteness of the practices of this kind incident to the administration of the German law. The following examples will serve to illustrate: Injured workmen are obliged to submit themselves to hospital or surgical treatment about as their employers' associations may prescribe subject to some check from governmental regulation. Employers are obliged to submit their private books and papers to the inquisitorial inspection of their competitors—if officials of their associations—and of public officials almost without check.

(2) It depends for its success upon an elaborate system of police registration and surveillance, for which there is no substitute here. What the

<sup>3</sup> Henry W. Farnam and Ernst Freund, in "Survey," N.Y., May 4, 1912, pp. 243, 245.

police do in Germany in the way of investigating accidents and injuries, identifying parties, checking frauds, exaggerations, etc., etc., would have to be done here by some equal force of equal efficiency, or the German scheme would misarry.

(3) Its low cost of administration is due in part to the free use of the Post Office in making payments. In our State we would have to organize a large, separate force for that purpose.

(4) It has succeeded only through almost perfect administration of the governmental functions, and an unvarying imperial policy; whereas our administration is looser, and is apt to change its policy with changing party administrations.

(5) It is suitable only for a stable and homogeneous industrial population and stable industrial conditions; our industrial population is fluid and made extraordinarily complex by immigration. Our small employers are constantly changing their industrial status, changing from the condition of employees to that of employers and vice versa, and changing their businesses.

(6) Germany is large enough, probably, to furnish an adequate distribution of risks in each trade association, without which distribution insurance as to employers is a mockery and a misnomer, and worse than no insurance at all. Probably no state in the United States is large enough to do that in all trades, and consequently, if the German scheme were followed, there would be many trade associations in which there would be too few establishments with too small aggregate assets to provide anything like adequate risk distribution. Truly unfortunate would be the plight of a responsible employer with a good business who should be forced into a blind pool with a few comparatively irresponsible competitors and saddled with a joint liability for the risks of all. A good illustration of this has already occurred under the Washington law, resulting from what is known as the Chehalis disaster.<sup>4</sup>

(7) The German scheme is suited to a state where employments generally are carried on continuously within the jurisdiction. In each of our states and in the Canadian Provinces there are many employers whose employees work irregularly part of the time within and part of the time without the State; their premium rates consequently would have to be adjusted so as to apply to each pay-roll only for the part of the time employed within the State. It would be a very difficult task to apportion the payrolls accordingly; there would be many disputes, and many conflicts between the courts of different jurisdictions in applying their different laws to transient and interstate employments.

There remain to be considered a few difficulties and pit-falls in the way of an adaptation of the German Industrial Accident Insurance Law:

(1) As stated above, that law is intimately correlated with the Sickness Insurance Law, which disposes of all injuries lasting less than fourteen weeks, without trouble or expense to the accident insurance associations. Without the sickness insurance, we would have to extend the accident insurance so as to compensate for injuries lasting over, say, two weeks. Such insurance would be concerned with a very much larger proportion of injuries than the German law—about 50 per cent. instead of 22 per cent.—

<sup>4</sup> Cf. "A Novelty in Legislation," by Will. G. Graves, of the Washington Bar, Spokane, 1911.

and would cover the class of short time injuries in regard to which impositions are greatest and the ratio of expense of administration is highest. That difference would make all the experience of the German insurance as to cost, practice, etc., etc., inapplicable, so that in effect we would have to proceed without experience to guide us. It is vain to consider devising offhand a system of sickness insurance to serve as a basis for a system of accident insurance. With our unstable and immigrant working population, sickness insurance is a problem infinitely more complex than work-accident compensation, and a problem such as no foreign country has ever solved.

(2) The Industrial Accident Insurance Law is designed and fitted to apply only to industrial employments (manufacture, transportation and construction). The entire Accident Insurance Law does not cover all employments or even wage-earners in all employments and it is not appropriate therefor. If, then, we are seriously to imitate the German example, we must prepare distinct and appropriate codes for industries, for agriculture, for maritime employments, for commercial employments, etc., respectively, and must accurately and in detail define the scope of these different codes as conditions actually require. Nothing could be more contrary to the spirit of their asserted model than the crude schemes that have been proposed in America as adaptations of this German law, and applied sweepingly to all employments.

(3) The formation and organization of the compulsory trade mutual insurance associations is a problem that cannot be solved satisfactorily simply by prescribing what trades shall form separate associations, and then compelling employers to associate accordingly and to work out their salvation as best they can under the dictatorial supervision of state officials. Germany did not leap in the dark like that. Before the German law was enacted the administrative regulations were fairly outlined and agreed to, and the trade associations and their constitutions were tentatively formed or projected. Care was exercised to form the associations as far as possible of harmonious elements. The great Krupp works were made practically a distinct association. The policy adopted tended to give control of the associations to the captains of industry. The small employers, so far from being given equal voting power with their larger associates, in some associations have been relegated to "branch institutes," in the management of which they have practically no voice at all. In fact, there are about a thousand details relating to the administration and regulation of the association which in some way must be determined and settled in advance before this complex scheme can be put into operation. There is no indication that the American advocates of the German model have given these things the slightest consideration.

(4) In order correctly to follow the precedent of the Industrial Accident Insurance Law, it is necessary to distinguish carefully between compulsory mutual insurance and state insurance, and to avoid taxation and bureaucratic management as distinguished from bureaucratic regulation and governmental assistance. The German industrial employer is liable to his association for assessments to pay a quasi-contractual liability, he is not taxed. The mutual associations' funds are private not public funds; are managed by the association and not by public officials, although subject to public regulation. The funds are disbursed by the associations, and

not by public officials—although the Post Office assists. These distinctions are vital. Yet many in America think that they are imitating the German Industrial Accident Law when they propose to resort to the exercise of the power of taxation to raise the insurance funds, and when they confide to public officials the management and disbursement of the funds. They are in fact varying from essential features of their model, and are imitating in part either the Agricultural Accident Insurance Law of Germany, or the Norwegian law. It is not within the province of this article to present the objections to the Agricultural Accident Insurance Law. It is sufficient to say that the merits of the Industrial Accident Law of Germany cannot truthfully be claimed for it.

(5) In this connection it should not be ignored that mutual insurance if self-managed has peculiar dangers of its own, which are familiar to us in this country from our experiences with mutual life and fire insurance. While many of the German mutual associations have been successful, some have been unsuccessful, and have involved in their losses many employers who have had no part in the mistakes or mismanagement which have brought about the bad results. It must also be understood that the German system of self-managed mutual insurance entails on members a large amount of unremunerative service which takes them away from their regular occupations and engages them in a new and technical business. Such service is and must be compulsory.

Now, to turn to the alternative—the British precedent.

The British Workmen's Compensation Law applied to industrial employments would be the simplest and least experimental first step in the direction of wider social insurance. It would entail no departure from our political principles, and only a slight change in our judicial principles—a change which many of us believe to be not fundamental.

It would remedy the one industrial evil which particularly calls for immediate relief—the injustice of our liability laws.

It would not interfere with the accustomed usages and liberties of our people.

It would adhere to our time honoured practice of judicial determination of issues affecting private rights and liabilities.

It would avoid absolutely all the dangers and abuses of bureaucracy inherent in systems like the German.

It would avoid the political struggles over the control of trade associations and the management and disposition of mutual funds, inherent in the German system.

It is consistent with voluntary mutual insurance, where desired, and permits of a comparative test of all sound proper methods of insurance.

It would be a prudent experiment, adapted to further development or amendment; whereas the German system, once embarked upon, can never be departed from without the embarrassments of liquidating a heavy outstanding indebtedness.

Against the British law certain objections are currently insisted upon by some well-known publicists who give the German law unlimited endorsement. These objections will be discussed seriatim.

First: As to cost. The critics referred to measure the cost of compensation by the rates of insurance. That leads into grievous error.

The English insurance rates cover the total cost. The German rates do not cover the cost of insurance—much of it is deferred. The published German rates do not cover the expenses of management; these are extra, and are assessed separately.

In addition to the cost to employers in Germany, there is a heavy cost to the public—and the cost to the public of an adaptation of the German law would be higher in America. That cost would consist of: (1) The cost of a field and office force to supervise and regulate the associations, their rate-making, and the collection, investment and disbursement of their funds. (2) The cost of a great system of official boards of arbitration, with offices, clerks, etc. (3) The cost of a force to disburse payments and to exercise surveillance over claimants and pensioners. The total cost of these three forces, if adequate for their duties, would be an amount which the public would not tolerate; and if adequate forces are not provided the whole scheme would miscarry.

The argument is frequently advanced that because the German rates of insurance are lower than the rates charged for insurance of compensation under the recent law of New Jersey; and because the cost of management of insurance in private companies under our tort laws amounts sometimes to 65 per cent. of premiums, while the accredited cost of management in the German associations is only about 15 per cent., therefore insurance under the German method would be cheaper than insurance in stock companies of the direct liability for compensation.

These arguments are quibbles. Taking them up in order:

The German rates are no indication of what our rates would be under the German method, because: (1) Our hazard is at least twice as great as the German hazard. (2) Our insurance would cover all injuries lasting over two weeks instead of those only which last over thirteen weeks; i.e., about 50 per cent. instead of 22 per cent. of injuries. (3) Our expenses of management would be about three times greater than the German. The comparison consequently between the German and the New Jersey rates furnishes no indication of the relative cost of insurance under a scheme like the German and under a direct liability like the British. The best indicator of the relative cost of the two systems of insurance is a comparison of the German with the English rates. Such a comparison shows that the English rates average a little lower than the German rates, *although the latter have not yet reached the stage where they cover the cost.* Looking further into the German rates, it is to be noted that the rates in Germany for some comparatively non-hazardous trades are inordinately high; for example, the rate for tanneries, is in England 0.75, in Germany 8.23. Such startling rates in Germany indicate that there exist serious dangers in the German method of insurance.

As to the cost of management of insurance under the various systems: Cost under our tort liability is no indication of what the cost would be under a direct liability for compensation: consequently it is wholly deceptive to compare that cost with the cost under the German system. The cost of management under a settled direct liability compensation law in England is about 36 per cent.; in Germany, it is claimed, it is about 15 per cent., ignoring the cost of the free assistance from governmental agencies, etc. Nevertheless insurance in England is to be had as cheaply as in Germany.

The cost of administering insurance in America under an adaptation of the German law would be about three times as great as the cost in Germany, because here the scheme would lack the free assistance of the Post Office and of an all-pervading police force, and because it would have to deal with the short-time injuries, with which the German accident insurance is little concerned, and in regard to which the expenses of management are relatively highest.

Consequently it is difficult to form any estimate of the cost of compensation insurance in America, particularly under an adaptation of the German system. Foreign experience gives us every reason to believe that the cost in America of a system of insurance in imitation of the German would be infinitely greater than the cost in Germany, and much greater in the long run than under an adaptation of the British law.

Second: It is objected to the British law that it does not tend to reduce accidents, and that the German law does. It is almost certain, although not demonstrable, that both laws do tend generally to reduce accidents. Why then this invidious distinction? Because in England the volume and ratio of accidents have increased, while in Germany it is the opinion of experts that the law reduces accidents. But the volume and ratio of accidents have correspondingly increased in Germany: and it is the opinion of experts that the British law likewise reduces accidents. Apply the same test to both laws and they measure up about the same.

A report, in 1904, of a Parliamentary Committee appointed to investigate the workings of the Compensation Act of 1897, in which it was stated that the Committee could not see that that law had any effect in accident reduction, is often cited against the British law. But expert industrial opinion is the other way, and the doubtful finding by that Committee is explained by the dictum of German experts that the effect of their law in the line of accident prevention could not be seen in statistics until it had been in operation fifteen years. A later British Departmental Committee on Accidents has reported as follows (to quote the summary in the Annual Report of the Chief Inspector of Factories for 1910): "They find that while the accident risk probably remained almost constant in the decade 1897-1907, any increase due to extended use of machinery and greater pressure being counteracted by improved inspection and by the greater care resulting from the Workmen's Compensation Act, it has decreased since 1907, owing to the causes above named and to the experience of employers in the efficient guarding of machinery. They regard the increase of reported accidents up to 1907 as due almost entirely to improvement in reporting, which since that date has been less marked, so that the effect of lessened risk has shown itself in the statistics."

Strong testimony in favour of the efficiency of the direct liability law of Great Britain in the way of accident prevention may be found in the brief of Mr. John Calder, a leading industrial expert, filed with the Congressional Employers' Liability Commission<sup>5</sup>, and in the testimony of Mr. Gill, M.P., and of Mr. Clynes, M.P., before the New York Employers' Liability Commission<sup>6</sup>.

Third: It is objected to the British form of compensation law that it provides no security to injured workmen for the payment of their com-

<sup>5</sup> Report of Hearings, Pt. 2, p. 768.  
<sup>6</sup> Minutes of Evidence, 1910, pp. 83, 89.

pensation. It is to be noted that this criticism is not included in the sweeping arraignment of the British law by Mr. Miles M. Dawson, in his brief filed with the Congressional Commission on Employers Liability (1911). The significance of this omission is that in actual experience in England, there has been almost no loss from the omission of any requirement of security<sup>7</sup>. Looking at the subject practically, it is obviously far more needful to require of employers security for their contingent liabilities for damages under our existing American negligence laws, than it is to require security for the contingent liabilities for compensation under the British law—and yet we have never thought it necessary to do that. Why then merely because one liability is substituted for another should the addition of a requirement for security be deemed essential? It is true that accrued liabilities for long continuing pension payments under the compensation law subject the beneficiaries to the risk of their respective employers continuing solvent during such periods; but it is easy to require security for accrued liabilities without requiring general insurance in advance. It is also possible that dummy corporations may be resorted to to defeat the liability (a practice more probable in America than in England); but in that event a particular remedy can be adopted to meet that particular evil. It is also probable that in America compulsory security may prove to be advisable in some industries. It would be absurd, however, to subject all industries to unnecessary bureaucratic domination or to launch the state into an uncertain and expensive actuarial experiment merely to forestall the possibility of an abuse that has not arisen in actual practice.

Fourth: It is objected to the British form of compensation law that it starts with a maximum strain upon industries. The meaning of this is that, upon the adoption of such a law employers, if they insure, must start in abruptly to pay premiums sufficiently high to establish reserves to cover the capitalized values of liabilities accruing during the period paid for. These premiums will undoubtedly be so much higher than the premiums for insuring the liability for negligence as to cause some embarrassment at first; whereas under the German system only payments due during the first year need be provided for by the first year's assessment-premiums, and the future payments upon accrued pension liabilities may be left to be provided for by future assessments, and the increase in premiums is thereby made gradual. But there are serious objections, hereinbefore explained, to the German method. It is too much like issuing bonds to pay for current expenses. It is to be noted that British industries have passed through the period of initial strain without material embarrassment, and now have the advantage of solvent insurance. It is also to be noted that all other countries, Germany excepted, have elected to meet the initial strain of the increased liability at once, without attempting to defer it.

Fifth: It is objected to the British law that it causes discrimination against the employment of the aged and defective. This is an evil of disputed proportions. That it exists at all is more generally denied<sup>8</sup>. It is more reasonable, however, to suppose that employers do so discriminate considerably not only because the aged are more liable to injury, as appears from German statistics, but also and more particularly because accidents to

<sup>7</sup> See testimony of Mr. Gill, M.P., before N. Y. Employers' Liability Commission, Minutes of Evidence, 1910, p. 81.

<sup>8</sup> See testimony of Mr. Gill, M.P., before N. Y. Employers' Liability Commission, Minutes of Evidence, 1910, p. 76.

elderly persons often lead to permanent disabilities caused not so much by the injuries as by old age, and oblige the employers to pay what are in effect old age pensions in addition to compensation for injuries. It is difficult to form an estimate of the extent of this discrimination, because there is, independently of this cause, a universal preference for younger men in taking on new workmen, particularly in the more hazardous industries. If the objection is to be deemed material it may readily be avoided by minor amendment to permit old men, etc., to contract for a sliding scale of compensation, dependent upon age or certified infirmity, as is now being advocated in England. It cannot be avoided by adopting the German Industrial Accident Insurance Law, because that law by itself would cause about as much discrimination as does the direct liability in England. It is the Disability Insurance Law and not the Accident Insurance Law that in Germany stills complaint of this discrimination.

Sixth: It is objected to the British law that it is not conducive to workmen's efficiency. It is commonly believed that during the past half century the average physique of the English working classes has degenerated, whereas the physical well-being and efficiency of the German working classes have increased. Some of the panegyrists of the German law attribute this improvement in Germany to the Workmen's Insurance Law, and this real or supposed degeneration in England to its compensation law. There is only a modicum of truth in the former conclusion; in the latter, none.

While the German Workmen's Insurance Law has undoubtedly exerted a material influence in improving the contentment and well-being of the working classes and thereby in promoting workmen's efficiency, it does not follow that this result is due to the distinctive features of the Industrial Accident Insurance Law, so that the effect of the German system as a whole would have been any less beneficial had the direct liability for accidents been adopted instead of compulsory mutual insurance. It is a tremendous exaggeration to attribute the growth in German efficiency so exclusively to the Workmen's Insurance Law, since widespread vocational training, compulsory military service, an iron discipline and early and wise child labour regulations are considered by many to have been the principal factors in bringing about that result. Moreover it is a vital mistake to attribute German industrial efficiency too much to the workmen. German managerial and technical efficiency were famous before the workmen's insurance laws, and are undoubtedly the ultimate cause of Germany's general efficiency and prosperity. The more one studies the subject the less becomes one's admiration for the German Workmen's Insurance Law in comparison with admiration for the administrative efficiency that has made those cumbrous statutes operate successfully.

Seventh: It is objected to the British law that it does not provide for the medical care of the injured. A comparison of the different policies of the German, French and British laws, will aid to an understanding of this subject.

Under the German law, the employers' associations are obliged to provide medical care, etc., for injured workmen; but the control of the whole matter—including control of the patients—is given almost absolutely to the employers, subject to moderate State regulation. The employers' associations seem to have exercised their powers diplomatically, and the

practice, except for some incidental abuses, has worked well, and has produced good results in the way of cures.

In France, the employer is liable for the cost of medical care, but the injured employee has the choice of a physician. This gives rise to many abuses, is uselessly expensive, and produces the worst results in the way of cures, etc.

The British law places no obligation upon the employer to furnish medical care, trusting that his self-interest to effect cures as soon as possible will induce him, or his insurer, to furnish proper medical care wherever necessary. The consensus of opinion seems to be that generally it has resulted as expected; but it does not cause due medical care to be given as universally as does the German law; and it has been construed to permit the expense of hospital care to be deducted from compensation benefits, which, generally, is wrong.

The choice lies between the British and the German practices. It seems safer to follow at first the British practice, with some modifications.

Eighth: It is objected to the British law that it has caused general dissatisfaction, whereas the German law, it is contended, is generally satisfactory. In discussing this proposition, it should be borne in mind that the comparison lies between the British Workmen's Compensation Act and the German Accident Insurance Law, and not between the British Old Age Pension, Sickness Insurance and Workmen's Compensation Laws on the one hand, and the entire German Workmen's Insurance Law on the other hand. While as a whole and in many of its details the German system is the more perfect and the more generally satisfactory, yet the degree of satisfaction given by the accident laws of the two countries respectively is about equal.

The German Industrial Accident Insurance Law was at first extremely satisfactory to employers, on account of its low rates; but that cause of satisfaction has ceased, and as rates continue to rise dissatisfaction among employers is increasing. On the other hand, the sudden and heavy increase in insurance rates caused by the adoption of the Compensation Act of 1897 in Great Britain at first made that law abnoxious to employers: but they have gradually got used to it, and now satisfaction with it is general, at least among industrial employers. No British employer with a well-equipped and well-conducted establishment would prefer the German law.

The attitude of labour towards these laws is complicated by socialism. In Germany non-socialist labour has generally been fairly satisfied, and the accident law has produced better relations between them and their employers. The socialists, on the other hand, were at first bitterly hostile to the insurance legislation, but have since become fairly satisfied with the sickness insurance. With the accident insurance, however, they remain dissatisfied, and demand a part in the management of the associations and benefits equivalent to 100 per cent. compensation regardless of fault. In England, labour generally has been satisfied with the compensation law. Recent declarations of British Labour Congresses against that law have been coincident with socialist control of those bodies. It is to be noted that the English socialists have not declared for the German law, but for a state-insurance law, awards to be made by political officers, and compensation to be on the 100 per cent. basis, with additional provisions for medical care, etc.

The impressions created upon American observers by the two laws respectively are not conclusive. All have been impressed by the completeness of the German system, and by the general excellence of its administration. When it comes to the Accident Insurance Law and particularly to the question of its applicability to our conditions, opinion is divided. The preponderance of expert opinion is undoubtedly in favour of caution and of a trial of the British system.

We should not be over impressed by the encomiums on their law from German officials. Naturally they are prejudiced in its favour; and they are the last persons who should be expected to cry aloud its weaknesses. The criticisms of such men as Friedensburg and Bernhard are sufficient to show that all is not satisfaction and perfection in Germany. That there is no like official chorus of praise for the British law is due solely to the fact that in great Britain there is no established bureaucracy connected with the administration of its law.

From the foregoing the conclusion is obvious. For us to adopt substantially any integral part of the German Workmen's Insurance Law would be a leap in the dark; it would be making the welfare of our people the playfield of impulsive experiment, and would entail a radical change in our political principles and in our social and industrial habits and customs. Both the British and the German laws, although in different ways and to different degrees, are products of gradual development. Even if our ideal be a system of broader and more perfect insurance than that provided by the British law, yet prudence dictates a course of gradual approach. The safest and most surely beneficial first step on that course would be the adoption of an adaptation of the earlier form of the British law.

The reserves under the German law are often spoken of as if they were for the purpose of liquidation, and I think some of the German officials have it in the back of their minds that the reserve may serve for the purpose of liquidation, but if you study the reserves you will find they are really very small. They are designed simply to pay the compensation in periods of depression or war when German industries are shut down, and there is no provision, no adequate provision, under the German law for ever paying off or ever liquidating the indebtedness of the associations.

THE COMMISSIONER: At page 26 of your brief what year do you quote from, because we had a quotation from Mr. Wolfe? The operations of what year do you mean when you speak of the present?

MR. SHERMAN: 1909 is my last information.

THE COMMISSIONER: Have there not been very large reductions since 1909?

MR. SHERMAN: I would like to have a chance to look that up, but the last figures officially published are 1909, the last check up.

MR. BALLANTYNE: Mr. Wolfe gave up to 1908.

MR. SHERMAN: I take 1909. There may be something later, but I have not had time to go over all the figures. I think Dr. Zacher calculates that the German rates will reach their maximum in ten or twelve years, but Dr. Manes who is the head of one of the insurance investigating bureaus, or something like that, gives twenty years, and it is pretty doubtful when the

whole thing will work out to a stable basis. Schwedtman and Emery are very favourable to the German law so I think it is fair to take their calculations.

With reference to my statement on page 25 of my brief (3) I may say this objection does not apply generally to the German law for this reason, that the railroads are largely owned by the Government and are formed into separate sections so that each railroad really carries its own insurance and manages its own insurance, and the same with the big Krupp works. It was formed into a separate association and carries its own insurance, so that really they have not forced the big establishment into the common scheme as much as the letter of the law on its face seems to indicate. The same thing is true in Norway where they have State insurance. They exempt the railroads. The railroads are the only large employers in Norway, practically. Even in Austria quite a number of large establishments and some railroads are exempted from the general obligation to insure.

I think if you will give the figures consideration you will see that both the German and the English experience under the compensation law compares favourably in the amount of litigation with their previous experience under the tort law, in spite of the fact that under the compensation law the number of cases in which they are entitled to relief, and consequently about which litigation may ultimately arise, has been multiplied in England at least eight or nine times.

I think, however, that the working people have very good reason to ask for the establishment of a Board which shall pass on all settlements so that the employer and workman must submit all settlements of claims to a Board, and such settlement shall not be binding upon the workman unless approved by the Board.

THE COMMISSIONER: Referring to your brief at the top of page 40, have you investigated that, because there must be some reason for that wide difference?

MR. SHERMAN: I have corresponded a great deal over there, but I have never been able to get the exact accounting explanation of that except this, that in the tanneries the trade has decreased, that branch of the leather trade has declined, so that you have a smaller number of plants carrying the differentials, but I have not been able to verify that.

THE COMMISSIONER: What is grouped under that heading in the two countries must be different. My attention was called to that with regard to the building trades. A very mistaken idea was given by Mr. Wolfe by the nomenclature. It did not mean the same at all when used in Germany as it did somewhere else.

MR. SHERMAN: The point I mean to make is simply this, that in many trades in Germany they have run up pretty high rates, and there is no doubt about it I think that this is an excessive rate. I do not attribute any cause to it, because I cannot tell you as a matter of knowledge. When I first drafted this I attributed it to the cause of declining tannery business, but I haven't got sufficient authority to make that proposition.

Every body agrees that the workman must get his compensation, and

the experience in England has been, I think, that the workman does get his compensation. I have never been able myself to find any case where the workman was defeated. If sentiment here is different from that, I think it is easy enough to require the employer to insure unless, in the judgment of a proper board, he is capable of carrying his own insurance.

THE COMMISSIONER: Would that not only shift it from the weak employer to the weak insurance company?

MR. SHERMAN: The employer can insure.

THE COMMISSIONER: What protection is there in one of these accident insurance companies?

MR. SHERMAN: The fact is you get much more protection than you do in any State fund unless the State itself guarantees the fund. If you have insurance regulated by law, insurance companies, mutual associations, and all forms of insurance, required to carry reserves to cover all their outstanding liabilities, required to have a surplus capital, and are liable to be wound up the very minute they fall below those levels prescribed, I think you have a security that will be greater for the workmen than by any other way.

THE COMMISSIONER: What use is that for him? He has no right to it under the British law except in the single case of the bankruptcy of his employer where he may prove for the accrued payments. He has no right to be subrogated to the rights of his employer against the insurance company.

MR. SHERMAN: I think he has under the last act.

THE COMMISSIONER: No, the only provision there is that if the employer becomes bankrupt the workman is entitled to prove for the arrears and rank against the estate.

MR. SHERMAN: I see what you mean. We have covered that in quite a number of bills that are pending in America. I think the Connecticut Commission that I advised covered that by the provision that all insurance shall run directly to the benefit of the workman and that it shall cover the entire liability of the employer.

THE COMMISSIONER: How would you work that? They insure with a blanket policy fixing the maximum in any single case. How would it be possible to do that under the British system?

MR. SHERMAN: It isn't possible to do that under the British system, but I am not advocating the British system with all its faults or flaws.

THE COMMISSIONER: I thought it was perfect half an hour ago?

MR. SHERMAN: I think not; if I have given you that impression I have gone a little too far.

THE COMMISSIONER: I did notice that you said it was a good step; as if it ought to go further some time.

MR. SHERMAN: I think the British law could be very much improved on in a great many details. I also hope that I have not misled you into believing that I

am a very bitter opponent of the German law, because the German law in my opinion is one of the good laws.

THE COMMISSIONER: You spoil it by saying it is not adaptable to the conditions in this country.

MR. SHERMAN: I respectfully insist upon that very firmly, and I do not think there is now any doubt about that in many minds in this country.

I think the law of the State of Michigan is a very good law. The employer may apply to that board for permission to carry his own insurance or he may insure in the State office.

THE COMMISSIONER: What about the political favouritism that you were talking about a while ago?

MR. SHERMAN: There is some possibility of political favouritism there, but not very much because the line is pretty well drawn there, I think. The Department will not exempt any concern unless its risks are really well distributed. The board is not going to get itself criticized by allowing a concern to do that where it is possible for it to be wiped out with a disaster.

THE COMMISSIONER: Where would the workman be in a case where they dispensed with insurance and the employer failed?

MR. SHERMAN: The workman would not get anything in case the employer's assets all went up in an explosion. That is the only case where the workman would not get his compensation.

THE COMMISSIONER: Supposing the concern goes out of business altogether, breaks down? You must look out for that.

MR. SHERMAN: The supposition is that a board of that kind will use its discretion pretty cautiously. The Michigan board refused to exempt the Cadillac Motor Car Company which covers three blocks in Detroit, and if any one wants any better security than the paper of the Cadillac Company I do not know what it is.

THE COMMISSIONER: You are between the devil and the deep sea. If they compel them to insure you have told us it is economic waste because it is not necessary, and if they do not compel them to insure and the man happens to leave the workman without any security at all for future payments he is out of it.

MR. SHERMAN: The workman is insured by the employers' liability. This proposition came up before the United States Congressional Commission and there was not much argument on that particular phase of it, because the workmen did not care a rap about security, because there were the railroads of the United States which were perfectly solvent and the security about as perfect as it can be.

THE COMMISSIONER: How many have gone into bankruptcy in the last fifty years?

MR. SHERMAN: But they have a preferred claim.

THE COMMISSIONER: How many to-day are in the hands of receivers?

MR. SHERMAN: I do not know. Two or three.

THE COMMISSIONER: Are these claims made a preferred claim?

MR. SHERMAN: Oh, yes; on the property.

THE COMMISSIONER: That was the proposition of the United States law.

MR. SHERMAN: That is what Michigan does. Generally in the United States laws these claims are preferred. I know more about the bills now pending than I do about the laws. In almost all they are preferred, and I think in some cases they give the workman the right to attach also the moment his claim accrues. I really think that you are looking on this from the abstract a little too much instead of from the concrete. The workman according to the British experience does not lose his compensation.

THE COMMISSIONER: But the British law has only been in force for a few years. Under the Employers' Liability where it was a lump payment the difficulty did not arise, but here you have payments spreading over perhaps twenty or thirty years.

MR. SHERMAN: It has been in force since 1897. I do not think you can find practically any loss at all.

THE COMMISSIONER: Conditions are not nearly as stable in this country as in Great Britain.

MR. SHERMAN: There is something in that, but I think if you cover that point by requiring security where security is necessary, and having your Board err on the side of requiring security, you certainly avoid all danger of turning the workman out into the cold. I do not see that the workman stands any chance at all of losing, compared with all the other risks of life that everybody else has to bear.

THE COMMISSIONER: Would you be in favour as part of your scheme if a loss happens—not a fatal accident, because that is compensated for at once—that the insurance company should be bound to put up the capital sum that would represent the future payments?

MR. SHERMAN: They should be obliged to carry it, yes.

THE COMMISSIONER: To deposit it somewhere so that it would be there to answer the claim. What injustice would there be in that?

MR. SHERMAN: I do not see any objection to doing it in case the injury was definite and certain and fixed. What I mean by that is a long time injury. Of course you know the majority of the injuries are short time injuries, and you would not want to be paying in a deposit and going through all sorts of rigmarole with them. The employer can take care of those right with his workmen. I think that is the British experience.

THE COMMISSIONER: I have understood that Professor Friedensburg's criticism was not directed against the principle of the act, but against its maladministration. You seem to have a different opinion.

MR. SHERMAN: It is pretty hard to tell. He winds up with a sentence that seems to indicate a preference for pure State insurance, but his criticism I think is against the administration of the awards by the German officials. If you

will study those officials, however, you will find they are about the highest type of official you can get anywhere. I do not know of any better type of men than they are. Speaking of the United States I do not think we quite rank up to them.

THE COMMISSIONER: In this country we are away ahead of them. Of course we are always changing and making experiments.

MR. SHERMAN: It may be a very expensive experiment if you are not careful.

THE COMMISSIONER: Do you think it is better to commence with the tail and cut it off inch by inch, with reference to the insurance companies? We have an idea suggested of cutting off the head right at once. Your idea would be a gradual wiping out.

MR. SHERMAN: Yes, only I do not know exactly where we are working up to. I do not see that the problem has been thoroughly and satisfactorily solved in any place, but I do think you would have to adopt a law capable of being developed in various directions. I do not believe, for instance, that the first law should be applied very broadly. I mean by that it would be better to adopt a law simply for the industries instead of for everything, and then fill it out, and the same way as to insurance. I think the best way for insurance will be found by experimenting and by competition. Trade mutual insurance is good, probably one of the best forms, but I know that it is very unsatisfactory and unpopular where it is compulsory, and I feel, without having been able as yet to verify it completely, that many of those associations do go wrong and do run up high rates in many of the sections.

THE COMMISSIONER: Why do you distinguish between industrial accidents and agricultural accidents? Do you not call those industrial accidents?

MR. SHERMAN: No.

THE COMMISSIONER: Why not?

MR. SHERMAN: I do not want to take up too much of your time, but I think that is rather interesting. It does not have any particular bearing on my argument, but I think the experience in Bavaria was somewhat like this:—They had the farm owner insure his workmen, his employees, in his territorial association. That association had to pay for every accident to the farmer's family, because his wife and his daughter and his sons, and everybody else around, were employees; and secondly there was no distinction between work accidents and play accidents. Every accident was a work accident; if the farmer's small boy fell out of a tree and broke his arm that was a work accident. So it was unpopular among the members, and to defeat those claims they simply raised the rates and turned it into a complete accident insurance. It developed about that far in Bavaria when along came the farmer himself. "Look here," says he, "everybody else here is insured, my wife and family, and everybody else on my place, but I am not insured;" so they have got the provision there that he can insure himself also, and that insurance is practically developed now in Bavaria to cover pretty much all accidents.

THE COMMISSIONER: I do not understand how you maintain that farming is not an industry. It is not a manufacturing industry——

MR. SHERMAN: What is an industry is a question of definition. They do not call it an industry. I think if you go into insurance in any form you ought to distinguish agriculture because of the German difficulty.

THE COMMISSIONER: Was that distinction not only because of what you have just mentioned, that the farmer was permitted to insure himself by adding his wage to the pay-roll?

MR. SHERMAN: You cannot base it on the pay-roll. They have abandoned all attempts to base agricultural insurance on the pay-roll. They have got to either levy the premiums like taxes on the land, or a sort of assessment on the probabilities of employment, and the work, and everything. I think it is growing more and more to be like land taxes in America; the assessor goes around and assesses your farm so much for accident insurance. I think that grew up because they were unable to draw the line, and it works very satisfactorily in Bavaria, I understand. It is a very good social institution.

THE COMMISSIONER: Well, what about the clerical classes? I do not mean the clergymen, but the clerks in shops, and all that class?

MR. SHERMAN: They are just being taken into the German law now, but they have never before been able to apply the law to the clerks. They are just working up to that.

THE COMMISSIONER: Why should not a clerk who is injured in the course of his employment, and arising out of it, be compensated just as much as the man who is busy planing?

MR. SHERMAN: This compensation law arose from what is known as the doctrine of trade risk or risque professionnel which is supposed to be very high in some kinds of industries, and it is very low generally in mercantile employments. The clerks really have very little professional risk, and so they have been left out to date for that reason.

THE COMMISSIONER: As I understand from what you tell me, Mr. Sherman, you do not believe any good can come out of a state board for any purpose?

MR. SHERMAN: A State Board to manage it?

THE COMMISSIONER: To manage any business.

MR. SHERMAN: Oh, yes; but not to manage insurance.

THE COMMISSIONER: If it is proper for a railway, why not for insurance?

MR. SHERMAN: Do you mean because it is proper for a State to run a railway it can run other things?

THE COMMISSIONER: Yes, I understand the basis of your objection is that it is a political machine. Is that the only objection you have to it?

MR. SHERMAN: That may have something to do with it. My objection is that foreign experience shows that State insurance fails.

THE COMMISSIONER: That may be a defect in the system, not in the kind of management.

MR. SHERMAN: Well, the trouble is you see other kinds of insurance succeeding and that kind failing and calling on the public for taxes, and running up bills.

THE COMMISSIONER: We cannot shut our eyes to the hundred and one insurance companies that fail.

MR. SHERMAN: Foreign experience is that insurance companies may lose money, but they do not fail.

THE COMMISSIONER: Our experience is not always that. Perhaps the failures are exceptional, but they fail.

MR. SHERMAN: I believe they have failed quite considerably in various lines in America in the past, but I do not believe if they are properly regulated they fail.

THE COMMISSIONER: If we had a board uninfluenced by politics altogether why should it not manage well an insurance scheme?

MR. SHERMAN: The regulation of this business is entirely a different thing from the management of it where you have political officers having power to deprive one man of all the profits of his business and give the profits of the business to another.

THE COMMISSIONER: That is assuming he is dishonest.

MR. SHERMAN: No, not dishonest. In Norway it is their indifference in differentiating their rates. If I go ahead and go to a heavy expense and cut down my accident cost and my plant is all right, I have still got to pay my share of other people's losses. That has been the universal practice under all the state insurance systems.

THE COMMISSIONER: That is non-interference. That is not political interference.

MR. SHERMAN: That is non-interference in the exercise of a very necessary function, but it is interference with a man attending to his own insurance for himself and running his own business for himself.

THE COMMISSIONER: Then I gather that you are, perhaps, not as unalterably as some, but opposed to any kind of mutual insurance.

MR. SHERMAN: Oh, no.

THE COMMISSIONER: Some of your observations would lead to that. Perhaps I did not follow you.

MR. SHERMAN: I believe in mutual insurance. There are difficulties, but I have advised the formation of mutual insurance companies.

THE COMMISSIONER: We have mutual insurance companies, some of the best in the country.

MR. SHERMAN: I mean mutual associations.

THE COMMISSIONER: I am talking about mutual insurance companies, not mutual associations. Your observations rather led me to think you were against the soundness of mutual insurance. I want to know if that is so, if you care to tell me.

MR. SHERMAN: I do not understand the exact question.

THE COMMISSIONER: Do you think mutual insurance against accident, against fire, against death, is a desirable form of insurance?

MR. SHERMAN: Well, the mutual insurance may be in a good many different forms. The mutual insurance I have in mind is mutual insurance in associations of employers self-managed.

THE COMMISSIONER: Take an ordinary mutual insurance company, a company which has directors, no stockholders, but carries on life insurance on a mutual plan.

MR. SHERMAN: I do not know very much how those vary from the stock companies. Some of them vary very little from the stock companies and others vary very little from the self-managed mutual associations. I believe in them as near as possible on the lines of self-managing trade associations. When it comes to a complicated mutual company I have never been able to understand exactly how it works out. I would like to have the employer either practically carry his own insurance in combination with his associates in some trade, or else I would like to have him pay a certain amount by which he secures full indemnity, and put that down as a charge to the business for the year.

THE COMMISSIONER: Supposing you got voluntarily all the employers of labour in Ontario to form an insurance company to insure against industrial accidents, would you think that desirable? That is every employer of labour in the country voluntarily joining and voluntarily becoming a member of an insurance association.

MR. SHERMAN: I rather think I would.

THE COMMISSIONER: You would not object to that?

MR. SHERMAN: No, sir.

THE COMMISSIONER: You would approve?

MR. SHERMAN: Yes.

THE COMMISSIONER: Well, what difference is there if he is made to come in? What is the vice of making him come in?

MR. SHERMAN: In one case you are making a man do something that he is not able and ready to do, and has not studied out.

THE COMMISSIONER: That only hurts his feelings.

MR. SHERMAN: Oh, no, it doesn't. I will put it this way. I will go into partnership with a man whom I like and approve of and trust, but when you come and say I must be the partner of some man, and must share his liabilities and be responsible for his losses it is an entirely different proposition.

THE COMMISSIONER: Part of your paper, I thought, did not quite agree with the other part of it; perhaps there is an explanation for it. You expressed your dissatisfaction, which you said was general, with the existing laws providing for workmen in case of industrial accidents, and you spoke of the loss or waste of litigation.

MR. SHERMAN: Yes.

THE COMMISSIONER: Then afterwards you defended having the claims under a compensation law go through the ordinary courts of law. Now, those are, perhaps, reconcilable, but I would like to know just how you intended to put it.

MR. SHERMAN: My proposition is this: Under a system like the British there is much less litigation through the courts of law than there is through the paternal boards of arbitration in Germany.

THE COMMISSIONER: Have you allowed anything for the difference in the dispositions of the people? The German, as I understand it, likes a little law. He is perhaps like my countryman, the Irishman.

MR. SHERMAN: No, I do not make any such allowance.

THE COMMISSIONER: Has that not to be considered? The kind of appeals are very different from the kind of appeals that you are comparing it with in England.

MR. SHERMAN: Of course when I talk about retaining the courts of justice and their jurisdictions I do not mean to say, as I explained before, that I would like to make the plaintiff, the claimant, hire an attorney and come into court and file a complaint, putting his case on the calendar, leaving that as a method of settling any disputes that the employer and the workman do not settle directly. I think there should be some administrative court official to whom the workman could go directly without going to any attorney, or any calendar practice, and state his case, and practically have the employer summoned and let him state his case, and see if they cannot fix it all up without any law. In Massachusetts they have a practice something like that, you know. I like that practice. The only thing, it seems to me, that is wrong in that is the final determination, if there really has to be litigation. If there is a Board of three arbitrators that Board has to sit in places around Massachusetts, and I think it would be much better to let the District Judge or the County Judge, as in England, pass right on that.

THE COMMISSIONER: I suppose you are familiar with our system. A board, if there is one constituted as proposed, would be appointed by the Government of the province. The judges are appointed by the Government of Canada. Do you think any superiority attaches to men when they are appointed in that way and because you call them judges than if you call them members of a board; is there anything in the difference of designation; is there any virtue in the difference? What difference does it make if you call me a judge or a member of a Board.

MR. SHERMAN: I think it makes considerable difference, because in one case you are part of the administration and you are simply dispensing the political functions of Government. I think the judiciary is a little different.

THE COMMISSIONER: But this board would be performing judicial functions in passing upon a claim.

MR. SHERMAN: That may be, but I think it would be better if I explained why I like the British system.

THE COMMISSIONER: You are unalterably opposed to any Board of management or any management by a State Board; is that not really the bottom of your objection?

MR. SHERMAN: I object to having the State Board the final judicial arbitrator of all questions relating to that law instead of the courts having the usual jurisdiction.

THE COMMISSIONER: You grant, as everybody must grant, that the number of cases in which questions of law will arise are very few. You pointed out the few that have gone to the House of Lords.

MR. SHERMAN: Yes.

THE COMMISSIONER: Which is the only place where questions of law ultimately do go.

MR. SHERMAN: Yes.

THE COMMISSIONER: Which is better, a business Board dealing with questions of fact and questions of how the accident happened, and the extent of the injury, or a judge and jury?

MR. SHERMAN: I do not want the jury at all if I can help it.

THE COMMISSIONER: What about the judge; you are going from bad to worse;

MR. SHERMAN: What I want there is a doctor. I do not want the administrative Board when it comes to determining the degree of incapacity; that is the great fault.

THE COMMISSIONER: Why should the Board not determine that?

MR. SHERMAN: Because the Board does not know anything about it.

THE COMMISSIONER: But advised by a doctor?

MR. SHERMAN: All right. I do not see the necessity of the Board.

THE COMMISSIONER: Would you have a doctor decide finally?

MR. SHERMAN: Report to a judge and let the judge decide.

THE COMMISSIONER: Why do you want to go to a judge; that is going to court and that means a lawyer.

MR. SHERMAN: I do not want to have a lawyer. I think you are magnifying my objections. I am simply saying that I do not see any particular use in creating additional machinery when you have got the machinery of the courts in most of our American states right there and perfectly well organized and competent to act under the British law.

THE COMMISSIONER: But under your system you cannot deny a man a trial by jury.

MR. SHERMAN: No, we could not deny him that.

THE COMMISSIONER: I do not understand if you had a good Board composed of men who would not be influenced by political considerations—a good board—why you could not as safely trust them as you could twenty judges.

MR. SHERMAN: Well, I do not see that it makes any difference if you say the Board shall be practically the same as judges and exercise the same functions as judges, and do everything a judge would.

THE COMMISSIONER: This Board to determine whether there is a claim, and the extent of it. You see it would be only another case of a guess; they are all guesses or opinions; to a large extent they are guesses.

MR. SHERMAN: I agree with you that you want to get closer to the workmen, instead of having the body that determines sit back behind a bench and having the claimant come with a lawyer, and a petition and everything like that. We want some administrative tribunal, and I think it ought to proceed as a court.

THE COMMISSIONER: Supposing the Province were foolish enough, in your view, to be wedded to the idea of establishing a mutual insurance plan, whether on the current cost or the other plan, would it be preferable to bring such a law into operation at once applicable to all employments, or would it be preferable to bring in certain of the industries at first and bring in the others as experience showed it was desirable to do so?

MR. SHERMAN: I think it would be better to proceed gradually by experiment on a small scale, simply to see how it worked out. In the United States we would have some constitutional questions, but here you have none.

THE COMMISSIONER: Well, apart from the view that it would be better to make haste slowly, would there be any other advantages by leaving them out and bringing them in by degrees?

MR. SHERMAN: Yes, there would be some advantage in picking out your most appropriate trades and organizing the trade associations only in those trades where you found the employers pretty universally willing and receptive to your scheme, because I think it insures the defeat of mutual insurance to have an unwilling or dissatisfied element in your association.

THE COMMISSIONER: Would it remove or mitigate any of the evils that you have pointed out if there were power where a man had not a proper system for prevention of accidents to be able to charge him or penalize him for that, making him pay a larger proportion into the common fund?

MR. SHERMAN: Yes, you want to make him pay a larger proportion, but you also want to be very careful at the same time to make the employer who has better conditions feel that he is getting a lower rate.

THE COMMISSIONER: Would that not be the effect of putting a man on a higher rate where accidents happen—would the effect not be to relieve the others?

MR. SHERMAN: It might be if you collected your penalty, but you want to hold out an inducement to improve. That is a much more important thing than the penalty; rather than falling behind the average you want the industry to get ahead of the average. It is something like fire insurance, where, for example if you instal a certain apparatus in your building you get a lower rate. So in the matter of safety, you want to have in each trade all the factors of safety pretty well understood, and every time an employer makes an advance you want to make it worth his while in the rate.

THE COMMISSIONER: Would that not be possible under such a system as has been suggested?

MR. SHERMAN: Such a system is in operation in Great Britain and in Germany, and I think the insurance companies in the United States are preparing to develop that system pretty thoroughly. Of course it exists already wherever there is insurance in regard to elevators and boilers for instance, and everything like that. Your rate depends on the inspection and the condition existing and compliance with the highest requirements of safety.

THE COMMISSIONER: Have you not in your paper left out of consideration altogether the existence of adequate factory acts, well administered?

MR. SHERMAN: The factory acts are a somewhat separate question. I touched on that when I said I thought the factory acts should be kept separate from the civil law, the civil liability, and that compliance with the factory act should be enforced by penal liability only. The general feeling amongst the factory inspectors has been that when a question of compliance with the factory act comes up in private litigation between a workman and his employer that sympathy to a certain extent enters into the determination of the compliance and into the construction of the act. It is better to have the factory laws solely in penal proceedings.

THE COMMISSIONER: That is hardly the point. My point is that if you have a good factory act, a well administered one, that takes care that there are very few slovenly factories.

MR. SHERMAN: The general feeling is that the factory act must supplement the direct liability of the employer, either a direct liability or an obligation to pay properly differentiated rates, that to expect the factory acts to do it all would be imposing too heavy a burden on them. The English factory inspectors have proceeded pretty well and they have a very good reputation, but their reputation for efficiency is not quite equal to the reputation of the inspectors of the individual insurance companies or of the mutual associations, or of the German association inspectors. They have not quite as high a reputation, and their efficiency is not thought to be quite as high.

THE COMMISSIONER: You would not want to fasten on us a similar body to the one which exists—I do not know whether it is a provision of the law—which is called an underwriters' association, which dictates to everybody? It appears to be a kind of law maker for the country.

MR. SHERMAN: That is practically what they have in fire insurance.

THE COMMISSIONER: You would not suggest anything like that?

MR. SHERMAN: I am afraid I would, Sir William, I think I would; I think that is very effective.

THE COMMISSIONER: For raising the rates.

MR. SHERMAN: Yes, and as an inducement to obliterate certain practices that are found by experience to be dangerous and hazardous in certain conditions. I do not think you can by statutory law cover that subject as well as the

underwriters, whether they are insurance companies or mutual associations, or whatever they may be.

THE COMMISSIONER: I think you said you had some connection with some federation; the National Federation, or what is the name of it?

MR. SHERMAN: The National Civic Federation.

THE COMMISSIONER: You said that was composed of employers and workmen. Perhaps you will tell me what proportion of workmen to employers?

MR. SHERMAN: A very large proportion of the organized workmen has representatives in that association. It is not, of course, a body that can act and bind anybody. It is simply a sort of mutual, you might call it a debating or talking association in many respects. There are a very large number of the organized labour associations in America represented; the United Mine Workers have withdrawn recently, but almost all the others are represented.

THE COMMISSIONER: It expresses opinions upon occasions and passes resolutions does it not?

MR. SHERMAN: Yes.

THE COMMISSIONER: Can it be said that the resolutions or pronouncements of that body in any sense represent the views of the employed?

MR. SHERMAN: It cannot be said that the pronouncements of that body represent any definite number of employers or of workmen. The fact was something like this, that the general conclusions of that body have been generally followed by employers in New York. The National Manufacturers' Association another concern, composed exclusively of employers, has little different views or opinions. The labour bodies have split up in various ways. The American Federation of Labour has generally endorsed the stand of the Civic Federation. The State Federation of Labour in New York State just now is very strongly inclined to state insurance, but the employers are all opposed, and the neutral members are all opposed, so that just at present we are in conference—that is, we have been holding conferences about twice a week for the last two or three weeks. I think we will get together on something like the Michigan law, that is the general feeling.

THE COMMISSIONER: I do not know whether it is a fair question to ask you, and you need not answer it unless you wish, but am I to understand that the opinions you have expressed here are quasi-judicial, or are they to some extent fashioned from your association with the concerns that you are connected with; are they impartial, or are they to any extent, justly or unjustly, influenced by your immediate association?

MR. SHERMAN: Well, that is pretty hard to say. Those opinions I think are impartial. I formed them, after a good many years of study, about two or three years ago, and I have always stuck to them very consistently ever since. I have represented a good many different interests since then, and I have never represented until within the last few months the parties whom I have been mostly representing lately, that is the insurance companies. However, the insurance companies have had to come to my views on certain questions, not I to theirs, and I think my reputation for being rather an opinionated person is unfortunately rather good.

THE COMMISSIONER: Are you familiar with the associations of employers in England, such as the Shipping Federation, the Mine Owners' Association, and the Boot and Shoe Association, and the building trades? As I understand it in various forms these different industries have created associations, some of them nearly all in the trade being members of them. In one of them they have a committee that acts as a kind of insurance body, I think that is in the Shipping Federation. They conduct their business somewhat upon this mutual insurance plan. In the case of the mines, the secretary told me that they found only in case of fatal accidents could they make a flat rate; that their experience showed that in all the mines the fatal accidents were relatively the same, but that in the cases of accidents that were non-fatal there were such wide differences they had to make differential rates. Now, why do those people avoid the insurance company?

MR. SHERMAN: Some of them avoid insurance companies, and some of them do not. Some of the trades in Great Britain, quite a number, have built up very satisfactory mutual insurance systems; others have not done so.

THE COMMISSIONER: If the State were to build it up for them would it not be doing a good service?

MR. SHERMAN: No. If it were done for them they would be thoroughly dissatisfied. I do not think it can be done for them as well as they can do it for themselves.

THE COMMISSIONER: I think the country where your views would prevail more would be France. They are all for the individualistic way of doing things. They do not want any of those associations.

MR. SHERMAN: Yes, France is very individualistic.

MR. HELLMUTH: I was going to suggest, Mr. Commissioner, that perhaps as Mr. Sherman has gone over the brief filed with you by Mr. Wegenast that there are some points in it that he might discuss usefully. There are some matters he has very strong opinions on as to some statements of opinion and some statements of fact. I thought perhaps Mr. Wegenast might like to ask him in reference to them.

THE COMMISSIONER: Does not Mr. Sherman's statements practically contain the answer?

MR. HELLMUTH: It does in a general way, but not specifically.

THE COMMISSIONER: By all means supplement it by any questions.

MR. HELLMUTH: Mr. Sherman, I believe you have gone over Mr. Wegenast's brief?

MR. SHERMAN: Yes, I have gone over it and I am rather surprised at Mr. Wegenast's statements in regard to opinions, the weight of opinion, as to the foreign laws on the subject of accident prevention. I have noted a good many points here which struck me as very clearly erroneous, and I think it might be well to put into the record just a short statement of my answers to them if it would not bore you unduly. The first error I find is on page 59, under the heading of "State Liability." Mr. Wegenast cites

Washington law. In the Washington law there is no state liability; there is no guarantee by the State.

THE COMMISSIONER: I do not suppose he means that.

MR. SHERMAN: Then he proceeds to say "the method of individual liability has been pronounced with singular unanimity by those who have investigated the operations of the different systems as a failure."

THE COMMISSIONER: Does he cite his authorities for that statement?

MR. SHERMAN: Messrs. Frankel and Dawson, Schwedtman and Emery, and the report of the Federal Commission. No matter what the authority is I would like to say that that is not singularly unanimous; that opinion is rather the other way. Now, he cites here the report of the Federal Commission. The report of the Federal Commission is decidedly the other way. That report follows my argument before it, and at pages 56 to 58 of that report it takes the contrary view that I have been submitting to you.

THE COMMISSIONER: You are speaking now of the current cost system?

MR. MACMURCHY: No, the individual liability. The current cost is only a method of carrying out compensation.

THE COMMISSIONER: One is individual liability, entirely distinct from current cost.

MR. MACMURCHY: There is another, the capitalized basis.

THE COMMISSIONER: That is another branch of it.

Now, I find "the third reason for recommending this law is, in dealing with a number of small employers any one of them may be financially ruined by some severe or great calamity, and the wisdom of distributing the shock by means of insurance is apparent." Does that not rather support Mr. Wegenast's view?

MR. SHERMAN: I see that, but here is the fifth point which you will find there, where the direct liability is stated as the most conducive to accident prevention.

THE COMMISSIONER: Are they not separating the railways and dealing with them as you suggest they should be dealt with, on a different plan from that upon which they would deal with the small employer, and is that not what is there that you are relying upon applicable only to that?

MR. SHERMAN: It may be construed that way, but what they said in their report was that whatever might be better for smaller employers on account of security, what would be the most conducive to accident prevention was direct liability. I think you will find that is the majority expert opinion. Now, even Mr. Dawson, who is cited here, admits that the Norwegian law which results in flat rates is very harmful, or would be very harmful in an industrial state.

THE COMMISSIONER: Perhaps you will explain, for the benefit of those who may read this, what you mean by a flat rate?

MR. SHERMAN: The flat rate is a rate which is the same for all employers in the same trade or industry—approximately the same, or roughly the same.

THE COMMISSIONER: Is that not what Mr. Wolfe recommended to the Massachusetts people?

MR. SHERMAN: No, Mr. Wolfe proposed a system of careful inspection by which the employers are rated according to their actual risk, and not by trade classes.

THE COMMISSIONER: As I understand him, although I have not read the document he refers to, his objection to the scheme here was small groups, and apparently instead of making a large number of small groups he had grouped the industries not according to the nature of the industry, but according to the hazard, and in that way the exposure was greater.

MR. SHERMAN: Yes, that is his idea. It all depends on his working that out; if he works it out perfectly then he gets the equivalent of the direct liability. It is the direct liability that is the normal proper way for accident prevention. If you get your insurance scheme you must work it out so exactly as to be the equivalent of direct liability.

THE COMMISSIONER: There is one question I forgot to ask you, I want to appeal to you now as an economist. Under a system such as is proposed is not the manufacturer, and whoever is subject to the law, a mere collector of the tax, and is it not collected from the whole community in effect; does not the tax fall ultimately upon the general body of consumers?

MR. SHERMAN: I think not; no, sir.

THE COMMISSIONER: Why not?

MR. SHERMAN: Not if you impose it upon the employer.

THE COMMISSIONER: He will not pay it out of his own pocket if he can help it?

MR. SHERMAN: No, not if he can help it.

THE COMMISSIONER: He will throw it onto somebody else.

MR. SHERMAN: If he can.

THE COMMISSIONER: Why can he not?

MR. SHERMAN: Why can he? Supposing you go ahead and tax me, if I am a manufacturer in Ontario, a certain price every year in my factory, I cannot immediately tack it onto the price of my product because that is governed by other things.

THE COMMISSIONER: I am told by those who assume to speak as economists, that the difference in the law in the different states is a negligible factor, that it does not count, that in the states where they have more onerous legislation it does not make any difference in competition with the next state where the laws are less onerous. Do you differ from that view?

MR. SHERMAN: To this extent, I think eventually the employer who has the lowest accident cost within the tariff wall territory, where he has to compete

will work that item of cost into his price, but I do not believe that the man with an excessive cost will be able to do it. We have in New York, for instance in the machine manufacturers, two establishments which are very similar, one of which has an accident rate of about three or four times as much as the other. I think eventually the one with the low accident rate might probably be able to work this cost into the price, but I do not believe the other one can work the cost into the price, because I think the lower one will fix the price.

THE COMMISSIONER: Can he not remedy that by reducing or changing the conditions that make his price the greater?

MR. SHERMAN: That is what I want him to do; that is the very thing. I want to say to him, "you cannot put that on the consumer, you have got to cut it down yourself."

THE COMMISSIONER: You have just given an answer to that—his competitors would compel him to do that.

MR. SHERMAN: If his competitor is doing better he has got to come down to the grade of his competitor. What I say is, leave those employers directly liable and that will be the result. If you tax them roughly about the same there will be no inducement on the one with the high accident rate to cut it down. That is the general theory; I do not think there is anybody disputes it very much. It is the direct liability theory, and if you do not have the direct liability you must work out a system of exact differential that will effect the same result, and that is very difficult to do.

Then at the bottom of page 62 and at the top of page 63 of the interim report, Mr. Wegenast says: "While there appears to have been on the whole, since the introduction of the English Workmen's Compensation Act, some diminution in the number of industrial accidents, the writers and investigators concur in refusing to credit this to the system of compensation established by the act." I think that is an error. The British Departmental Report for 1910 attributes that to the operation of the act.

THE COMMISSIONER: In part to the operation of the act.

MR. SHERMAN: In large part.

THE COMMISSIONER: You read it, did you?

MR. SHERMAN: Yes, in large part. Of course all the successful laws depend in large part also on first class factory inspection in addition; that is understood. I think the weight of authorities is clearly against that assertion now.

Then he says "The German system exhibits perhaps the most striking results." We will not dispute that; but he says, "A corresponding measure of success has attended the operation of other collective systems." From my studies I would say no; I don't think that is true. I think the German system is an exception in the collective systems. Then the next sentence says: "There is absolute unanimity amongst the writers and investigators in ascribing to the German system an immense superiority over the English system in reducing the industrial accident rate." I do not think there is

absolute unanimity. I think he is going a little too far in some of his statements.

The next statement is a matter of opinion only; he has as much right to his opinion as I to mine. "There is every reason to anticipate for the act of the State of Washington a similar measure of success in preventing the occurrence of accidents." I think that most all the industrial people who have studied that act think not; that it will not have that effect, because it penalizes the better employer too severely in the assessment. I am pointing out just a few little points.

THE COMMISSIONER: It is not to be taken that anything you do not mention is admitted?

MR. SHERMAN: Here is a perfectly fair statement, and yet it leads, I think to a very unfair inference:—

"The German collective system represents an efficiency of 87.2 per cent. only 12.08 per cent. being taken up in expenses of administration." I do not think that is untrue, but it is not the whole truth. They do not represent 87 per cent. of efficiency because only 12 per cent. of employers' premiums are taken up in expenses of administration. There are a lot more expenses of administration that do not come out of the employers' premiums, so that when you say 87 per cent. there that is exaggerating considerably.

THE COMMISSIONER: You dealt with that in your paper, I think, about the 12 per cent.

MR. SHERMAN: Then at the bottom of page 79 and at the top of page 80, Mr. Wegenast is speaking about the correlation of the system of inspection with a view to prevention of accidents with your insurance system, and he points out that a collective organization of employers will have very great facilities in having an efficient factory inspector. He says, "The individual liability systems provide no corresponding incentive or facilities," and "The insurance company has no direct facilities for standardizing machinery nor any means of enforcing regulations except by a threat to decline or cancel the policy, the coercive effect of which would be very slight." I think the English experience is that the insurance companies have very efficient means, very efficient facilities for standardizing and for inspection, and that the threat of refusing insurance, and on the other hand the inducement of lower rates of insurance, have the same effect as the corresponding practice in the collective. You cannot much distinguish them in that respect. Then on page 84, in the second paragraph, Mr. Wegenast says: "The individual liability system also on account of its wastefulness necessitates the payment of insurance premiums approximately double those required to confer corresponding benefits under a collective system." I do not think there is any justification for that statement. When you get at the collective system on the deferred assessment basis you get very much lower rates at first and very much higher rates later. Probably the only difference theoretically between the collective rate and the private insurance rate is the expense of agents' commissions in competition, and as I have contended, and I think it is pretty generally established, there is not very much

difference there; but whether there is or not it is not anything like double, the fact being that the English rates to-day are about the same as the Norwegian rates.

THE COMMISSIONER: Everybody admits that the English rates have got to go up, and go up largely.

MR. SHERMAN: They have got to go up some, but you must remember that everybody admits that the Norwegian rates are going up, and that the German rates are going up.

THE COMMISSIONER: The only exception I heard was from one insurance company which said it was not so; but in all cases they have lost money and will have to increase the rates.

MR. SHERMAN: If you look at the figures you will find the English insurance companies have come very close to running it pretty nearly at a little profit. The French experience is much worse; all along the line, both for the sickness and the mutual and the private companies, they have all fallen behind, so that the general experience throughout Europe has been lost everywhere. The only people that have not made universal loss have been the English companies, and they are on the average about one or two per cent. behind; but they are pretty close to being correct and right, and they have held their rates more steadily and uniformly, I think, than any other system. The experience in private insurance, and in all kinds of insurance in France, has been pretty poor, but in England it has been pretty good.

On page 86 in the second paragraph, Mr. Wegenast says: "In Sweden, likewise, where there is a system of state insurance with the option of insuring in private companies, the State scheme has been gradually absorbing the business of its competitors owing to their inability to compete with it." The fact is that the State Insurance Office has its expenses paid by the state, and the private insurance companies have to pay their own expenses; there are some local privileges also given to the State Insurance Office. Nevertheless the private insurance and the mutual insurance—the voluntary mutual insurance—has been pretty nearly holding its own even in spite of the handicap; it does not show the superiority of State insurance, it shows the superiority of the other. You will find that same experience in the Netherlands, and something like it in Italy. It is only in New Zealand that state insurance in competition is fair, that is it is not privileged and is not subsidised, and there it seems to cover about ten per cent. of the field. It seems to be useful and satisfactory judging from the reports that I get, and is neither growing nor decreasing very much.

THE COMMISSIONER: You do not think it is satisfactory because it only gets a fraction of the insurance?

MR. SHERMAN: Well, it is satisfactory because it probably covers a field which is not satisfactorily covered by other forms of insurance. I do not feel as you seem to feel that there must be one kind to satisfy everybody. I believe that some people want one kind and some another kind; there is some advantage in variety.

THE COMMISSIONER: But what variety is there in an accident insurance company? They are all the same.

MR. SHERMAN: No, you have the state insurance, and you have the other.

THE COMMISSIONER: I see what you mean; it is all unanimity with accident companies, they agree. Unless an agent on the sly cuts the rate they have a uniform rate.

MR. SHERMAN: They have a tariff rate, but as a matter of fact there is some degree of competition, and if there is a field by which any one can get an extra lot of territory, or an extra lot of customers, he is very likely to move into that tariff or no tariff.

On page 88, in the first paragraph a little way down, Mr. Wegenast says: "The contract of insurance in such cases, however, assumes the form of an undertaking on the part of the insurance company to indemnify, not the workman against loss by injury, but the employer against loss through the enforcement of the workman's claim against him as employer." Generally throughout Europe it is not so categorically done. The insurance is for the employer and the workman, and I think insurance should be required that way by law; that is it should not insure the employer against the workman. I do not think it implies protective insurance against the workman so much as insurance for the workman.

THE COMMISSIONER: Yes, but is Mr. Wegenast not perfectly right? The contract is with the employer and the contract is simply to indemnify him against any claim that under the law the workman may have against him.

MR. SHERMAN: That is the contract under the tort liability.

THE COMMISSIONER: Under compensation too.

MR. SHERMAN: Not in the European countries.

THE COMMISSIONER: I have not seen the form of the policy.

MR. SHERMAN: I think you will find that under the American law, or the United States law, they are pretty much all requiring that to run direct to the workman. It ought to, of course; we want to get rid of that old insuring against the workman.

That about covers the principal points. Some of these statements occur again and again, but you know the points I want to illustrate. I think the majority opinion is against Mr. Wegenast's expression in regard to that.

THE COMMISSIONER: These observations you have made are supplemental to your written statement?

MR. SHERMAN: Yes.

THE COMMISSIONER: Because you attack him in several places in the written statement, not directly but in your text?

MR. SHERMAN: Yes.

MR. C. H. RITCHIE, K.C.: There is one question I want to ask Mr. Sherman while he is here. Have you seen the report of the working of the Compensation Act in Washington State?

MR. SHERMAN: Yes, I have a copy here.

THE COMMISSIONER: Is this the last report?

MR. RITCHIE: It is the only report as I understand it.

MR. SHERMAN: This is the report that is published.

MR. RITCHIE: How many reports have there been of the working of that?

MR. SHERMAN: As far as I know two, one for eight months and one for the year. This is for the year.

MR. RITCHIE: Is that the one that appears in the November issue of *Industrial Canada*?

MR. SHERMAN: It seems to be the same.

MR. RITCHIE: Then will you kindly tell me, Mr. Sherman, if you have any observations to make about the circumstances under which the report was made, and as to its accuracy?

MR. SHERMAN: That report shows they are claiming a very low cost for the operation of this law. I think it is very misleading, because if you look here you will find they have set up reserves, that is covering outstanding liabilities, in only about half of the fatal accidents so far.

THE COMMISSIONER: Do you mean half the claims allowed, or half of the claims made?

MR. SHERMAN: The claims made.

THE COMMISSIONER: If it is the claims made they shouldn't do that because a large number would have been withdrawn and disallowed.

MR. SHERMAN: Yes, but what they have done is set up their reserves solely for a proportion of the death claims and a proportion of the total permanently disabled, and they have in their balances a comparatively small proportion. You see their reserves would amount to about \$20 per accident; they balance about \$20 per accident. Now, they have about fifty per cent. of their claims for death, and for permanent total disablement unliquidated. You have to have a reserve to cover that.

THE COMMISSIONER: What do you mean by unliquidated?

MR. SHERMAN: That is the claim is simply presented and it is not adjusted. It is not allowed. The custom is in insurance, and particularly in the first year of the compensation laws, to calculate just as soon as you have notice of an accident the average amount which should be credited to the reserve against that, that is simply the more serious accidents. We find up here in this report that they had notice of a thousand or more accidents and there is no reserve for them at all, the law does not require any.

THE COMMISSIONER: Until the claim is allowed?

MR. SHERMAN: Whether the claim is allowed or not.

THE COMMISSIONER: When is the reserve required to be put up?

MR. SHERMAN: For death and permanent disability.

THE COMMISSIONER: When?

MR. SHERMAN: The law does not specify.

THE COMMISSIONER: They apparently do not require it until the claim is allowed.

MR. SHERMAN: No, and they have not set them up; I am talking about the cost of it. When they have in their balances only the same amount about as they have in their reserves, and they set up reserves for only a very small proportion of the accidents, it is perfectly apparent that their balances there are not sufficient to cover the rest of their outstanding liabilities. I do not think any actuary would dispute that proposition.

THE COMMISSIONER: But if they do not call upon the employer to put up the capitalized sum until the claim is allowed is your criticism not rather unfair?

MR. SHERMAN: It is perfectly fair. I am not questioning the fairness of it. I am questioning the fact that they are claiming that they can furnish this insurance at the present rates, and that I do not think that is right. The present board is all mixed up; two of them, I think, went directly against one, or one against two, but they are involved in a good deal of trouble at present. They are not doing anything very morally wrong, I do not mean to say that; but I mean to say that the attractiveness of this scheme to the employer is made to appear very much better than it really is. Another thing I dislike about this is the statement of what is known as the Chehalis explosion. They state what might have been, or as it would have been under certain other conditions, instead of reporting the fact very definitely. I have been writing to them as to that case, and the attorney for the Dupont Powder Company tells me an absolutely straight story which contradicts the story of the Washington board. I cannot take their statement. I do not know which is correct, but I would like to see that board report the facts about that accident as they have investigated it, and the calculations they have made. In other words they ought to report that frankly and candidly, and I do not think they have. I think that is a fault in that system of insurance. If you look at the report of the private companies as they are required in the United States you will find instead of a sheet like that there are about sixteen pages, very large pages, from which any one with any knowledge can calculate very exactly the operation of the law, and the cost, but this is simply a very partial report.

THE COMMISSIONER: I should have thought those sixteen pages would so bury it up in words that nobody but an expert could find out what it meant.

MR. SHERMAN: Well, that is true, but no expert can find out what this means, and the unexpert thinks he knows, and that is the trouble. In the other case he knows he cannot know.

MR. RITCHIE: In your opinion that report is misleading?

MR. SHERMAN: Yes, I think it is.

MR. RITCHIE: Does it in your opinion furnish any fair basis of comparison with the cost under other insurance systems?

MR. SHERMAN: No, you cannot compare that with anything; there is not a basis of comparison.

MR. RITCHIE: Then one more question: I see stated in an article here by Mr. Wegenast, at page 742 of the December number of *Industrial Canada*, "It has been practically certain all along that some form of workmen's compensation act would be introduced in Ontario at the coming session. The only question was as to the form which the legislation should take. Should it be an act such as those in force in England and in some of the provinces of Canada, for instance, British Columbia, Quebec and Manitoba, where the liability is imposed directly upon the individual employer, or should it be an act based upon the mutual insurance principle as in Germany and the State of Washington? Upon this question the manufacturers have given a decided answer. If there were no other ground of preference the fact that the plan favoured by the liability companies would cost employers two or three times as much for the same scale of benefits would surely be sufficient."

Now, does your experience as to the cost with liability companies compare with mutual companies or state insurance?

MR. SHERMAN: I do not think there could be anything like that possible. My own opinion is that the voluntary mutuals sometimes get rates down a little lower than private companies, and other times the private companies get the lowest rates in the long run. I do not think the collective system has ever succeeded in getting down the cost quite as low.

MR. RITCHIE: How?

MR. SHERMAN: Not quite as low in the long run.

MR. RITCHIE: You think the ordinary liability companies, all things being equal, would give insurance rates just as cheap?

MR. SHERMAN: I think about as cheap, yes.

MR. RITCHIE: I do not know whether you were asked the question, but what is the consensus of opinion, if there is any consensus, as to state insurance as opposed to ordinary insurance in mutual and liability companies? Is there any great preponderance of opinion?

MR. SHERMAN: There are so many different aspects of that. As I have said I think from the accident prevention standpoint the expert opinions are almost unanimous against state insurance. On the other side on the question of cost of administration opinion is divided, about evenly divided, I should say, according to the person's predilection and political ideas and things like that.

THE COMMISSIONER: Mr. Ritchie has used a term there that has many meanings as popularly used, "State insurance." What do you mean by State insurance? All kinds of things are denominated State insurance.

MR. SHERMAN: When I am speaking of it I mean where the State manages the fund, whether it guarantees the fund or not.

THE COMMISSIONER: You call that State insurance?

MR. SHERMAN: I do, yes. If you want to distinguish very closely, of course I would distinguish.

THE COMMISSIONER: Because it is in no sense state insurance where the state simply manages the fund and is under no liability.

MR. SHERMAN: That is not strictly State insurance, no sir.

THE COMMISSIONER: Have you any questions to ask, Mr. Wegenast?

MR. WEGENAST: I have not anything to ask but there are number of observations that I might make. I perhaps ought to thank Mr. Sherman for affording me such a large field for observation, but I am afraid the time would be too short to enter into the subject. So far as Mr. Sherman expresses his opinions I would be disposed to give every consideration because of the fact that he is representing a cause which I cannot regard otherwise than as lost. So far as he has ventured on statements of fact the time will be too short for me to deal with it. I want to make this statement, however, as uncritically as I can, and with a view, and realizing it may appear discourteous to a stranger, that the misstatements of fact which Mr. Sherman has made are both many and serious, and if it is important that they should be contradicted or dealt with I desire to have an opportunity of doing so. I hope you will give me also an opportunity of dealing with the brief that was filed by Mr. Wolfe.

THE COMMISSIONER: If you do not take too long to do it.

MR. WEGENAST: There is the trouble. These gentlemen come here and make statements, statement heaped upon statement, and unless one has a little time to analyze them it is impossible to meet them, and they may go uncontradicted, and the most absurd of them perhaps may do the most harm because uncontradicted; it is very difficult to select from amongst them. I hope to have an opportunity of doing what I can in that respect.

The statements Mr. Sherman has made with regard to the Washington system are perhaps illustrative of what I am referring to, and I ought to thank my learned friend, Mr. Ritchie, for giving me an opportunity of making these observations. The observations which Mr. Sherman has made are characteristic of the observations which both Mr. Sherman and some other representatives of liability companies have been making in different parts of the United States with regard to the Washington system. It so happens I spent a week in the State of Washington only a month or six weeks ago, and I think the last two columns of that Washington report were put in at my suggestion. The report was ready at the time, and I said to the auditor "you would give us a very valuable basis of comparison between your rates and the rates of the liability companies if you would work out these rates on the pay-roll." They have not given the pay-rolls, but I should hardly venture to think that there could be any mistake in the figures. The first reflection of course is that they are perhaps only one third or one fourth, or perhaps as low as one fifth, of the

average rates of the liability companies under systems giving very much smaller benefits; but passing that, I want to refer to what Mr. Sherman has said with regard to the reserves on death claims. The Commission has issued every month—not only at the end of six months or eight months, but every month—a statement showing the position of the fund, and in the other statements up to the eleven months' statement they have a column showing the number of deaths, and the number of deaths in which there were claims paid to dependants. I remember in the eleven months' statement (speaking subject to correction, but I think it was the eleventh month statement) the number of deaths in the lumbering industry, the largest industry, was 33; the number of deaths requiring no compensation to be paid to dependants was 29. The matter is absolutely clear to Mr. Sherman or to any other actuary why there are not larger reserves. The whole basis of the capitalization under the Washington system is a capital amount of \$4,000 set aside in case of any death where there are dependants.

THE COMMISSIONER: Why did that table not show the number of deaths in which there would be claims?

MR. WEGENAST: They did in the former tables.

THE COMMISSIONER: It ought to have been there.

MR. WEGENAST: If Mr. Sherman had seen the eleventh months report, or even the six months report, he would not have made the observations he has made.

THE COMMISSIONER: When do you understand they require the capitalized sum to be paid in?

MR. WEGENAST: There is no capitalized sum paid in. It is calculated in the rate; it is all made up in the rate they assess in the first place.

THE COMMISSIONER: In Ohio that is the capitalized sum?

MR. WEGENAST: No, they have a capitalized sum of \$4,000, but this is taken care of in the rate. They assess in the first place a three months' premium based on the schedule of rates. Wherever that fund was sufficient to carry them through the whole year providing for capitalization and all, no further assessment was made. As soon as it was necessary in any group to make a further assessment a further assessment was made, but these assessments were sufficient to set aside the necessary reserve funds, based on a capitalization of \$4,000 in case of death. I do not think Mr. Sherman would venture to say that the liability companies are in the habit of capitalizing a death claim at \$4,000. The capitalization under this system is surely ample as compared with the liability system, and there is absolutely no foundation for the impression which Mr. Sherman seeks to make that this reserve is not sufficient. If it is insufficient, if \$4,000 is not a sufficient reserve fund basis in the case of a death claim, then of course it is all the harder on the liability company. I hope to have an opportunity, Mr. Commissioner, within a week or ten days to say something further.

THE COMMISSIONER: If Mr. Sherman cares to do so I think he should answer that observation now.

MR. SHERMAN: I think Mr. Wegenast shows they have sufficient reserves to cover the death claims allowed, but death claims are a very small proportion of the compensation outstanding. All their other balances do not duplicate the reserves for death claims. I do not believe that that shows for a minute that they have collected the total amount of their accrued and outstanding liabilities. In other words I am positive in my opinion that they are not paying their indebtedness, but that they have an uncovered outstanding indebtedness in addition to that balance, in addition to their reserves.

MR. WEGENAST: That is getting away entirely from the point we are discussing. We have got away from the reserve fund as against the death claims. When you come to the other feature, the running claims, the claims for injuries which last three, four, or five months, then due allowance must of course be made of those claims which will run into the new year, but at the same time you must off-set against that the overlapping claims under the old system before the act came into force. You must make allowance for a fact which I ascertained there, that in a great many industries they did not find out that there was an employer until one of his employees was injured. Then the employer rushed in with his premium, and the employee got his compensation, showing plainly that a great deal of insurance was not paid for. That condition of things will, of course, be remedied very shortly; it was incidental to the beginning of the system. Setting those factors off against the deferred claims, while we may not have a perfect balance we will at least have somewhere near an approximate balance. Then there is room for those rates to be doubled before they will approach the rates under the ordinary systems which represent a much more modest scale of benefits than that afforded by the Washington act. The Washington act gives the largest scale of benefits of any system in the world.

THE COMMISSIONER: What do you mean by providing for claims for injuries before the act came into operation?

MR. WEGENAST: There will be a great many people who are not sufficiently informed as to the act. It takes a while for the act to come into operation and for people to know what their rights are under the act, and I have no doubt a great many claims during the first few months of the operation of the act would go unpaid.

THE COMMISSIONER: I understand you to mean claims before the act came into operation at all. I didn't see how that could be.

MR. WEGENAST: That condition of things is incidental to the beginning of the act, and I look for a slight increase next year unless it is counteracted by the very strong campaign which the Insurance Commission is conducting in favour of accident prevention. I was going to say I hoped to have Mr. Hinsdale, the Chief Auditor of the system, before you, and I hope the representatives of the liability companies will do him the courtesy of attending and criticising what he says.

MR. SHERMAN: The only thing, it seems to me from what Mr. Wegenast says, they are carrying on the scheme on a deferred basis for all injuries excepting death injuries. I do not think that is understood, and I think if they are

going on that basis they are going to find out not only next year the rates will go up very much higher, but the third, fourth, fifth, sixth, seventh and eighth year rates will all go higher on account of the accumulated pensions that will be rolling up.

MR. WEGENAST: I must correct Mr. Sherman and say he is entirely in error when he assumes there is a reserve fund only in case of death claims. Where the injury is only temporary, such as the loss of a finger or a hand, the payment is in a lump sum. Where the injury is permanent and total there is a sum of \$4,000 set aside. Where it is permanent but not total there is a less sum set aside, and it is all provided in the act. The idea under the Washington act is to capitalize fully; it is not on a deferred payment basis in any sense of the word. The only way in which any claims can be deferred is in the first year where the claims are not all brought in. I understand that during this year they have got the people of the state educated up to the point where the claims come in very promptly, within a few days. It is very improbable that there are deferred claims amounting to any considerable sum.

THE COMMISSIONER: Where are the figures with respect to these things?

MR. WEGENAST: They are included. There is a reserve set up in the woodworking industry of \$1,100.91. That plainly could not be a death claim or it would be \$4,000. That must be a permanent partial injury claim.

THE COMMISSIONER: I thought your idea was that these reserves only accounted for nineteen fatal cases?

MR. WEGENAST: I am speaking only of the lumbering class, which had the largest number of deaths; I think about half the deaths occurred in the lumber business.

THE COMMISSIONER: Are not the figures of the claims allowed something like 6,595?

MR. WEGENAST: Yes. Mr. Hinsdale, the auditor, wired me yesterday that he was equipped with full reports. This is only a sketch which was gotten out a few days after the close of the year, showing in the rough the results.

THE COMMISSIONER: If there were seven thousand claims and you are right about the way they are providing a reserve out there, the reserve would be a good deal larger than that statement shows.

MR. WEGENAST: The reserve is \$243,000.

Now, Mr. Wolfe stated, and I think in that respect perhaps he was correct, that in approximately 84 per cent. of the accidents the injury does not last beyond the thirteenth week. That of course does not represent the proportion of the cost at all. On that basis this statement looks very plausible. In regard to the deaths in the lumber camps that is capable of explanation. In the lumber camps a good many of the men are single men and have no dependants and float around the country and around the world with nobody particularly depending upon them, and it is quite possible that in the majority of cases there would be no claim: all they would need to do would be to bury the man, and there would be

no necessity for setting up a reserve fund. That is only an example of scores of questions of fact into which I would like to enter if it were considered necessary.

THE COMMISSIONER: I think it is quite likely we will have to wipe out all these experts on both sides and trust to common sense.

MR. WEGENAST: I have dealt with all these things in my brief, in anticipation of this belated appearance. As far as Mr. Sherman's observations on my brief are concerned, I would like to say that I am prepared to stand by every word of it. I was particularly careful not to include anything in my brief, either by way of statement of fact or of opinion that was not substantiated by authority.

THE COMMISSIONER: Mr. Ritchie, I think it would be just as well, if you can, if you would show us how these insurance companies provide reserves.

MR. RITCHIE: That can be done.

MR. WEGENAST: If you will permit me to go a little further, I want to venture the statement here, realizing its gravity, that I doubt whether there is a liability company in the Dominion of Canada to-day that can meet its obligations in respect of liability insurance that has not mortgaged the future to some extent.

THE COMMISSIONER: What do you mean by liability companies?

MR. WEGENAST: Liability insurance companies. I want to venture the statement, without professing any knowledge of the internal conditions of these companies but with the perfect willingness to establish it by the authority of actuaries, that there is not a liability company in business in the Dominion of Canada to-day that is prepared to meet its obligations. There are companies which have reserves derived from other lines of business who are able to meet their obligations, but I want to express in the plainest possible terms my belief that there is not a liability company that is prepared to-day to meet its obligations, and I would like to have their statement upon that point.

MR. RITCHIE: Of course that assertion is denied. However, Mr. Commissioner, as you suggest I will have a statement prepared.

THE COMMISSIONER: I would like to ask one question more, Mr. Sherman. If it is a fact that a large majority of manufacturers, perhaps the great bulk of the manufacturers, of this province desire the establishment of a law such as is discussed in that report, how do you account for it?

MR. SHERMAN: Well, you are assuming something.

THE COMMISSIONER: I do not know whether the hypothesis is correct or not: assuming it to be so, how would you account for it?

MR. SHERMAN: I think they have been attracted by the idea that it is going to be very cheap and would defer the cost to future generations as in Germany. I think that would be so with a good many. As I do not myself find many manufacturers who have studied this subject desire anything of the kind, I am a little bit doubtful of the hypothesis.

MR. WEGENAST: I understand Mr. Sherman advocates the Michigan act, and I would like to ask Mr. Sherman what observations he has to offer to this article from the *Western Underwriter*, a paper I think of some standing in insurance circles. It is headed "Want law repealed":—

"That an attempt will be made to repeal the Michigan Workman's Compensation Law, is the report that has gained considerable currency out in the State. The manufacturers are at the bottom of the move. Those in the smaller cities cannot reconcile themselves to the big hoist in rates which has prevailed since the law became effective. In Detroit, thus far, there has been no talk of repealing it. The manufacturers seem to have accepted it as one of the steps of modern progress and are adjusting their affairs to meet it. The manufacturers who are agitating for a repeal are charging that the casualty companies were the chief lobbyists in favour of the law when it was passed. The casualty companies deny this saying they did not favour it at the time, but have accepted it and are doing their best to live up to it." Then out in the State it is claimed that the compensation rates are being cut from 25 to 35 per cent. Then it goes on under the headings "Crooked Attorneys Busy," "Riddles State Plan." The liability companies are getting back at the commissioner who was appointed under the Michigan act and who is now advocating the establishment of a State system. The liability companies are getting back at him and riddling his plan. Then the next heading is, "Many Entanglements," showing the whole system in the State of Michigan after a year's operation is one of indescribable chaos.

MR. RITCHIE: I was wondering who paid for that.

MR. WEGENAST: Oh, this is an insurance journal published in the interests of insurance companies.

I understand, Mr. Sherman, you recommend the Michigan system of workmen's compensation. Have you any observations or any explanations to offer upon the situation in the State of Michigan?

MR. SHERMAN: This newspaper report simply gives an account of a good many different feelings and troubles down in Michigan. The Michigan law has not been in operation very long and it is meeting some of the difficulties, but I do not see all that the German law has got up against, and all that the foreign laws are up against. I would never want to be understood as saying that the employees or workmen or anybody is satisfied with any law that I have ever seen in operation. They are all more or less dissatisfied. I have been in different parts of Michigan, and the employers are forming some mutual associations. The general opinion I found there was that the law from the employers' standpoint had increased their cost exceedingly; they had the same feeling about that increase that they had in England, as I mentioned, and that they have everywhere. In spite of some criticisms amongst the insurance people that the State insurance Commissioner, who is authorized to manage things in his State office, has been campaigning around the State for business, and has been conducting a regular campaign for business—that is competitive. I rather believe in it myself—but the insurance companies are calling names at him and he is calling names at them; that is very good for both sides and will have a chastening effect. I don't know of anything else that I can say.

MR. WEGENAST: I would make this final observation. I do not suppose there is any use asking Mr. Sherman questions about it, but I want to make the statement that in comparison with them I found after promiscuous inquiry throughout the State of Washington that there was not a single employer, employee or member of the general community, who had any fault to find with the Washington system or the general principles under which it is operated.

MR. MACMURCHY: Are you referring to the Dupont case?

MR. WEGENAST: I want to tell Mr. Sherman that the Dupont people had written out a cheque for the amount of their premium when the news came of the Chehalis disaster, and that they have been negotiating and dickering with the State Insurance Department since that time to try and get the Insurance Department to let them come in after the Chehalis disaster. There are further significant facts in connection with that. I mentioned one fact at the last sitting, that notwithstanding that tremendous catastrophe if the Dupont people had paid their premium the rate would have been only about five per cent., showing that the catastrophe hazard is a bug-a-boo which the insurance people are trying to make a great deal of, but which in reality does not amount to a very great deal. I want to make this qualification. I said there was perfect satisfaction with the principles of the Washington act. I want to say this, that notwithstanding this act offers the largest scale of benefits of any system in the world the workmen were asking for more, and I think that is a condition that we can hardly expect to cope with. At the same time I want to make that qualification so as to keep myself absolutely correct.

MR. HELLMUTH: May I ask if Mr. Wegenast will let us have copies of those reports before Mr. Hinsdale is called?

MR. WEGENAST: He said he would bring the reports with him. There will not be any prints; I think the telegram said he had only proofs of them to bring. I would be very glad to facilitate my learned friend if I could do so.

MR. BANCROFT: Mr. Commissioner, the elaborate statement that Mr. Sherman has given us appeals to us the same as it does to Mr. Wegenast; it needs a good deal of answering. There is a great deal in it with which we do not agree and which we believe is not correct. In the first place with regard to the National Civic Federation, of which Mr. Sherman speaks, Mr. Mitchell, who was a member of the National Civic Federation and who is organizing the United Mine Workers of the world consisting of a quarter of a million members, was more or less compelled to withdraw from that body. I met Mr. Mitchell about two weeks ago in New York; he had been over in Washington in the summer and had been taking a great deal of interest in the Washington act. He assured me that the Washington act was working splendidly and that it was a good act, and as far as he knew no complaints could be made against the administration. I also met men in New York who were part of the original conference, I believe they were on Mr. Sherman's committee; there was Mr. Gernon. I think he was Chairman of the original conference in New York on

workmen's compensation, and they have met the Civic Federation at different times.

MR. SHERMAN: They are members.

MR. BANCROFT: Their declaration is for state insurance.

MR. SHERMAN: They are out now for state insurance.

MR. BANCROFT: They have taken the same position as we have done here with regard to the state insurance plan. So you see Mr. Sherman's statement needs a great deal of answering, and some of the statements that Mr. Sherman has made need qualification. We would like to look over his brief for the purpose of answering it if they will furnish us with a copy.

MR. HELLMUTH: We will certainly furnish you with a copy.

MR. BANCROFT: We rather feel, whether it is right to say it or not, that Mr. Sherman's opinions largely reflect the opinions and maybe the desires of the great accident insurance companies of the United States; that is the impression that I gained from my visit down south. We find there is a great deal of difference between Canada and the United States in this respect, that in Canada the Canadian Manufacturers Association is well organized, and the accident insurance companies, as far as I can find out, are not organized. In the United States, particularly in the State of New York, it is altogether different. The manufacturers are not very well organized and the accident insurance companies are well organized. It is these latter, the companies, who are putting up objections to state insurance; the fact is very plain to us, and I suppose to every one else. Like Mr. Wegenast, I am convinced from the information I have gained that the Dupont Powder Company explosion is merely being used by the accident insurance companies as an argument against the Washington act, while those who are administering the Washington act hardly regard it as of any importance whatever. I have information similar to what Mr. Wegenast has given us, that the Dupont Powder Company was on the eve of coming into the scheme. It would have cost them very little if they had got in beforehand, and they wish they had got in before the explosion happened. I believe I have some knowledge of those matters, but as I say, you cannot just offhand reply to a brief or to a memorial such as Mr. Sherman has presented.

THE COMMISSIONER: Are there any questions you would like to ask?

MR. BANCROFT: Yes. Is it not a fact, Mr. Sherman, that the National Civic Federation are drawing up a bill which has for its object federal legislation?

MR. SHERMAN: Not that I know of.

MR. BANCROFT: Have they not got an idea, and are they not trying to spread the theory that under workmen's compensation it will be far better to allow the accident insurance companies to do the insuring and the State guarantee the insurance company?

MR. SHERMAN: I have never heard of that specially. It is the British and Belgium

way. I have never heard of that. What happened was along about 1911, or 1910, the Civic Federation drew up a bill, or a draft of a bill, for a compensation law which was circulated throughout the United States, advocating compensation laws. I do not believe anybody in the Civic Federation ever heard of any accident insurance companies at that time. That followed along the lines of the British law. The Federal Commission rather followed that; and Kansas and a few other States. Recently the Civic Federation has been trying to bring that draft down to date in view of the general experience, and circulate it simply as a basis for any form of laws adapted to the different states, without taking any particular attitude—a basic frame work. In New York State we have had conferences in which a great deal of difference of opinion has been developed; I think we are now getting pretty close together. You know the American Federation of Labour has been right back of the Civic Federation.

MR. BANCROFT: Is it not a fact, as you have mentioned here where the National Civic Federation is not understood, that it is rather a debating society? That is nearer correct?

MR. SHERMAN: That is substantially correct. They do not bind anybody.

MR. BANCROFT: They do not represent anybody but themselves in the Federation?

MR. SHERMAN: They are representing themselves.

MR. BANCROFT: For instance, Mr. Gompers represented Mr. Mitchell, but not in the Federation?

MR. SHERMAN: No, there is no delegating at all.

THE COMMISSIONER: Then it is understood that Mr. Bancroft and those associated with him may put in a written statement in answer to that. I understand he wishes to answer Mr. Wegenast as well?

MR. BANCROFT: Yes, we are coming in a little later.

THE COMMISSIONER: You must not leave it too late.

MR. BANCROFT: If they keep on calling experts we will never get a chance.

THE COMMISSIONER: I suppose the great body of the people want to get the best law, both employers and employees. No man of course, wants to be put out of business if he can help it.

I understand there is a gentleman from Berlin who wishes to speak.

MR. J. A. SCELLEN: Mr. Commissioner, a short time ago there was a circular letter sent out by one of the large private liability insurance companies setting forth very skilfully the arguments in favour of private liability insurance in preference to a government administered system. The arguments advanced in that letter were such that no doubt many employers of labour were induced to give a favourable answer, because the form of the letter and the arguments used were, as we think, somewhat unfair. The letter, after reciting the proposed legislation, amongst other arguments sets forth: "State insurance is a movement towards paternalism of Government, more far reaching than any economic measure heretofore proposed. The adoption of such a plan commits you to a principle, which,

if carried to its logical conclusion, means that any or all commercial industries may properly be conducted by the Government to the exclusion of private enterprises. It is for the Government to decide as to what form of legislation to place on the statute books in respect to compensation to injured workmen. That is one thing, but for the Government to arbitrarily fix the rates that the employer must pay for his protection is, I think you will agree with me, taking away your inalienable right to purchase your insurance, or protection, at the lowest possible cost." Then further it advances reasons, and winds up: "May I ask your replies to the following queries: Do you approve of that much of the proposal, viz., state insurance? Or are you in favour of continuing the present conditions whereby you may carry your own risk, or purchase insurance from companies properly qualified for that business?"

Now, many of the employers of Waterloo county, Berlin and Waterloo, from which I come, received that circular letter, and in order that there may be no mistaking the feeling among those employers and manufacturers I was sent down here to-day to say to you, Mr. Commissioner, that they are practically unanimous in opposing any privately conducted liability insurance, and that they are strongly in favour of a system administered by the Government. They have incorporated those views after a discussion of the principles, and have a petition signed, as I say, by practically every employer in Berlin and by many in the town of Waterloo. Not only have the manufacturers and employers expressed themselves to that end, but also the Trades and Labour Council of Berlin, which had this matter under discussion. The Trades and Labour Council represents all the trades and labour unions in that city, and have passed a resolution expressing in the same way their preference for a system of insurance administered by the Government. Those are the views, practically without dissent. There was a follow-up letter later on in which they referred to the former letter, stating "Will you be good enough to let me have your views on the subject, or if you have been unable to form an opinion, then a letter to that effect."

THE COMMISSIONER: Did any of the gentlemen sign this petition?

MR. SCELLEN: No, but I understand there were two or three misled by the letter. They did not understand it and were led to answer favourably.

THE COMMISSIONER: I have seen something of that kind emanating from an insurance company, with, I think, the initials "A. L."

MR. RITCHIE: Will you allow me to answer this, Mr. Commissioner?

THE COMMISSIONER: Certainly.

MR. RITCHIE: Some time ago representations were made to some of the casualty companies that this petition that was sent in by the Board of Trade did not represent the views of the manufacturers but rather elaborated the personal views of Mr. Wegenast who was retained by a committee that was appointed, and who was retained to collect evidence and make a report. It was also pointed out, or at least represented, that some of the members whose names appeared as members of that committee were not present at the discussion. Others subsequently said that while they did discuss the question of workmen's compensation, all agreed that the feature

as to state insurance had not been brought forth prominently and had not been discussed, and that this petition really presented the views of Mr. Wegenast rather than the members of the committee. Having heard that, this particular circular to which Mr. Scellen refers was sent out; I will not take up your time in reading it because it is going to be put in. I submit there is no justification in the statement that anything appearing in that letter was of a misleading character, "May I ask your replies to the following queries: "Do you approve of that much of the proposal, viz., State insurance? Or are you in favour of continuing the present conditions whereby you may carry your own risk, or purchase insurance from companies properly qualified for that business? I shall be glad if you will let me hear from you at the earliest possible moment;" it seems to me it could not be put more clearly than that.

THE COMMISSIONER: That is not what Mr. Scellen is complaining about. It is the statement of what the proposition involves.

MR. RITCHIE: I submit there is nothing objectionable in that.

THE COMMISSIONER: It is wholly inaccurate; that is all there is objectionable in it.

MR. RITCHIE: Well, I have not read it recently, but if you will point out what is inaccurate?

THE COMMISSIONER: Everything in that statement is inaccurate.

MR. RITCHIE: "You are no doubt aware that a Royal Commission has been appointed by the Ontario Government." That of course is not.

THE COMMISSIONER: No.

MR. RITCHIE: "The Commissioner, Sir William Ralph Meredith, is now visiting England and the continental countries to investigate on the ground the systems in operation in these countries." That, of course, is not inaccurate. "A plan may be proposed by which all workmen sustaining personal injuries by accident arising out of and in the course of their employment will receive compensation irrespective of who are to blame. A workmen's compensation act of such a nature would be only similar to those adopted in the other provinces of the Dominion as well as in England. There is a suggestion in the interim report of the Commissioner, that the manufacturers of the Province of Ontario are favourable to a scheme of state insurance. The details, of course, are not disclosed, but the scheme would, I imagine, be operated on an assessment plan." I do not see, Mr. Commissioner, that you can find any objection up to that point?

THE COMMISSIONER: It is not State insurance at all; that is a misleading statement.

MR. RITCHIE: It says "there is a suggestion in the interim report." I think that is the inference I would read.

THE COMMISSIONER: State insurance is an entirely different thing. It is simply the management by the state of a fund provided by the employers to compensate the workmen for the injuries within the scope of the act,

which is an entirely different thing, and in no way open to the objections that seem to underlie that statement.

MR. RITCHIE: I daresay the difficulty is, judging from the replies, that none of them seems to understand what State insurance really means.

"State insurance is a movement towards paternalism of Government, more far-reaching than any economic measure heretofore proposed. The adoption of such a plan commits you to a principle, which, if carried to its logical conclusion, means that any or all commercial industries may properly be conducted by the Government to the exclusion of private enterprises. It is for the Government to decide as to what form of legislation to place on the statute books in respect to compensation to injured workmen. That is one thing, but for the Government to fix arbitrarily the rates that the employer must pay for his protection is, I think you will agree with me, taking away your inalienable rights to purchase your insurance or protection at the lowest possible cost. Any legislation that will eliminate law costs and provide adequate compensation to the injured workmen will be gladly welcomed by the insurance companies. Let the Government pass such an act, and if necessary see that the liability companies are subject to the closest Government inspection so that no injustice may be done the employer in the fixing of rates, and I think it will be found that there will be a better feeling between the employer and the employee than if arbitrary rates are fixed by the Government under a system of State insurance and injured employees are compelled to look directly to the Government for compensation." Then it goes on "May I ask for your replies?"

That letter was sent out. Very shortly after there was sent out, as I have understood, by Mr. Wegenast a letter in which he said that a circular letter was being sent out by the Employers' Liability Company asking for answers to certain questions and stating that the circular was very misleading in its statements, and for them to ignore the circular letter, or at any rate to examine into the provisions of the proposed act before condemning it. I am instructed that there were probably about fifteen hundred letters sent out, or in that neighborhood. In answer to these, before apparently Mr. Wegenast's circular was received by them, eight hundred and ninety-two replies were received, and in these a number of employers, 70 or 80 per cent., favoured State insurance. The number of employers favourable to the present system of purchasing insurance from companies qualified for that purpose was 43 per cent. Then there were 49 per cent. of the eight hundred and ninety-two who said they had not given any consideration to the question and were not prepared to give any opinion.

THE COMMISSIONER: I suppose that was a polite way of saying "Mind your own business."

MR. RITCHIE: Well, you many construe it in that way; the fact is, as they say that they have not given it consideration. The names of these people are all given; the letters are all here; and my learned friend Mr. Wegenast may compare, if he desires to, the letters with the tabulation that we have made of them. At all events it shows in three hundred and eighty-four

cases these employers have written to say they are in favour of the present system of buying their own insurance.

THE COMMISSIONER: I should have thought it was a very injudicious circular to send out. If they wanted an honest opinion as to this they would have said what was proposed; but to load it up with irrelevant and inaccurate statements as to what the scheme was, and what the consequence would be. It was, I think, very ill-advised, if I have a right to express any opinion upon it.

MR. RITCHIE: I have read the circular which was sent out in full. I did not scrutinize very carefully what was in the interim report, but it seemed to me having asked the question in that way, and the replies to these queries being as they are, that that was a matter that might very well be taken into consideration. At all events the gentleman who sent it out was led to believe that the Canadian Manufacturers were not by any means unanimous, and as I have said the committee were not unanimous, and they thought they would get an expression of opinion.

THE COMMISSIONER: This has been going on for months, and Mr. Wegenast has been here expressing their views; if he were not expressing their views correctly, I should think that as business men they would soon be here to tell me so.

MR. RITCHIE: We had no instructions in the matter until long after you had made your interim report, and these gentlemen thought it was a fair way of finding out whether this scheme was upheld by them. It is for you, Mr. Commissioner, to say, to express your view.

THE COMMISSIONER: First my idea was, Can I propose a scheme that is economically sound and workable? If I can, and that is acceptable to the body of the employers and to the body of the workmen, I think the employers' liability companies and insurance companies are a negligible quantity. What have they to say about it?

MR. RITCHIE: Quite so. I understand you will say they are self-interested; but any argument they can adduce for the purpose of showing that what is proposed is not economically sound, is not just, and would not be workable, that is perfectly fair ground.

They agree, of course, with the view that there should be a workmen's compensation act; and as to the details of it, that is for you, sir, to work out.

THE COMMISSIONER: I would like it to go out from this commission that if there is any member of the executive committee of the Manufacturers Association, or any individual member of that Association, who repudiates or is dissatisfied with Mr. Wegenast's representation of what their attitude is, that they shall notify me in writing. That perhaps will test whether Mr. Wegenast does represent them. I would have thought when there has been no protest from anybody that was the best indication that he was representing those for whom he assumes to act, and representing their views. Whether they are right or not is another question.

MR. BANCROFT: I do not know whether it is the fact, but I would like to ask Mr. Ritchie. I understand after consulting an actuary in New York in

whom I have some faith, that the reason that the insurance companies were in this position in Great Britain was that the stock-holders were not making any money and that the insurance companies were not a paying proposition; that the reason they always opposed state insurance was from this standpoint, that the managers, superintendents and the field force did not want to be put out of their positions, and so there was great opposition.

THE COMMISSIONER: They ought to form a union.

MR. BANCROFT: I submit that is the object of the opposition.

THE COMMISSIONER: It is human nature.

MR. RITCHIE: It is human nature; I am not going to controvert that position at all.

MR. BANCROFT: I submit if that is the reason for the opposition of the insurance companies they should say so, and not attempt to speak for the Manufacturers Association, who have spoken for themselves. That information seems, I say, to be somewhat reliable. The accident insurance companies ought, I think, to show us how to draw up an act which is better than the one which has been proposed instead of trying to show in their own self-interests that their particular interests should be maintained in the community, and hinder the progress of a great interest at stake which is perhaps greater than the insurance companies. The workers are concerned much more than the accident insurance companies in this business of getting compensation.

MR. RITCHIE: The insurance companies are quite willing to submit to any obligations that are imposed upon them. You asked the question of Mr. Sherman, Mr. Commissioner, whether he did not think in case of deferred payments that the insurance companies ought to make some provision by setting apart a deposit. I understand the companies I represent are quite willing to submit to any such condition as that; if it is deferred payments and the liability is spread over a number of years, that that should be deposited to meet the payment when it matures from time to time.

MR. HARVEY HALL: I just want to make one or two observations here, and one is in reference to a statement made by Mr. Sherman in which he suggested that the right of the employers and the employees to make agreements between themselves with reference to compensation—I may have misunderstood him but I understood it to be that he made the suggestion that that should be made a part of the provisions of the statute. I do not know whether it is or not, but I hope it is not. I hope that will never be allowed because possibility of influence being used upon a certain proportion of the employees to bring about that condition which has in the past resulted in very serious concern on the part of the employees. You will no doubt recollect the old Grand Trunk compensation act which was worked under a statute got by the Grand Trunk, and through the agreements made under that statute those men were contracted out of liability.

THE COMMISSIONER: That is not what Mr. Sherman meant. I think Mr. Sherman was explaining what the features of the British act were, and amongst them he mentioned a provision that the employers and the workmen in any

particular establishment might agree upon a scheme provided the compensation is at least equal to that which the workmen would have under the act. That did not exist under the Grand Trunk act.

MR. HALL: I hope that will be prevented.

THE COMMISSIONER: Then some Government official has to be satisfied with that before it becomes operative.

MR. HALL: From my experience it is an easy matter to bring the evidence to make out that the employee is satisfied.

THE COMMISSIONER: That is not it. The question is, is the benefit that he gets under this family scheme, if we may call it that, at least equal to what he gets under the act; if it is not then the scheme has no operation against him.

MR. HALL: Even then I think it ought to be under the supervision of the Government to see that those claims are carried out, because in my experience it is an iniquitous proposition.

THE COMMISSIONER: There is no doubt the Grand Trunk scheme gave the workmen a great deal less than they would get under such a law as is proposed.

MR. GIBBONS: Did that not have the effect that the workman accepted a great deal less for fear he would lose his job?

THE COMMISSIONER: Would he not run the same risk if he made a claim?

MR. GIBBONS: The board would then adjust his claim.

THE COMMISSIONER: I should hope under whatever scheme it is, whether the railways are within or without this compensation plan if that is adopted, that the Board will settle the claims and they would have to pay them.

MR. MACMURCHY: Certainly: that is the proposition.

MR. HALL: That is one question; the other is the matter of groups, putting the railways all in one group. That matter has been given some consideration by the conductors in this district, and with the knowledge that we have of the different railways of the country we think it would hardly be fair. You would have to make an equal assessment against each railway company to assure this fund. Now, all railways are not equipped alike, some of them are very careless with regard to their equipment: I am afraid if you were to establish the group system that the careless fellow would say it doesn't make any difference for it is not costing me more than the other fellow who spends a great deal of money in improving his equipment.

THE COMMISSIONER: You are following up Mr. Sherman on the whole scheme.

MR. HALL: There are things I disagree with, but there are some things he has pointed out, whether intentionally or not, that I do agree with, and that is one. Our railway companies are nearly all solvent propositions, but at the same time I feel that the employees of the railway companies should be brought under the protection of the act in some way, that there should be a reference board of some nature by which when a company makes an

offer of settlement that is refused by the employee that he should have a right of referring to this board to see whether it is right or not.

MR. D. L. McCARTHY, K.C.: There is no objection to that.

MR. HALL: Anything to keep him out of legal proceedings. I do not know whether the lawyers will agree with me, but a great deal of the insurance to-day, gentlemen, is eaten up in that way.

THE COMMISSIONER: By whom?

MR. HALL: By such men as Mr. Ritchie here. (Laughter). I believe the intention of this act is that we are trying to take something away from these gentlemen that they have enjoyed for many years.

THE COMMISSIONER: I do not think this can be a blow at the lawyers or we would have the whole Law Society here.

MR. HALL: Well, they are well represented here to-day anyway. However, so far as the railway companies are concerned the conductors of this district do agree to this principle, so far as the Canadian Pacific Railway is concerned, that the company pay the indemnity, but they should have the right of protection of a Board to which they could refer in case of dispute, so that they can avoid the law costs that they are up against at the present time.

MR. E. M. TROWERN: As representing the Retail Merchants Association I was here some time ago.

THE COMMISSIONER: You need not remind anybody who was present on that occasion that you were here.

MR. TROWERN: I have been watching this matter very closely since, and I have also been discussing it with a number of merchants throughout the country. In listening to the discussion that has been going on to-day I find that there are no precedents anywhere by which the retail merchants come under this law. The time is getting very short between now and the opening of the session, and as this is a commission as I understand it for getting information so as to compile an act, it looks to me that while there is a conflict between the Manufacturers Association, or members of it, or the manufacturers rather, as has been shown here this afternoon, there is going to be a greater conflict when the facts are brought out. Would it not be a wise thing if we had something to go on in discussing this matter with the merchants? The first thing they ask is, and naturally, "What are the proposals; what does the Government propose?" I am at a loss, and I think every man in the room is at a loss to know exactly what the proposal is. I cannot see how in the world the retail merchants are going to come under it. The working class want it, I say give it to them; the manufacturers evidently want it, I say give it to them. The retail merchants certainly do not want it; we do not want to be mixed into a thing that we do not know the first thing about and that is going to place a liability on every little storekeeper throughout the province for the benefit of some one he employs. He employs the man and gives him occupation and takes care of him, and then has to contribute, as I under-

stand, to the Government a certain sum of money to keep him when he is sick or meets with an accident, or something happens to him. We cannot change our minds—we have not been able to change our minds, we certainly would like, if there were a possibility, of having the thing thrown over. I am speaking now because I feel it is our duty as citizens, and my duty as secretary of the Retail Merchants Association, to give the Commissioner all the information that it is possible to give regarding the interests that I represent. I do not pretend to know anything about any other interests than the interests I am representing. Having been brought up in the retail trade and understanding the retail business, I feel that I am competent to speak for the retailers but for no other class. Our retail merchants throughout the country are watching very closely now and wanting to know what is the proposal. Lots of them, as you know, are Conservatives, as well as Liberals, and the Conservatives feel that the Government is not going to bring in anything that is going to be an injury to them; but they have nothing to go on, they have absolutely nothing in front of them only just the information that comes out in the press and that, of course, is not sufficiently extensive, the papers could not hold all the information they desire. So, Mr. Commissioner, I am asking would it not be a wise move to have a bill prepared, and then give the merchants and manufacturers and others an opportunity of knowing the contents of it, because the bill will go in and we will not have time to do anything. An unfortunate thing we have in this particular Government is that we do not get time enough between the publication of an act and the time it comes before the committee; they no sooner print it, the print is hardly dry, before the bill is before the committee and then it passes through the House.

THE COMMISSIONER: They are afraid of hearing you.

MR. TROWERN: Well, if there is anything going to be presented that will be detrimental to our interests I feel we ought to have time. The Government have always treated us fairly, but I certainly would like to have a little time between the drafting of the act and its presentation to the Government.

THE COMMISSIONER: I hope I did not misunderstand you. If I understood you aright the principle you laid down I should have thought would hardly be acceptable in this modern age, that the employer conferred a favour upon the workman by giving him employment and paying him wages. Might the workman not just as well say he conferred upon the employer a favour by giving him his services. Is that not a wrong way to approach the subject; is it not just a case that he gives his service and has to be paid for it? There is no compliment by anybody in the transaction; is that not so?

MR. TROWERN: Yes, it is so. Your conditions are a little different as retailers than they are with the manufacturing industry. The retailers' profits to-day are very small and we have a great many difficulties that it would be out of place to discuss here. The employment of a clerk is a different proposition from the employment of a skilled mechanic, an entirely different proposition. To give you an illustration, I may tell you that the employees of the retail merchants travel from place to place more in Canada

than they do in England or in Germany. Take as an illustration the waiters in restaurants; we all know that there are hosts of waiters who make it their business to travel around the world. They are here to-day and maybe work a week and are gone: they have seen enough of Toronto and they go on to another city. We want to know where we are with such help as that. Clerks are not engaged as long in their employments as a man who is a master mechanic, a man who is acquainted with the moulding trade, or the manufacture of any specific article; he does not travel around the same way as a clerk. People engaged in restaurants, and engaged in all sorts of business come in and go out; if they are all going to be included under this act we want to know it.

**THE COMMISSIONER:** For your information, Mr. Trowern, I will explain to you what the object of this Commission is, and what is its function. I am commissioned to enquire as to what, having regard to existing legislation in other countries and conditions here, would be the best law to put upon the statute book. I have to get what information I can, and if the retail merchants have any information that would enable a constructive policy to be adopted, or anything in the nature of objections to what is proposed or what has been suggested by those who have spoken, they should lay it before me if they choose to do so. Then I have to take the responsibility of coming to a conclusion upon what I think is a fair law, and report that to the Government. It will be for the Government to say whether they will introduce it at all; and if they are going to introduce it, when they will introduce it. If I do report a draft act, if there is any desire on the part of any employers or employees that that should not stand, the proper place to make representations is to the Government, and urge upon them to let it be placed before the public before it becomes a law.

**MR. CALVIN LAWRENCE:** I have appeared twice before you, Mr. Commissioner, on this matter, and on one occasion I mentioned a law that at that time was introduced in the United States Senate. It passed through the Senate but Congress adjourned in 1912 before it was enacted. There are some good features in that law, and are some features that I would call bad, some provisions that I do not agree with. In the first place it says that every person engaged in interstate or foreign commerce, including commerce in the District of Columbia . . . shall pay compensation in the amount herein-after specified to any employee who is hired or employed in such commerce by such employer who sustains personal injuries by an accident arising out of and in the course of his employment and resulting in his disability, or to the dependants hereinafter defined, etc. As I understand it that means that each railway company will pay their own compensation, compensation to their own employees, and not be grouped as was suggested in your interim report. I do not know that I led you to believe that we were in favour of the railway companies being grouped, that was not my intention. I think it would be to the detriment of the employees to group the railway companies. Any one familiar with the railway companies of Ontario and of the Dominion knows that some railway companies are more efficiently equipped than others. With some railroads there are more accidents than with others. We think as employees of our railway that if they were grouped and the efficient roads had to pay their share to the

compensation for the employees on inefficient roads, that it would be a detriment to the employees on the inefficient roads.

THE COMMISSIONER: Do you not think, in the language of the street, they would try and make the other railways sit up?

MR. LAWRENCE: Can they do it?

THE COMMISSIONER: They could put the law in force.

MR. LAWRENCE: The Railway Board has passed orders for safety appliances on locomotives and cars. There are a number of railroads in Ontario that have greater efficiency in that line than the railway commissioners say they shall have, got by the employees. The employees' committee, if they see anything they think would be for their safety, will take it up with the officers of the road, and they get some things that the commission does not require them to have. If we go before the commission and ask for certain things, of course the railway companies naturally will oppose it for the simple reason, not because some of them do not want the equipment, but if it is made an order and a locomotive or car is sent out without being so equipped and an accident happens to an employee on that account, then they are liable for damages. I have had complaints from some roads about wooden bridges, and things like that, where employees claimed they were not properly watched and there was danger of accident in that regard. There is a law laid down with regard to that, and it is a hard matter. Of course all the railway companies have to watch their wooden bridges, or culverts, in case of fire. This law also says they may organize and constitute in such a manner as they may determine a committee or committees for the purpose of settling disputes, and for awarding compensation according as it is prescribed in the act. That means, as I understand it, that the employees can have a committee, and the employers can have a committee, and in case of an accident the committees will get together, and if they can make a settlement well and good. I believe in a large majority of cases they could make a settlement. Then in case they cannot make a settlement they appoint an adjuster, and it is referred to him. The adjuster is paid as the district judges are paid in the United States, and that I think is the proper thing. This act also provides that an employee cannot contract, it does not make any difference what scheme he makes with the employer, it has no effect. Section 19 reads: "No contract, rule, regulation, or device, whatsoever, shall operate to relieve the employer in whole or in part of any liability created by this act." There are other features in this that I cannot agree with, but it is not necessary for me to mention them; that can be worked out later on as I understand when the bill is drafted. On behalf of the locomotive engineers I request particularly that the railway companies be not grouped, because it will not be to our benefit. I think it would be to our detriment if the railway companies were grouped as suggested by the other trades. I am not in a position to say anything about the other trades, whether they should be grouped or not, but I have been instructed that we take this up. We have legislative boards for each Province, as well as for the Dominion. Our legislative boards meet here in Toronto. We met last January and this thing was thoroughly discussed, and they were unanimous. Every

railway centre in Ontario was represented, and they were unanimous that it would be to the detriment of the employees to group the railways in this workmen's compensation act. As I understand it some of the railway companies at least are in favour of a proper workmen's compensation act, which we have not got at the present time, and therefore, Mr. Commissioner, we would make the request that the railway companies be not grouped.

MR. CHARLES CLARKE: I am a locomotive engineer, and I have been in the business for forty-five years. I am sent here by the men to tell you that they are certainly against grouping the railways; they want to be by themselves. We have always got compensation so far, and I doubt if you make a bill now you will do as good as they have been doing. However, we think it would be a detriment to the road, or a very poor encouragement for them anyway, to look after its rolling stock, and keep up with all the modern appliances to date, if they had to pay part of the other roads' liabilities. Our men think, on the other hand, it would be wrong to take the money that our company pays out to pay into any other company. They have always been quite willing to meet us, and I can speak for quite a number. You will understand, sir, I have been thirty years employed with the Canadian Pacific, and during that time there is no doubt I have seen a good many injured, and I have seen a good many people pass into eternity; in my own family it has been the same. I want to say I have yet to find a case where compensation has been asked that our company has not liberally made it. In fact I know the engineers, and the trainmen too, every one that I have talked to are much opposed to doing anything like putting us into a pot, as it were, and everybody to take their share out. Now, sir, we have nothing against compensation; whatever liabilities there are we would like to have our company pay them. I like the open statement that Colonel Gartshore made to you last winter. I was very sorry that I did not know of that meeting, for I certainly should have been there on behalf of the railwaymen of London. He said he believed in compensation, and he believed it should start from the moment that the workman is injured, and he believed in paying for medical services and medicine, and all such things. He also said he wouldn't like to say just how much, but he thought it should start off with fifty per cent., and when the workman was able to go to work it could then be settled by a committee of the Friendly Societies and the management. If not settled then he said it might go to law, but he ventured the assertion that there would not be one case in ten. I can safely say, sir, that we would not have one in fifty. I believe in giving the best day's work for the best day's pay. I do not believe there is a man in the Ontario Division who has been as much in touch with this as I have, and I must say they have been very good in meeting everything; I have often gone to Montreal and I have yet to come home empty-handed. Now, sir, if you can see your way clear in passing this act to keep us clear, do so: if not, I know the men will not be satisfied with it if the money our company pays goes to pay for liabilities of another road.

THE COMMISSIONER: I do not suppose it is possible now to fix the date of another

meeting, but whenever the parties are ready another public meeting will be called.

MR. HELLMUTH: Would you allow us at some meeting to summarize shortly?

THE COMMISSIONER: I will hear all you have to say.

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## NINETEENTH SITTING

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THE LEGISLATIVE BUILDING, TORONTO.

*Wednesday, 8th January, 1913, 11 a.m.*

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner.*

MR. F. N. KENNIN, *Secretary.*

MR. W. B. WILKINSON, *Law Clerk.*

THE COMMISSIONER: I understand Mr. Hinsdale has been delayed and will not be here this morning. I received a communication from an officer of the Railway Trainmen from Ottawa the other day, saying they were appointing a representative to attend the meeting. Is there anybody here representing that body?

MR. GIBBONS: I have not seen any one representing that body here. There are different Orders.\*

THE COMMISSIONER: Mr. Wegenast wishes to answer the statements of Mr. Wolfe and of Mr. Sherman. I have just been discussing it with him, and it seems to me that what he has to say will have to be said in the way of argument, and it would not be advisable, I think, to interject an argument at this stage. He had better wait until the evidence is closed, because there may be something more to be said. I gathered from what Mr. Wegenast said that he had some statements to make from an actuarial point of view, and I have told him that I did not see how I could take that as evidence, as he is not an actuary, but that I would hear whatever he had to say and give such weight as ought to be attached to it in the argument.

I see Mr. Hellmuth and Mr. MacMurchy are here representing the railways, and Mr. Ritchie and Mr. Ballantyne representing the insurance companies. Do you think it would be of any advantage to enter upon anything in the nature of an argument until the evidence is completed?

MR. HELLMUTH: I certainly, Mr. Commissioner, would not. I think one's argument might be answered by evidence and perhaps be unnecessary.

THE COMMISSIONER: Mr. Hinsdale, I suppose, is to answer from the practical working of the Washington act, and as an actuary, the evidence of Mr. Wolfe and of Mr. Sherman.

MR. HELLMUTH: I would have liked to have heard what he had to say before entering upon any argument.

THE COMMISSIONER: What do you say, Mr. Ritchie?

MR. RITCHIE: I do not know that I want to present any argument, Mr. Commissioner. When the evidence is all in there may be something that should be pointed out.

THE COMMISSIONER: I judge from what I see in one of the newspapers that there is a misapprehension as to the purpose for which this meeting was called.

The statement as I recollect it was that this meeting was called in order to allow the labour representatives to present their case. That is not the fact. I am not going to call upon them to present their case until the case on the other side has been presented fully. This meeting was called in consequence of Mr. Wegenast informing me that Mr. Hinsdale was coming here, and that he desired to present an argument from the standpoint of the manufacturers whom he represents.

MR. WEGENAST: I am quite willing to fall in with your suggestion and to leave the argument stand over until the evidence is all in.

THE COMMISSIONER: It means we will have to have night sittings. I will not be able to give any day sittings next week.

MR. WEGENAST: The material I have to present is something entirely apart from what Mr. Hinsdale will present.

THE COMMISSIONER: You could not speak as an actuary.

MR. WEGENAST: I have left everything in that nature to him.

THE COMMISSIONER: Is there any certainty that Mr. Hinsdale will be here to-morrow.

MR. WEGENAST: I cannot say for sure. I understand he left Seattle on Saturday night, and in the ordinary course he should be here to-day.

THE COMMISSIONER: We will adjourn till eleven o'clock to-morrow when this meeting is over.

MR. HELLMUTH: It may not be necessary that we should be here, but I do not think Mr. MacMurchy and myself will be able to be here. There is a meeting of the railways in Montreal.

THE COMMISSIONER: The proceedings will all be in the notes. Mr. Hinsdale's evidence will not be directed particularly to the interests you represent. Perhaps you could arrange with Mr. Ritchie to be here and he could ask any questions which you might wish to put.

MR. WEGENAST: Mr. Hinsdale has no instructions or communications whatever as to what he has to say. He does not know himself what he is appearing for. I know him personally and I know that he is informed fully as to the workings of the Washington system, and is for the purpose of giving information that I suggested that he should come.

THE COMMISSIONER: Does your information, Mr. Wegenast, with regard to Washington agree with this, that the expenses of the commission for twelve months amounted to \$107,868?

MR. WEGENAST: I have not a copy of the Washington report in my hand.

THE COMMISSIONER: Do you know if that is about the figure?

MR. WEGENAST: I think it is, Sir William.

THE COMMISSIONER: Now, what did you say was your idea of the number of firms that would come under the act if the scheme which you are advocating is adopted?

MR. WEGENAST: I could not speak off-hand. I would like to have my memorandum before me.

THE COMMISSIONER: They have apparently 130,000 employees. It would be four times that number here.

MR. WEGENAST: I should think it would be two or three times—not four times.

THE COMMISSIONER: Say four hundred thousand. If the expenses in Washington have been \$107,000 it would probably be two or three times that here.

MR. WEGENAST: Two and a half, perhaps.

THE COMMISSIONER: That would mean over a quarter of a million and that would be increasing, I suppose—except the first year, where more work might have to be done.

MR. WEGENAST: But it would not increase in proportion to the number of population or the number of industries. The same commission would answer, no matter how many there were.

THE COMMISSIONER: Is this statement correct: The preliminary figures on one thousand cases indicate that less than three per cent. of all accidents reported under the Workmen's Compensation Act show a liability that would be good for a verdict under the old law?

MR. WEGENAST: I think that is the statement made in this report. Of course in the nature of things it must be a pure estimate.

THE COMMISSIONER: But that is an enormous decrease.

MR. WEGENAST: I think it is quite consonant with the evidence that has been given by Mr. Dawson and Mr. Boyd, that under a system of compensation for pure negligence or tort it will cover only a very small percentage of the actual accidents.

THE COMMISSIONER: I do not speak with any certainty at all, but I think these figures vary very much from the English figures.

MR. WEGENAST: What English figures, Mr. Commissioner?

THE COMMISSIONER: Comparing the cases under the present law with the cases before that law was passed.

MR. WEGENAST: I am not competent to speak as to that. I am judging for myself largely from the reports of the various systems as to the causes of accidents.

THE COMMISSIONER: These causes would not indicate that any such result would follow; how many accidents were due to the negligence of the employer; what percentage?

MR. WEGENAST: I think the estimates given by Mr. Boyd and others vary from 7 per cent. upwards.

THE COMMISSIONER: It is a great deal more in the German one. Is it not some thirty per cent. odd due to the negligence of the employer?

MR. WEGENAST: Here are some figures from Germany. They are taken from the analysis of Messrs. Schwedtman and Emery. Employers' fault 17 1-3 per cent.; workers' fault, 29 2-3 per cent.; employers' and workers' fault, 10 per cent.; hazard of industry, 43 per cent. Those, if I recollect rightly, are for the deaths in the different classes of fatal accidents.

THE COMMISSIONER: What is the non-fatal?

MR. WEGENAST: I think I am wrong in that. They are not divided in this schedule.

THE COMMISSIONER: What is that for?

MR. WEGENAST: The responsibility for occupational accidents, including agriculture.

THE COMMISSIONER: If that is so 17½ per cent. of these cases should have been compensated under the old law, not three per cent.

MR. WEGENAST: Yes, that estimate, if it is an estimate, seems to me very low, but conditions are very much different in the Western States and the Middle States from what they are in Canada and the Eastern States. The proportion of cases in which the workmen recover, is, I think, much lower. I cannot give any definite authority for that statement, off-hand.

THE COMMISSIONER: I should have thought it would be the other way on, from my experience and reading about American cases. They recover more often, unless they have not as favourable laws.

MR. WEGENAST: I think that is so in the East, but not in the Western States. I cannot, as I say, give any authority for that statement. On page 30 of my brief there is another set of figures from Mr. Boyd's analysis. These are for various years, of course. These figures are for the years 1887, 1897, and 1907, from Mr. Boyd's brief, and I assume, they are taken from the official reports in Germany. In 1887 the proportion of accidents due to the fault of the employer was 20.47; in 1897 17.30 and in 1907, 16.81.

THE COMMISSIONER: So that apparently the more he has to pay the more careful he gets.

MR. WEGENAST: I think the explanation given for that is that the German system has induced employers to be more careful. Then I have here the result of the investigation by Crystal Eastman.

THE COMMISSIONER: Is that a lady?

MR. BANCROFT: Yes.

MR. WEGENAST: She gives the proportions as follows: Cases attributable solely to employers 29.97 per cent. This is what is called the Pittsburg Survey. I do not know whether it covers the whole state.

THE COMMISSIONER: That may be limited to Pittsburg.

MR. BANCROFT: I have here her whole work.

THE COMMISSIONER: I think it would not be a bad idea to get this lady to come here. I know Mr. Hellmuth would like to talk to her.

MR. HELLMUTH: Thank you.

MR. WEGENAST: I have seen somewhere an estimate as low as seven per cent. but I cannot remember where.

THE COMMISSIONER: That is from some manufacturers association.

MR. WEGENAST: Possibly. I should think it would be a good deal higher than given in this report of the Washington commission. However, there is considerable difference of opinion as to whose fault an accident really arises out of, and difference of opinion is quite accountable.

THE COMMISSIONER: Mr. Wolfe's proposition, or Mr. Sherman's proposition, I have forgotten which, with regard to the farmers seemed reasonable, that it would never do to have them under such a system as is proposed, because it would mean that every member of the family would be a claimant upon the fund; that is, every member that is able to work.

MR. WEGENAST: I would like to make this broad suggestion, that all those questions could very well be left to be determined by the constituency covered by the particular type of insurance.

THE COMMISSIONER: What do you mean by that?

MR. WEGENAST: If there are difficult questions incidental to the insurance of farmers that can very well be left for the farmers themselves.

THE COMMISSIONER: I do not think that would do at all. There is no proper organization and no system under which that could be done.

MR. WEGENAST: The organization would have to be worked out.

THE COMMISSIONER: What seemed to me a good deal better would be to leave to this commission that is appointed the bringing under the act from time to time of such classes as it deems proper to bring under it.

MR. WEGENAST: I entirely agree with that. That is what I assumed, but the commission would not apply it in the face of a majority of sentiment.

THE COMMISSIONER: That would depend on who the men were.

MR. GIBBONS: If every member of the family came under that act would they not pay a premium for every member of the family?

THE COMMISSIONER: It is based on the wage-roll.

MR. GIBBONS: Assuming they did not pay any premium they would not come under the act.

THE COMMISSIONER: They would under this system; it says every employee.

MR. WEGENAST: In Germany the pay-roll has been abandoned as the standard of premiums.

THE COMMISSIONER: What is substituted for it?

MR. WEGENAST: The number of persons. very largely.

THE COMMISSIONER: It could not be that in itself.

MR. WEGENAST: No, not exclusively. Mr. Wolfe gave an idea which he has worked out himself, that even in the case of ordinary industries the pay-roll should not be the exclusive standard, and it is quite possible that some such idea could be worked out.

THE COMMISSIONER: He thought scientifically that would not be right, but practically it could not be helped.

MR. WEGENAST: His views are published in Insurance Journals, and there has been an active controversy between Mr. Wolfe and Mr. Cowles on the subject. Mr. Wolfe claims throughout the whole field of liability insurance the pay-roll shuld not be the exclusive factor on which the premium is based. Mr. Cowles disputes that. I think it is quite obvious that the pay-roll does make a rough and ready standard which is susceptible of refinement as time goes by.

THE COMMISSIONER: Those who are interested in the coming act possibly had better be very careful that they do not load it down, or seek to load it down, by bringing in classes that the Legislature will not be willing to bring in. You may defeat the whole scheme. If the result of this enquiry was to present a bill in which the farmers were put exactly on the same footing as persons engaged in industrial occupations, my motion is that it would have no chance whatever of passing the Legislature.

MR. WEGENAST: I think I have said that several times, as appears by the record, Sir William. So far as we are concerned we do not care whether the farmer is brought in now or not. We think, judging from the experience of every other jurisdiction, that the farmer will ultimately be brought in, and we have reason to think that it will not be long in this province before he will be brought in. All we say in regard to the farmer is that the system should be such a system as would be clearly adapted to extension to the farming community when the proper time arrives.

THE COMMISSIONER: You see it would be very difficult following Mr. Gibbons' suggestion. A farmer has two or three sons able to assist him. He does not pay them any wages, but practically they are employees of his; they get their support, and yet their wage would not appear in the pay-roll at all.

MR. GIBBONS: Could their compensation not be fixed by the amount of premium paid?

THE COMMISSIONER: I do not know how that would do.

MR. BANCROFT: I think Mr. Hinsdale might be able to tell us.

THE COMMISSIONER: The farmers are not in under their law.

MR. BANCROFT: But those who do not appear on the wage-roll under the Washington act are not entitled to compensation.

MR. WEGENAST: Oh yes.

THE COMMISSIONER: That might mean the employer might do the employee out of his compensation.

MR. BANCROFT: The intention was to give the employer if on the wage-roll at a stated salary compensation as well. You remember Mr. Waldron brought up that point early in the commission's investigations.

THE COMMISSIONER: That applies in Germany in the case of a farmer. It might apply in the smaller industries where the man is practically a journeyman.

MR. WEGENAST: I would think there would be no difficulty in any industry in having the employer insured provided he puts himself on the pay-roll. I think it might be left to the employer himself whether he would include himself on the pay-roll or not; and in the case of the larger corporations whether employees amongst the class commonly called clerical should come under the system.

THE COMMISSIONER: Now from the standpoint of the manufacturers what would they think of a provision that where the accident was due to a disregard of the law as to safeguards for the prevention of accidents that he should personally pay the whole compensation?

MR. WEGENAST: The general view that I have laid down in my brief is that any reasonable penalty on the employer for negligence or any other misconduct would not be objected to, but that the sum or penalty, or whatever it is, should not go direct to the employee but should go into the general fund.

THE COMMISSIONER: Then, I suppose, under a proper system there should be power in the board, whatever board it may be, to re-adjust the rates in classes according to experience.

MR. WEGENAST: Precisely.

THE COMMISSIONER: If one employer showed he was conducting his business so as to cause the least accident he should get the benefit of that.

MR. WEGENAST: There is absolutely nothing in the contention which has been advanced over and over by the representatives of the insurance companies who have appeared here that the assessment system or any state system involves a blanket rate over all industries of a similar kind. There is absolutely no foundation for it. The statement was made that in the Norwegian system there was such a flat rate; that is absolutely contrary to the fact. The Norwegian system is, if anything, more refined than any other European system in its system of sub-classification.

THE COMMISSIONER: Of course a system of sub-classification is an awkward thing,

and yet on the other hand to leave it to the judgment of the board would perhaps lead to anomalies and inconsistencies.

MR. WEGENAST: What I have suggested, and I have not had a convenient opportunity to elaborate on this, is that these matters should be left largely to the initiative of associations, voluntary organizations, corresponding to the groups.

THE COMMISSIONER: I suppose any sensible Board, if there were an organization, would let it advise and inform them, but not in any way bind them to their conclusions.

There seems to be a mistake in the first report; as I understand it the State guarantees nothing, it will merely disburse the fund.

MR. WEGENAST: Yes, nominally, but really there is a state guarantee by virtue of the fact that the State has the facilities—

THE COMMISSIONER: That is not what I am talking about. Supposing there were claims in a particular year amounting to half a million dollars, and there was not sufficient in the fund to pay them, the workman would lose. He would be sealed down so as to make the sum in hand cover his claim to date.

MR. WEGENAST: No, I think not.

THE COMMISSIONER: Yes, there is no obligation. The state's obligation is limited, as I understand it, to the amount from time to time that is paid into the fund.

MR. WEGENAST: But the board has the power to assess.

THE COMMISSIONER: Yes, that is a different thing, but there is no such obligation.

MR. WEGENAST: None whatever on the State itself.

THE COMMISSIONER: This says the payments are guaranteed by the State; that is misleading.

MR. WEGENAST: It is in that one sense. I would like to read a sentence from a letter by Mr. Preston to me on that point:

"In some of the earlier drafts of the bill I had it provided that if an injured workman found a deficit in the fund applicable to his case, the state should make it good out of its general fund and then recoup itself later out of the industry involved. We have the constitutional provision forbidding the state to loan its credit to any other than a public use." Then he says that we have no such constitutional difficulties and therefore are in a position to improve on their work in that respect.

THE COMMISSIONER: I think any scheme that is adopted will have to fix a maximum sum that the State shall contribute, and if there is anything beyond that it must come back on those who contribute to the fund.

MR. WEGENAST: I think the manufacturers throughout the province would be quite willing to accede to that.

THE COMMISSIONER: I do not think there would be any chance of getting the province to assume an unlimited liability.

MR. WEGENAST: I think nobody would ask it. It is simply a matter of distributing the money which the employer is perfectly willing to pay towards a reasonable measure of compensation.

THE COMMISSIONER: We have not had anybody yet who has been able to give an expert opinion as to whether this is not really a tax in substance upon the community in its last analysis.

MR. WEGENAST: I have given an opinion but it is not that of an expert. I entirely agree with that. What I do not agree with is a conclusion which you have drawn with that as one premise, and another premise which I am not quite able to see.

THE COMMISSIONER: What is the other?

MR. WEGENAST: I cannot quite see what the other premise is.

THE COMMISSIONER: What is the conclusion?

MR. WEGENAST: The conclusion is, apparently, that it is not unjust to have the employer pay the whole of whatever compensation the workman is entitled to.

THE COMMISSIONER: Perhaps it happened when you hadn't a lucid interval.

MR. WEGENAST: I want to qualify my statement with the observation that I do not agree with the conclusion which you attach to it.

THE COMMISSIONER: Of course the railways can do anything they like, and the manufacturers, so long as they have a good wall up, but what about such people as the producers of wheat and the producers of silver; how can they throw the burden upon the community?

MR. WEGENAST: They cannot do it.

THE COMMISSIONER: I suppose the answer is that they make so much that they can afford to pay it themselves.

MR. WEGENAST: Well, I am not prepared to speak on that feature.

MR. HELLMUTH: Have you overlooked the fact that the Dominion Railway Board can fix the rates of railways?

THE COMMISSIONER: Yes, and I have in mind the fact that all the rates that are fixed are a great deal above what the railways are compelled by business conditions to exact.

MR. HELLMUTH: Not always.

THE COMMISSIONER: They were when I last looked at them, away above.

MR. HELLMUTH: It shows the railways have to reduce their rates.

THE COMMISSIONER: They could not help it. They did not do it for love, they did it for business.

MR. HELLMUTH: Quite so, but they cannot stick it on very well.

THE COMMISSIONER: They will all take what the traffic can stand: that is their maximum is it not?

MR. HELLMUTH: I think so.

THE COMMISSIONER: I am not quarrelling with it.

We have not had an expression of opinion yet, even from Mr. Trowern, I think, from that large class which might be called the clerical class. I would like somebody to give some information upon that, or the reasons why they should be either brought in or left out.

MR. WEGENAST: Mr. Trowern contends very strongly that they should be left out of any schemes.

MR. HARVEY HALL: There was an observation made here by Mr. Wegenast awhile ago. He said in case of accidents occurring through the negligence of an employer that any penalty over and above the workmen's compensation act should go to the general fund and not to the injured workman. Does that not more and more bring us to the conclusion that the railway companies are right in protecting themselves from the group principle?

THE COMMISSIONER: I do not know.

MR. HALL: Is it not a certain amount of protection for this money to go to a general fund rather than to go to the injured person, to the negligent party?

THE COMMISSIONER: No, it helps the body of those that are in the class.

MR. HALL: Will it not help the negligent party to the extent of that amount of money? That fund is enlarged or increased by this money that should have gone to the injured person.

THE COMMISSIONER: That would only be a small fraction.

MR. HALL: I would certainly object to that principle.

MR. WEGENAST: I would like to say with regard to that there is a distinct cleavage of opinion amongst not only experts but persons who have expressed opinions on the subject just on that point. The extreme view which Mr. Hall apparently favours is set out by a Mr. Calder.

THE COMMISSIONER: He has not suggested any views. He has negatived your view.

MR. WEGENAST: He suggests the view which Mr. Sherman also referred to that it is inadvisable to relieve the employer of his direct liability.

THE COMMISSIONER: I do not understand that.

MR. HALL: No, that is not my idea. My idea is that what you are recommending is an encouragement to the negligent employer because he is protected by the money that other people put into a fund for him.

THE COMMISSIONER: That feature could not have any such effect.

MR. WEGENAST: Mr. Calder who represented some association of locomotive engineers advocated the prohibition of insurance. His idea was that each employer should be made individually liable and should remain individually liable and insurance should be prohibited. Now it is not necessary to say that that view has no general support.

MR. HALL: Who do you refer to?

MR. WEGENAST: I think his name is Calder who spoke at the hearings before the Federal Commission. I think he is the only man who has publicly and permanently embraced that idea, and the Chairman of the Commission forced him to the logical conclusion, which I submit, of course, is absurd.

THE COMMISSIONER: I do not follow your argument, Mr. Hall, at all. Supposing the railways were grouped and an engineer is killed owing to some disregard on the part of the railway company of its duty, and the Board determines that that railway company should pay the whole cost. That relieves all others in that class to that extent, so that it would tend to get rid, as it strikes me at the moment, of a difficulty that has been suggested of the careful man and the man who is not careful being on the same footing and paying what Mr. Wolfe called a flat rate.

MR. HALL: I quite agree with those ideas, but the principle involved may mean many things. If I have got to pay for the expense that is incurred by negligence on the part of another railway, who yourself or somebody else may represent, every dollar that I pay into that fund is easing you and possibly encouraging you in neglecting to furnish or equip your property as it should be.

THE COMMISSIONER: Apparently the only people who are objecting are the railways. All the manufacturers are quite willing to share that.

MR. BANCROFT: And more than that a curious thing was, although we are not replying to Mr. Sherman now, that he took as his ideal model the British act, which includes railways.

MR. HELLMUTH: Pardon me. The British act provides that any railway that has a benefit scheme approved of by its employees, which gives to the employee as large benefits as the state insurance, can contract out of the act.

THE COMMISSIONER: That is only if it is approved by the Secretary.

MR. HELLMUTH: Quite so.

THE COMMISSIONER: At present I am against any such scheme as that.

MR. HELLMUTH: That is in operation in England.

THE COMMISSIONER: It would destroy the whole scheme if the manufacturers or the railways were able to form schemes of their own and keep out of the act. It would not do at all. The act would break down.

MR. BANCROFT: The evidence that seems to have been brought out on the other side with regard to the railway situation there I find, that the only reason that the railways engaged in interstate commerce are excepted from the state legislation is because the state has no jurisdiction over interstate commerce. They have included the railways as far as they could in the state legislation, and now the Federal Government is bringing in a Federal bill to include the railways engaged in interstate commerce throughout the whole of the United States, so you see the intention is evidently to include the railways in the United States.

THE COMMISSIONER: It does not make any difference to the manufacturers whether the railways are left out or not, except as a matter of sentiment. If they are left to bear individually their own burdens, making them whatever the Legislature thinks may be reasonable, nobody is hurt.

MR. WEGENAST: I want Mr. Commissioner, to take explicit exception to the principle of exempting the railways.

THE COMMISSIONER: It is easy to take exception and it is easy to overrule an exception too. As far as I am concerned I have come to no conclusion about that, but my personal impression would be that at the beginning at all events it would not be desirable to include the railways in any group, but to leave them to be brought in if the board is of opinion, after some experience of the working of the act, that they ought to be brought in. That is the way my mind is tending; I have come to no conclusion.

MR. WEGENAST: On the ground of expediency I agree, but on the ground of principle, of course, I do not.

THE COMMISSIONER: Principle is nothing; it is all expediency; you cannot get a perfect thing.

MR. WEGENAST: Not all at once.

THE COMMISSIONER: It must be compromised. As a matter of natural justice, as Mr. Hall has pointed out, it is very unjust that manufacturers in Class A should pay a dollar for the losses incurred in the manufacturers Class B.

MR. WEGENAST: That is what insurance means.

MR. HALL: This is one principle of it.

THE COMMISSIONER: I should not wonder if when these gentlemen come from Ottawa they will be combatting the views that Mr. Hellmuth and Mr. Hall and some other gentlemen are advocating.

MR. HELLMUTH: I do not like to assume, but I understand that all the bodies of railwaymen that have met, and I think it goes without saying that the railwaymen are not very amenable necessarily to the executive officers' desires, or the desires of the railways—they look after themselves—object to grouping. I may be quite wrong, but I understand wherever they have met they have taken that position. I am speaking of the grouping of railways.

THE COMMISSIONER: I do not understand why they are taking such a warm interest in the interests of the employers. Not in the slightest does it affect them. It is absurd to say that they are affected if the law is that all railways must pay their compensation: it is nonsense for them to talk about that.

MR. HELLMUTH: May I put forward what I understand is the view that perhaps the employees have, that if a good efficient road is simply grouped and has to pay with other roads to the general fund it will not individualize in regard to safety appliances, but if it knows it has to pay its own losses it will continue to take extra care with regard to the employees of that road: I think that is the idea; I may be wrong.

THE COMMISSIONER: That can be very easily corrected. If a railway disregards its duty it can be penalized and may be made to pay individually.

MR. WEGENAST: And the other railways would very readily see if the C.P.R., for instance, had more accidents than the Grand Trunk, and the Grand Trunk would very soon make itself felt and would see that they were put on a lower rate than the C.P.R. My contention of course is that in the matter of accident prevention the tendency is the very opposite to what my learned friend suggests.

MR. BANCROFT: I would like to ask what does Mr. Hellmuth mean when he says all the railway employees, as he understands?

MR. HELLMUTH: I mean steam railways. I mean all the employees, so far as they have met in bodies, like the trainmen, the locomotive men, and others. I may be wrong; I only say I understand that.

MR. BANCROFT: I have a letter from a point in Ontario telling me that the C.P.R. has circularized all their employees, and they have in their circular also pointed out the defects that they think are in the Commissioner's interim report, and asking the men to take the matter up. Is that true?

MR. HELLMUTH: I believe there was a circular sent out. If you have the circular there I will tell you?

MR. BANCROFT: No, I have not got it.

MR. HELLMUTH: The circular, as I understand it, asked the men to hold such meetings as they might see fit, but I understand there was nothing at all done in regard to placing any plan before them at all.

MR. BANCROFT: This is a private letter that I will turn in, if the Commissioner desires it, in confidence, but I will read an extract from it to show what I mean. This is addressed to the Vice-President of the Trades and Labour Congress and was forwarded to me: "The workmen's compensation question is agitating the minds of the members of our lodge, and the fact that a bill will soon be introduced into the Ontario House has stirred the C.P.R. company up to issue a circular to its organized employees, pointing out the various defects in the suggestions of the Honourable Sir William Ralph Meredith in his interim report, a copy of which they enclosed with their circular." That is just an extract from the letter. When you speak of all the railways' employees I do not just understand what you mean.

MR. HELLMUTH: I understand the Grand Trunk has done it, and I understand the locomotive engineers called their own meeting.

MR. HALL: I would like to say a word on this question. The railway employees as a rule are not fighting the employers. A circular was sent out by the C.P.R. company in which they promised to pay any sum that was authorized, or any sum that was decided upon by the workmen's compensation act, for injury or death, as the case may be, but in order to save themselves expense and to deal directly with their employees they ask to be relieved of the grouping principle, and they set forth certain reasons why they should be relieved from that principle. Now, the employees of the C.P.R.

are agreeable that that should be done, but they want a reference board appointed in order to protect them against any disputes, and protect them from being hauled from one court to another in case of difference of opinion. We are all well aware that the higher officials of the railway companies are guided very materially by the lower officials, and they may have opinions as to why accidents happen, and very frequently up to a certain point these opinions are accepted by the superior officers.

THE COMMISSIONER: I understood either Mr. MacMurchy or Mr. Hellmuth to say that they did not object, if the principle of the act is that the amount of the compensation shall be determined by the Board, or the right to compensation, to the claims of the railway employees being so determined.

MR. HELLMUTH: That is so, sir.

MR. WEGENAST: May I ask Mr. Hall what is the opinion of the railway men as to whether the company should be asked to pay in the full capitalized amount of the compensation at once, or should be allowed to pay the pensions as they come due from year to year?

MR. HALL: You are not mixing pensions with workmen's compensation?

MR. WEGENAST: We certainly are. This gentleman seems to assume that the compensation will be paid in a lump sum.

THE COMMISSIONER: The policy in all countries I think is against paying a lump sum.

MR. WEGENAST: Supposing a man is killed—

MR. HALL: If it is not paid in a lump sum I would disapprove of the act altogether.

THE COMMISSIONER: There is no chance of my recommending the payment of a lump sum.

MR. BANCROFT: Mr. Hall, are you representing the railway conductors?

MR. HALL: Yes.

MR. BANCROFT: He says "all the railway employees of the C.P.R." I think he is representing the conductors, not all.

MR. HALL: Well, I will withdraw that statement as to all, but I want to say that I have not heard of an employee of the Canadian Pacific Railway yet who said to me personally or in a meeting that they were against the proposition recommended by the C.P.R.

THE COMMISSIONER: I may say now definitely that I shall not recommend any scheme which involves the right to capitalize payments; I mean payments to workmen of the capitalized sum. There should be an opportunity in cases where it is proper to be done for the board authorizing that, just as there is under the British act, but the very basis of this legislation is that it is social, there is no use disguising the fact. One of the main objects of it is to prevent injured employees and their dependants being made a burden upon the public. If you allow the compensation to be paid over in a lump sum it may be squandered, and the result brought

about which you seek to avoid, and one of the primary objects of the legislation would be defeated.

MR. WEGENAST: May I follow up the suggestion of the gentleman here by asking the representatives of the C.P.R. whether they propose to pay into the insurance fund a capital amount, or whether they propose to run their suggestion on the current cost plan?

MR. HELLMUTH: I would answer that very simply. As I understood it we propose to carry out the law, whatever the bill drafted by the Commissioner and approved of by the House may be; that is to say if the law provides that you shall make periodical payments we will do so.

MR. WEGENAST: But you will not pay into the fund the capital amount; you do not want to pay it in?

MR. HELLMUTH: If it is provided that an employer should make a capital fund and pay into the capital fund—as the bill may be—then we certainly will.

MR. WEGENAST: You do not object to the application of the capitalized principle?

MR. HELLMUTH: We do not mind what the principle is that is adopted; we will do whatever the law may be in regard to that. What we are particularly anxious about is that we may be allowed to deal with our own employees and pay them such sums as the state may direct shall be paid to workmen so injured, and not have to be grouped with other railways.

MR. GIBBONS: You do not want this Commission to determine what you should pay? You want to make that determination yourselves.

MR. HELLMUTH: Oh no, we want the Commission to determine. We do not ask to be put in any other position than anybody else.

MR. BANCROFT: Supposing the bill was drawn up and in the grouping of the different industries it was pointed out that the C.P.R. was considered by themselves a group, and the G.T.R. by themselves a group, and the Canadian Northern by themselves a group, and they were under the obligation of providing the compensation for the workmen as stated in the bill, and that they should pay into the commission fund just the same as anybody else to have it administered, and anything else they wanted to do they should do themselves, have you any objection?

MR. HELLMUTH: We think we could avoid the expense. There is only the question of expense of administration.

THE COMMISSIONER: No, there is more than that in it. If any such scheme as Mr. Wegenast has advocated it would mean there must be paid into the fund a surcharge or something to form a reserve fund. Under a scheme such as you are suggesting there would be no provision for that at all in the case of the railways.

MR. HELLMUTH: Would there not in this way: Supposing you assess on any particular pay-roll with enough additional, that a certain sum to be paid yearly, or whatever it may be, irrespective of the actual accidents, wouldn't that sum have to be put apart in some way satisfactory to the Board, if

there is a board, or to the state, or whatever the state machinery may be, which the Grand Trunk or the C.P.R. would have to pay into a fund so that it would be earmarked?

THE COMMISSIONER: That would mean then in addition to your being ordered to pay, or paying the claims as they arose, that you should hand to the board sufficient to represent a guarantee fund.

MR. WEGENAST: That is what I understand Mr. Hellmuth is acceding to.

MR. HELLMUTH: We are not suggesting that.

THE COMMISSIONER: You would have to do that if you were left out. You could not be left out of the burden that there is upon other concerns.

MR. HELLMUTH: We would have to assume the same burdens as others. There is, I understand, a distinction in regard to what is called the certainty of redress. That is a matter that you, Mr. Commissioner, laid some stress upon, that the workman should be absolutely certain of getting compensation. Now, in regard to the railways it could always be made a first charge upon the undertaking.

THE COMMISSIONER: There would be no power in the Provincial Legislature to do that in the case of a Dominion road.

MR. HELLMUTH: Well, that might be obviated by a suggestion that Mr. Wegenast made, that the Dominion should adopt concurrent legislation as the Ontario act in Ontario, and possibly the Manitoba act, or perhaps we are opening a rather wide question there with regard to jurisdiction over the Dominion railways.

THE COMMISSIONER: What they might do, if the railways consented to it—I suppose it could be done—to enable the board by the passing of a Dominion act or by the act itself to declare that any sums payable under such a law should be a first charge.

MR. HELLMUTH: If that were done it would obviate the necessity of that.

THE COMMISSIONER: It would look as if the railways were favoured more than other industries, and I do not like anything to have that appearance.

MR. WEGENAST: What I suggested was that the Dominion Government might consent to waive the application of the clause in the Railway Act which does impose a direct liability on the railways. There is a clause in the Railway Act under which the railways are liable for negligence, and that clause, I take it, the Ontario Legislature could not affect or remove. I should think it would be a reasonable thing to ask the Dominion Government to relieve them in that respect.

THE COMMISSIONER: The Legislature would have to do that; that in any Province where there was a compensation law on these lines that that provision should not apply as to employees.

MR. HELLMUTH: So far as being a favoured class is concerned. I would like to remove any such idea as that. The C. P. R. at all events does not want to be treated in any way differently from other people; they are prepared to

bear the same burdens and have the same privileges. But there are difficulties, Mr. Commissioner, in regard to that Dominion legislation. What is known as the statutory liability under the Dominion act we could not be relieved from.

MR. WEGENAST: You could by Dominion legislation.

MR. HELLMUTH: We could not be relieved from it by Ontario legislation. I suppose that could be sued for in the ordinary course here.

THE COMMISSIONER: What section of the Railway Act creates any liability to an employee?

MR. HELLMUTH: A great many. There is the section, for instance, in regard to the couplers, which Mr. Harvey Hall will be familiar with, having proper couplers; and the sections with regard to other appliances. There are a great many others that are directed to be put upon the railways. If these sections are not complied with then under the act besides the penalty anybody who is injured because of non-compliance, (and that covers employees), is entitled to recover as at common law for such damages sustained. That is not affected by the Ontario Workmen's Compensation Act, because frequently damages are given up to \$4,000, \$5,000, and \$6,000 for loss of limb and life. There was a verdict the other day in Barrie, in a case I was in for \$6,000, where a young man lost his arm by reason of not having proper appliances; I am saying that is the claim.

THE COMMISSIONER: You do not expect that to stand?

MR. HELLMUTH: It has been upset at present, but it may be restored. I only mean that it is a question that will have to be considered, because while we do not want any favoured treatment it would be rather unfair that the railway should be obliged to pay the full amount under the proposed workmen's compensation act where there is no negligence at all, and then when there is negligence that it should be obliged to pay four or five times what a manufacturer would be obliged to pay.

THE COMMISSIONER: That will make you very careful not to be negligent.

MR. HELLMUTH: That is one way of looking at it. However, I wanted to disabuse your mind of that idea.

MR. GIBBONS: Could it not be arranged that where you came under the liability of the Dominion act you would not be liable under the workmen's compensation act?

THE COMMISSIONER: A man could not get it twice over.

MR. HELLMUTH: We do not want the larger amount where everybody else would have the smaller.

MR. BANCROFT: Has it not worked out in England, for instance, that wherever there has been a suit at common law on the employers' liability in preference to the workmen's compensation the judgments have largely been based upon the compensation that the man would have been entitled to under the existing compensation law?

THE COMMISSIONER: I do not know how that is.

MR. BANCROFT: I think that is the evidence of everybody, that the judgments have largely been based upon that.

MR. HELLMUTH: You mean the amount recovered?

MR. BANCROFT: Yes.

THE COMMISSIONER: They are not fixed by a jury but the judge of the county court.

MR. HELLMUTH: It is not so here with the juries. I have been in a number of cases in which the judge has said to the jury: "Now, assess the damages under the statute;" that is under what we call the workmen's compensation here, three years' wages or \$1,500, which is the limit. I have seen cases where \$1,500 has been assessed under one, and \$5,000 or \$6,000 under the other, so that the juries will very naturally give the larger amount wherever they can.

MR. BANCROFT: It seems from your statement that the C. P. R. object to the grouping system whereby they will be paying an assessment for the negligence of a road that is not as efficient as itself. I understand that is your objection?

MR. HELLMUTH: We are not saying they will not, but we think they should not.

MR. BANCROFT: That is the implication. Now, if the C. P. R. was made under the legislation a group in itself, like the Krupp works in Germany, where they have either a lower or higher assessment according to their efficiency and protective devices against accidents, I cannot see in my own mind where the argument is that you should be left out and allowed to manage your own insurance. I can easily see the danger of, for instance, the Timothy Eaton Company claiming the same thing, and the Grand Trunk Railway, and that would reduce the whole social scheme.

THE COMMISSIONER: I do not think that is what they are asking. They are quite content to pay the compensation and to pay any surcharge, or if the law is to be a capitalized fund, to pay it; they are prepared to leave to the Board just as if they were grouped under the act the determination of what claims should be paid.

MR. BANCROFT: That is what we would like to get clearly from the C. P. R., as to whether they are willing to come under this act.

THE COMMISSIONER: In everything, except they do not want to be grouped; they would not pay an assessment, they would pay as the losses occurred.

MR. GIBBONS: There is one statement I do not understand. They say they want to deal with their own employees; that is something we would object to.

MR. HELLMUTH: Only so far as paying the money over is concerned.

MR. GIBBONS: What difference does it make if the Commission pays the money over?

MR. HELLMUTH: We do not want to pay the costs of the Commission if we are paying our men.

MR. GIBBONS: The Commission makes the award.

MR. HELLMUTH: And then we pay the money over to the men.

MR. GIBBONS: The Commission handling the money will not make any additional cost, as I understand.

MR. BANCROFT: If the C.P.R. comes under the act as a group in itself and pays the assessment into the insurance fund the only difference to you is this, that the Insurance Commission holds the C. P. R. money in a fund, and in the way you want the C. P. R. itself holds the money.

MR. HELLMUTH: Itself holds the money?

MR. BANCROFT: Except the reserve.

MR. WEGENAST: This appears to be the main point or the underlying reason, if I may attribute motives, for the stand of the C. P. R., that the men will not feel so free to claim their compensation if it comes directly out of the individual road as they will if they have to apply to a fund.

THE COMMISSIONER: That kind of workman would be a rara avis. Is that not fanciful?

MR. WEGENAST: No, I think that is apparently the basic reason.

MR. BANCROFT: We have found out by some years of experience that it is very hard to get the workmen from big concerns to give evidence in the face of their employers, because after all the employer has the last kick.

THE COMMISSIONER: That is in favour of another employee who has been injured; they will in their own favour. I never knew them to fail.

MR. BANCROFT: But what Mr. Wegenast is pointing out is this, that a workman on the C. P. R. would not feel as free to claim compensation from the company as he would from an Industrial Commission that was appointed by the Crown and which was a public concern.

THE COMMISSIONER: I have not seen that workman yet in all my travels.

MR. WEGENAST: I have seen a good many, Mr. Commissioner. We are giving as one of our reasons for acceding to the proposition of a Government fund that it will improve the relations between us and our employees. As it is the employee has to fight for his compensation, he has the employer against him. Under the system we propose we think that the employee will feel more free to claim his compensation, and judging from the experience under other similar systems the employer will give him every assistance in securing his compensation.

THE COMMISSIONER: Do you really seriously suggest that the putting of three railways together will make the slightest difference?

MR. WEGENAST: Yes, I do; with all respect, I want to say it with emphasis.

MR. BANCROFT: The question I asked Mr. Hellmuth about the handling of the money is important inasmuch as the labour men of this country have continually tried to get an amendment to the Railway Act whereby the com-

pany will have to pay wages fortnightly. It is often six weeks before he gets any money, and the retaining of that money must mean considerable to the C. P. R. In this case the objection seems to be against the handling of the money by the state, and I would like to point out that the amendment to the Railway Act passed the House of Commons unanimously but has been defeated in the Senate. The point I wish to bring out is this, that the only difference as far as I can see is that if the C. P. R. does not pay the money into the Industrial Insurance Commission that the C. P. R. will retain that money themselves and pay out the compensation as they desire to pay it out or as they are directed by the act. Now, I do not think that is a good enough objection to allow them to be an exception to this legislation. I would be willing to listen to any real reason why the C. P. R. should be left out, but that seems to be the object, the retention of such a large sum of money.

MR. HELLMUTH: We are not asking to be left out of the act, but out of the groups. The act can direct how the money shall be laid out. As far as the C. P. R. is concerned I would be quite prepared to undertake for them that they will pay a day earlier even to the workmen direct, so that there shall be no loss of time.

MR. BANCROFT: If you should handle your own insurance fund as you suggest, why should not another big corporation handle its fund?

MR. HELLMUTH: I am not acting for other corporations. The Krupp people practically do it, and the Government railways in England do it.

MR. HALL: I think the railway employees ought to know their own business as well as somebody from the outside, as to what is in their interests, and they have been here and have represented their case to the Commissioner, and I think they are quite capable of doing it too. I would like to know when the decision was come to to make this a pension fund instead of an insurance compensation.

THE COMMISSIONER: We are not going to waste time in discussing words.

MR. HALL: I would like to know if it is the intention to make it a pension fund.

THE COMMISSIONER: It would be compensation by pension, or whatever you choose to call it; it would be so much money a month or a year, whatever you like to call it.

MR. HALL: It simply means this, that there is a difference between the words.

THE COMMISSIONER: Not the slightest.

MR. HALL: One is pauperizing the receiver and keeps his in a position where he cannot better himself.

THE COMMISSIONER: That is another mistake as to what pension means. It is only a convenient term that is used here in the discussion; it does not amount to a row of pins.

MR. BANCROFT: I would like to make this clear. In the railway transportation business of this country there are a great number of men. The conductors and the engineers are not the transportation system. They are numerically

a big body, but there is in the C. P. R. shops a bigger body of machinists, car men, moulders, boiler-makers, and others who belong to the C. P. R. federation, and who are affiliated with the Trades and Labour Congress. I would like to draw that matter to your attention, and that they should be considered in this matter, and not only the transportation end of it.

THE COMMISSIONER: Have they expressed any opinion?

MR. BANCROFT: They have expressed their opinion through the Trades and Labour Council which has seventy per cent. of the members, and they are expressing their opinions through us here. The boiler-makers and machinists are all represented by the Trades and Labour Council, and they are the men who wanted the Railway Act amended, which was defeated.

MR. GIBBONS: I am informed there are only two of the smallest organizations that have had a chance to express their opinions to the men who are here to-day, and those men who are here to-day only represent forty-five per cent. of the conductors in the Province of Ontario, while the Dominion Trades Congress represents the whole number.

MR. HALL: I do not think they represent any of the train service organizations.

MR. BANCROFT: You take the unorganized men even in the C. P. R.—take the freight handlers in this city who number six hundred, they have very little organization; should we not consider all these men also in a public matter of this kind? I think we should. There are thousands of men on the C. P. R.

THE COMMISSIONER: Mr. Hall suggests that the Trades and Labour Council does not represent any of the train service men.

MR. BANCROFT: I mentioned that, that the conductor and the engineers and the train service men and the transportation end of the C. P. R.; but the other end of the C. P. R. is a bigger body of men.

MR. GIBBONS: There are the firemen and the brakemen that Mr. Hall does not represent either, and only forty-five per cent. of the conductors.

THE COMMISSIONER: You say that the body Mr. Hall represents is only 45 per cent. and that the rest of them are represented by the Trades and Labour Council?

MR. GIBBONS: I think we represent the biggest organization of them all.

THE COMMISSIONER: Take the conductors; you do not mean the 55 per cent. not in that association are represented by you?

MR. GIBBONS: Oh, no. I say they only represent about 45 per cent. of those.

MR. BANCROFT: Mr. Hall represents part of the conductors.

THE COMMISSIONER: Which is this organization that I was speaking of this morning with its head office in Ottawa, the Railway Trainmen; what branch is that?

MR. BANCROFT: That is the transportation.

THE COMMISSIONER: Have they not a separate organization of these freight handlers?

MR. BANCROFT: Oh yes.

THE COMMISSIONER: Why do they not speak?

MR. BANCROFT: The freight handlers down at the C.P.R. in Toronto have very little organization. I will tell you another thing, Mr. Commissioner, as Mr. Wegenast has pointed out, it is not very easy for men employed by a big corporation to come and oppose that big corporation; it is a very dangerous thing for them to do.

THE COMMISSIONER: I appreciate that.

What is the view as to the power of the board in case a workman has clearly brought about his own injury; would it do to reduce the amount of the compensation to which he would otherwise be entitled?

MR. HALL: In railway practice that is a very hard question to decide, because there is not a rule governing the operation of railway trains that a man can live under and not make a mistake; he is always guilty of some mistake. It is a very easy matter to take into the courts the rules governing the operation of the road and prove that the man did something wrong.

THE COMMISSIONER: That does not hurt the man; it only hurts the railway when some third person is injured.

MR. HALL: It hurts the man's family if he gets killed by some neglect or lack of memory, or something by which he makes a mistake.

MR. HELLMUTH: I quite appreciate what Mr. Hall says. It has taken place I think some times before you, sir, if I recollect rightly, where the company has put in a rule to show a man should not have done what he did, and the man has said, "Well, I had to do it or I wouldn't have kept my job."

MR. HALL: Another thing, he may have so many things to do that he forgets one.

MR. HELLMUTH: I understood this act was to cover compensation in such cases, but I do not think that is the case that has been presented. Supposing a man deliberately against the orders and the rules does something. I am not saying he should not receive compensation, but without any excuse whatever he recklessly does something; I think that is the question.

THE COMMISSIONER: Supposing a workman working on glass, or a workwoman more likely, has supplied to him glasses to wear for the protection of his eyes, and he deliberately refuses to wear them and does not use them, and a piece of glass flies into his eye and injures it, what justice is there in that man getting compensation?

MR. WEGENAST: I am suggesting, Mr. Commissioner, that the voluntary associations which we hope will be organized shall have the power to make rules which, when sanctioned by the board, shall have the force of law. These should be governed by proper penalties, and while not desiring to express a final opinion, it does appear to me that these penalties, if enforced, might be a sufficient deterrent. They would be penalties imposed regardless of whether an accident happened or not.

THE COMMISSIONER: I think that would be a source of all sorts of irritation.

MR. GIBBONS: The different suggestions with regard to violating a rule might work out with regard to an injured employee, but if that employee were killed and not able to speak for himself then there might be various reasons given why he should not have violated some rule, when possibly it might not be the fact and nobody would be there to dispute it.

THE COMMISSIONER: The British act does not allow the exception where the accident is fatal.

MR. HELLMUTH: And that is proper too; I quite agree with what Mr. Gibbons says.

MR. WEGENAST: I think it is improper and I quite disagree with what Mr. Hellmuth has said. The exception is purely arbitrary and has no foundation in justice; that it is that leads me to suggest some other method of penalizing.

MR. HELLMUTH: I think perhaps we unnecessarily differ there. I am speaking of a case where the man is killed and nobody can speak as to how the accident occurred, or whether it was his fault or not. There they give him the benefit of the doubt; surely that is a reasonable proposition.

THE COMMISSIONER: It would be wider than that. In the British act it does not matter whether there is doubt or not. The British act says: serious and wilful misconduct bars the right to recover unless the accident results in death, when it is no answer. There are two reasons, it seems to me, why that exists; the first is the one suggested by Mr. Gibbons, and the other that this is in part a social law and these dependants would be left upon the public if provision were not made.

MR. WEGENAST: But in many cases where the man is not killed the dependents are just as badly off, or more so, such as in a case of total disability; the economic effect is as great or greater. It is a purely arbitrary rule, and due to the inartistic way in which the rule is worked out.

THE COMMISSIONER: I think the reason that Mr. Gibbons has given is one of the reasons.

MR. WEGENAST: I have suggested in my brief that perhaps the Washington act could not be very much improved; it is a small percentage.

MR. HELLMUTH: The British act covers both. Compensation is not paid when the injury was due to the serious and wilful misconduct of the man unless it results in death or in serious and permanent disability: in either of those two cases under the British act he gets compensated.

MR. WEGENAST: I stand corrected in that.

MR. MACMURCHY: That was made in 1906.

MR. GIBBONS: We contend that the workman is penalized anyway because it is only a fraction of his wages: and then there is the suffering he has to endure that is the penalty for his misconduct.

MR. BANCROFT: Mr. Sherman says if a man gets 50 per cent. compensation he is contributing 50 per cent. to the fund.

MR. HELLMUTH: Even where he is not in fault at all?

MR. GIBBONS: Yes, where he is not at fault he contributes 50 per cent., and where he is the other party contributes 50 per cent.; so it is even.

THE COMMISSIONER: Of course there are cases where such an exception is absolute injustice. Take the case of a man who deliberately gets drunk and goes to his work on a railway, with the result that he not only kills himself but kills twenty other people; does it not shock the conscience that the man should be entitled to claim compensation?

MR. HELLMUTH: Of course those are exceptional cases. You cannot make a law that will absolutely fit every case.

MR. GIBBONS: There is usually a way of preventing that man from going to work.

MR. HELLMUTH: It does occur sometimes, of course.

THE COMMISSIONER: I suppose the modern idea is that a man has a right to be drunk if he likes off duty. That is Mr. Keir Hardie's idea.

MR. GIBBONS: He thought if the rich had the privilege the poor should have the privilege.

MR. BANCROFT: This is a copy of the act that was sent to me quite awhile ago from the British House of Commons. This says compensation in the case of serious and wilful misconduct shall be paid in case of death or serious and permanent disablement.

THE COMMISSIONER: That is what Mr. Hellmuth has said.

MR. BANCROFT: Pretty nearly the whole defence of negligence in the British act has been wiped out.

MR. HELLMUTH: We are still getting some litigation by reason of "arising out of or in the course of employment."

THE COMMISSIONER: I have a strong notion that if any classes are left out, it ought to be provided that if an accident happens in the course of employment until the contrary is shown the workman is presumed to be injured in the course of his employment; and arising out of it, it is to be *prima facie* presumed that it arose in the course of employment; leaving the onus on the employer.

MR. GIBBONS: There is one situation that seems to make it work out on one side. If the employee is guilty of wilful misconduct he is deprived of his compensation and that is a saving on the employer no doubt. If on the other hand the employer is found guilty of wilful negligence by reason of not employing safety devices it is proposed that he should be penalized and pay into the fund. In either case the workman gets the worst of it, because he does not get any more compensation on account of the negligence of the employer, while if he is negligent himself he doesn't get any compensation at all; it works both ways to the benefit of the employer. The penalty goes into the

fund instead of to the workman, and in the other case if he is debarred from his compensation it still goes into the fund.

MR. WEGENAST: The provision in the Washington act is that if the injury or death results to a workman from the deliberate intention of the workman himself that neither the workman or his widow or child or dependants of the workman shall receive any payment whatever out of the accident fund.

THE COMMISSIONER: Without that act it would be so, if it were deliberately done.

MR. WEGENAST: "From deliberate intention produces any such injury or death;" that is section 6.

THE COMMISSIONER: The effect of that section, leaving in the common law liability, is to make it necessary to insure.

MR. WEGENAST: May I have some expression as to when it will be convenient to hear what I have to say with regard to Mr. Wolfe's brief?

THE COMMISSIONER: I will hear you when we get through with the witnesses. I do not suppose Mr. Hinsdale's statement will take very much time. I want to bring this to a close as soon as possible.

MR. WEGENAST: I have made arrangements for Mr. Hinsdale to stay a week or two so that he can give any advice if he is called upon.

THE COMMISSIONER: I do not want any advice that is not given here.

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## TWENTIETH SITTING.

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THE LEGISLATIVE BUILDING, TORONTO.

THURSDAY, 9TH JANUARY, 1913, 11 A.M.

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner.*

MR. F. N. KENNIN, *Secretary.*

MR. W. B. WILKINSON, *Law Clerk.*

MR. WEGENAST: Mr. Commissioner, I have asked Mr. Hinsdale to appear before you, principally for the purpose of answering some of the criticisms of the Washington system which have been expressed by the men who have appeared here on behalf of the C. P. R. and the liability companies. Since the system we propose is more nearly like the Washington act than any other existing system, the attack on our proposition has assumed to some extent at least the form of a criticism of the Washington act in the concrete, and it is for the purpose of allowing Mr. Hinsdale to set before you the actual facts that I suggested he should appear, and that I asked him to come.

THE COMMISSIONER: Will you proceed to ask him such questions as you think fit?

MR. WEGENAST: I think the questions I may ask Mr. Hinsdale will be largely in the form of asking his approval or disapproval of the criticisms.

THE COMMISSIONER: Just go on in your own way.

MR. WEGENAST: The first thing I would like Mr. Hinsdale to elucidate is the manner of fixing premium rates. There are certain premium rates given in the act, and the liability representatives have kept insisting that these are flat rates.

THE COMMISSIONER: Just ask him the question. Do not state your proposition and ask him if that is right. That is not the right way to examine a witness. I am treating him as a witness giving his evidence before the Commission.

MR. WEGENAST: I thought it would save time.

Well, Mr. Hinsdale, will you explain how the Washington system works in respect to the assessment of premium rates?

THE COMMISSIONER: I am not objecting to your asking if it is a flat rate, but do not make your statement and then ask him to corroborate it.

MR. WEGENAST: I will adapt my question to your suggestion.

MR. F. W. HINSDALE: The industries of the State of Washington were divided into forty-eight classes, and rates were assigned for the operation of each class which were presumed to be in proportion to the hazard. The initial contribution was required to be at that special rate on the pay-roll for a period of three months.

MR. WEGENAST: So it is not necessary for the Commission to levy the whole of the rate specified in the act?

MR. HINSDALE: Only in regard to that first period of three months. For the first three months of the operation of the law they had to levy that rate specified in the act. These months were October, November, and December, 1911. After that calls were to be made on the various industries as the funds became depleted in any particular class, and unless the funds were depleted by reason of accidents, or unless they were at a point that was considered a reasonable amount, a call was made, and if months had been passed and no call had been made for a period of time the first call issued was to be for the first month elapsed. For example, if we did not call on a particular class until midsummer we would put out a call for January, or a call for January and February, as was necessary, and then no further call was made until it became necessary to replenish that class.

MR. WEGENAST: Can you illustrate that by reference to some of the classes in your report?

MR. HINSDALE: Well, I am speaking of any class. I may say, for example, in the printing class, to which printers and engravers contribute, they paid in an original assessment of one and a half per cent. of three months pay-roll. Since then they have not paid anything. We have not asked them for anything, and we may not ask them for anything for two years yet, if the accidents continue to prevail, or not to prevail, as they have in the past.

MR. WEGENAST: Just so as to make it clear on the record, the printers' rate as specified in the act is one and a half per cent.?

MR. HINSDALE: Yes, on the pay-roll.

MR. WEGENAST: You made a levy of three months of that one and a half per cent., which is three-twelfths of one and a half per cent., and that is all you levied for the first year?

MR. HINSDALE: The first year. Under our interpretation, so far as our levies were concerned, it ran from the 1st October to the end of January, and we counted the calendar year—we counted 1911 as our first year so far as the classes were concerned, and the law required that they pay for this three months, but so far this year we have not asked them for anything. For 1912 we have not asked them for anything.

MR. WEGENAST: You treated the year as running from the 1st October to the 1st October. For the first year of the operation of the act you assessed only three-twelfths of one and a half per cent.?

MR. HINSDALE: Yes, three-twelfths of one and a half per cent.

THE COMMISSIONER: That is quite plain.

MR. WEGENAST: So that the system works absolutely on the assessment basis?

MR. HINSDALE: Absolutely on the assessment basis. It is practically automatical as far as we are concerned. We call for money as it is needed. In the lumbering class, which is a very large class with twelve hundred separate contributors, nearly thirteen hundred, they have paid nine months out of fifteen. That is to say, their rate so far has been nine-fifteenths of two and a half per cent., making a net charge to them of \$1.66 2/3.

MR. WEGENAST: Then Mr. Wolfe makes a statement which is a very broad one: "This act became operative in the latter part of 1911. The published report shows its operations do not permit of an accurate determination of the true condition of the fund." Now, what do you say as to that? He goes on to say, "Whether enough has been collected from the fund to enable the losses which have occurred during the year to be met in full, or whether the funds on hand will be insufficient for that purpose are matters which cannot be determined from the published reports," and this was elaborated on both by Mr. Wolfe and Mr. Sherman. What do you say as to that. Mr. Hinsdale?

MR. HINSDALE: Do I understand the question to be in regard to the payment of indemnities on account of injuries?

MR. WEGENAST: No, the sufficiency of the fund collected to meet the liabilities.

MR. HINSDALE: The funds have been sufficient in every class, with one exception.

MR. HINSDALE: Yes, the powder class.

MR. HINSDALE: Yes, the powder class.

MR. WEGENAST: We will leave that over for the present and refer to it later.

MR. HINSDALE: In every other class the firms have responded promptly and have sent in such moneys as were called for. Whenever the fund became low in any class we have asked for more and have received it. It appears to me that each fund is in good condition.

MR. WEGENAST: What the critics of the system had reference to, I think, is the sufficiency of the reserves to meet deferred claims. Will you explain how the reserves are calculated?

MR. HINSDALE: The reserves that we charge are with reference to fatal accidents and permanent total disability. Our law provides that \$4,000 shall be set aside as a reserve to justify the payment of a pension to a widow thirty years of age.

MR. WEGENAST: On what basis is that calculated?

MR. HINSDALE: That is calculated on the basis of the American Table of Mortality, with the expectation that the money shall be invested, and of course assuming that the money shall be invested and the fund shall derive an income and grow. We have during the first year up to October 1st set aside \$243,984.95 as a reserve. We have that invested at a little better than five per cent.—about five and a quarter or five and one-eighth, in such funds as State Treasurers are authorized to invest state funds. We set aside a reserve of less than \$4,000 if the widow is older than thirty, of course. We have worked that out on a proportionate amount as age increased and her life expectancy naturally decreases or is less. We worked it out on a basis of thirty years to ninety-five years.

MR. WEGENAST: What do you say as to the probable accuracy of your estimate?

MR. HINSDALE: Our law provides if a widow shall re-marry we shall pay her a year's pension in advance, and shall continue such pension as may be payable to her children until they become sixteen years old. Of course the pension to the children is not affected by her re-marriage; we continue them. As soon as she re-marries we release any unpaid amount from that pension, from that reserve. It seemed to us that this was a sufficient amount: it was carefully thought out. Of course it may take a good many years to determine whether it is correct or not, but there are no statistics available whatever with regard to when widows re-marry. We have had two cases occur already.

MR. WEGENAST: That is in the first year's operation?

MR. HINSDALE: Yes. Another thing, if a workman is permanently totally disabled, as we say, we set aside a reserve to justify his pension: naturally it is an impaired life and his expectancy would not be equal to that of the table.

MR. WEGENAST: That is recognized by the insurance companies, I understand.

MR. HINSDALE: In England I think they set aside only two-thirds of the reserve that would be required on a normal life. We have given it very careful thought, and it seems to us that \$4,000 is sufficient in view of the fact that many of these lives are impaired lives anyway. They are not selected.

MR. WEGENAST: Then, in making your calculations you have made use of such experience as was available of insurance companies?

MR. HINSDALE: It was thought out very carefully. We get a pretty good rate of interest. I think most of those reserves in the insurance companies are figured on a basis of a lower rate of income. We have \$239,000 invested in municipal bonds, school bonds, city securities and, as I said, our net rate of interest is about five and one-eighth per cent.

MR. WEGENAST: The rates of interest in the west, I presume, are a little higher than they are in the east?

MR. HINSDALE: They are. Of course some of the cities are able to borrow money at a very low rate, but with careful selection we can buy school bonds in the different cities, and municipal bonds. We do not bid on bonds unless they carry a good rate of interest; we let the low interest bonds be sold east.

MR. WEGENAST: Are you familiar with the methods of the liability companies in setting up reserves?

MR. HINSDALE: I cannot say that I am personally familiar with the methods of liability companies as regards to naming the amounts of the reserves.

MR. WEGENAST: I understand that the rough method adopted by the liability companies in comparing the results of your system with theirs is to assume that a certain percentage of the amount of premiums collected will have to be set aside. I think the percentage usually spoken of, roughly, is 60 per cent.; that is 60 per cent of the premiums collected will have to be set aside as a reserve for deferred payments. Would you make any such rough estimate, and form any conclusion from it?

MR. HINSDALE: It may be worked out that way, but that is not the way in which under our law it is done. Under our law a certain specified amount is named as to the amount that shall be set aside at the age of thirty or the other ages varying in accordance with the expectancy. But one could work it out differently; one could charge a rate, of course, which would take into consideration the accumulation of a reserve, or the setting aside of a reserve. In a sense one might create a sinking fund by an additional rate.

MR. WEGENAST: Then in estimating in that way you would be depending on experience and not on an accurate calculation.

MR. HINSDALE: I do not think there are any absolute statistics available to make a perfectly accurate forecast.

MR. WEGENAST: You have spoken of the reserve set aside in the case of death and in the case of permanent total disability. What about reserves in cases of partial disability.

MR. HINSDALE: We do not set aside a reserve in the payment of partial disability. We pay a pension so long as the disability lasts. That pension is simply regarded as an award to be paid and not carried in the reserve account at all. It is a direct charge against the fund of the class.

MR. WEGENAST: That is in case of a temporary disability, but what in case of a permanent total disability?

MR. HINSDALE: A permanent total disability, of course, would be a matter for a reserve. A permanent partial disability like the loss of an arm or the loss of a leg would require lump sum payments. We have had very few permanent total disabilities. I think only two.

MR. WEGENAST: And do you set up a reserve?

MR. HINSDALE: We do. We set aside a reserve.

MR. WEGENAST: On what basis would you calculate that?

MR. HINSDALE: On the expectancy.

MR. WEGENAST: You make the best calculation you can?

MR. HINSDALE: The same basis precisely as setting aside the reserve for the widow.

We learn the age of the injured man and what relation that is to the age of thirty towards his expectancy.

MR. WEGENAST: Then in case of temporary disability you do not set aside a reserve?

MR. HINSDALE: No, sir. That is a direct charge against the fund of the class.

MR. WEGENAST: The probability is then that owing to the abrupt beginning of the act on the 1st October, 1911, there will be an over-lapping liability which will run from the first year into the second year, and which will cause the rate for the second year to be higher than the first; is that correct?

MR. HINSDALE: There is that, certainly. In other words, a man might now be temporarily disabled, in our opinion, and we might be paying him a pension—we do not call it a pension—we might be giving him a monthly award. During the year it might develop that the man could not ever get well—in other words, that he was permanently totally disabled. A man might have an injury to his sight and we might be uncertain whether it would cause total blindness or not, and we might be paying him his monthly award, and the next year we might discover that his eyesight is absolutely ruined. We would then put him on the total permanent disability list and set aside a reserve to justify the award that he is to receive each month.

MR. WEGENAST: Then can you express any opinion as to the probable extent of the rise in the rate, if any, after the first year? I see you have the report now for the first fifteen months.

MR. HINSDALE: We have the report up to the 1st January, which has completed the fifteen months.

MR. WEGENAST: Then on the basis of that, or any other information you have, can you express any opinion as to the probability of the rise in the rate?

MR. HINSDALE: I could not say how much the rise would be. I think it is fair to assume that there will be an increase in the rate. The law is so young in its operation, only having been operating fifteen months, that we surely have not come into the normal year's work. When we first began on the 1st October a year ago naturally there were no claims coming in that month, and almost none the next month. We did not begin to get into full swing in the claims department until this spring, I presume. In fact we are paying occasionally a claim that originally dated a year ago for some accident that occurred long ago. It is too early to take a certain year and say from January to January our expenses were so much, and that that is a fair indication of the future. It will naturally increase a little.

MR. WEGENAST: Will that increase, in your opinion, be continuous from year to year?

MR. HINSDALE: I do not think it should be continuous. I think as soon as a given

year is a fair estimate—in other words as soon as there is just as much unfinished business of the year before done that year as there is business for that year that cannot be done until the next year, then we will be justified in saying that between a certain date and another date was a normal year.

MR. WEGENAST: Subject, of course, to the gradual increase of industry?

MR. HINSDALE: The gradual increase of industry and possibly the bad outcome of conditions that we think now are temporary developing into permanent injuries.

MR. WEGENAST: Then there are, I suppose, some counteracting factors. For instance, during the first year would you get all the premiums you are entitled to?

MR. HINSDALE: No, that is another matter in which we cannot say the receipts from January to January, or October to October, represent a normal year, because when we first began there was nothing coming from the past. At the end of the year we had a large amount coming that had not yet been paid in. It was not due, but it was outstanding.

MR. WEGENAST: Then I presume there would be a loss of some proportion of the premiums actually due the first year—a total loss.

MR. HINSDALE: Yes, in some cases. We have been fortunate in our collections. There are cases, however, when men have become bankrupt or absolutely unable to pay, when a judgment was worthless.

MR. WEGENAST: Do you find any cases where a claim is made for compensation and it develops that no premium was paid in by the employer?

MR. HINSDALE: We do. We make a very careful search throughout the state for all industries, and yet it is natural that certain operations should be conducted for a length of time before we are able to discover them. A man might be logging up in the hills, and an accident might occur in his operations and be reported to us, and we find there has been nothing paid to the fund on account of those operations. In our law there is no provision that a man is in default until a formal demand is made upon him and he has refused or failed to pay. We have had to hold that a firm was not in default until they had refused to pay a formal demand, and therefore we have paid those claims and have immediately tried to find out what the employer's pay-roll was and made a claim from the 1st of October.

MR. WEGENAST: By the way, would it assist the commission in its work if there were a provision in the law that the premium should be due without demand?

MR. HINSDALE: Very decidedly. I should heartily recommend an amendment to our law giving a constructive default, requiring a man to make settlement on his pay-roll, and requiring him to make contribution.

MR. WEGENAST: That would also assist as against an under-estimate of the pay-roll?

MR. HINSDALE: Yes. We have quite a heavy penalty for the under-estimating of a pay-roll. We have never had to inflict it.

MR. WEGENAST: Then there is some loss incidental to the first year's operation owing to your not having fully covered the state and ascertained who the employers were?

MR. HINSDALE: Yes, there is some loss.

MR. WEGENAST: And men are actually insured and are entitled to compensation without their employers having paid in the premium?

MR. HINSDALE: We consider that the workman is entitled to the payment of his claim regardless of whether the employer has paid the contribution or not. If the employer has not paid we try to make him pay; if he does not pay willingly we sue him. The only trouble is that we have no provision whereby he is in default until we have made the demand, and we cannot inflict the penalty.

MR. WEGENAST: It is not incumbent on him to come to the board and report his pay-roll?

MR. HINSDALE: No. It should be, and it will be, no doubt, after this session of the legislature; they will amend the act. Of course if we have made a reasonable demand and given him a reasonable time and he has failed to pay or refused to pay, and then the workman is hurt, if he wants to come to us and ask for compensation we give it, but we take his right of action against his employer and bring suit in the name of the state against his employer as though we were in his place, and the employer has been deprived of his old defences of fellow-servant and assumed risk and contributory negligence. The workman can either assign his right of action to us and we sue the employer, or the man himself may sue and not take compensation from us. He cannot do both. We had a case in Spokane where we asked a laundry to pay two per cent. of three months' pay-roll, the original contribution according to the act, and I think the payment amounted to about \$69 if they had paid. We made a formal demand and they failed to pay it, after repeated notice. A man was hurt in November, and the lawyers sent over to find the condition of the record, to find if the firm was in default on a certain date, and we showed that they were in default on that date. The man sued the employer and recovered a verdict of \$5,000.

MR. WEGENAST: Then you have this additional hold on the employer, that if he does not pay his premium he is liable to an action at common law?

MR. HINSDALE: He is liable to suit by his employee, and if the employee does not want to bring a suit we will bring a suit.

MR. WEGENAST: Supposing he recovers only part of what he would have got by way of compensation, then the board makes up the deficiency?

MR. HINSDALE: Yes; if we take his right of action and give him his compensation under the law and we recover more, we turn it in to the accident fund.

MR. WEGENAST: Referring again to the loss because of not knowing of the existence of the employers, should that be continuous; should that be a continuous condition under your system?

MR. HINSDALE: The loss on account of the employer not paying the premium?

MR. WEGENAST: No, the loss incident to the beginning of the act and your not having covered the State fully and ascertained who the employers were—should that be a continuous condition?

MR. HINSDALE: No, the condition in that respect should be improved.

MR. WEGENAST: So that that factor must be considered as counteracting to some extent the deferred liability?

MR. HINSDALE: Yes.

MR. WEGENAST: Now, Mr. Wolfe stated in connection with that that there was an appropriation of \$150,000 made the first year for the expenditures of this Washington compensation commission, and this year they have asked that this sum be increased to \$250,000; have you any comment to make on that?

MR. HINSDALE: When the law was proposed of course it was absolutely unknown what the expenses would be; there were no statistics on the subject, as far as we were concerned. The Legislature thought that \$150,000 might be sufficient for a period of twenty-two months until the next appropriation might be available. We had to equip the whole office and buy our books and stationery and machines, and so forth, and pay the auditors. Then there were various other expenses that the Legislature did not contemplate, I presume. We found we had to pay all the expenses in regard to the investigation of claims which were not good claims. Then we had to pay our own doctors to examine a man, and we had to pay a great many different expenses. Of course \$150,000 divided into twenty-two months gave a permissible sum of \$6,818 per month. We have kept within it, but it has been hard work.

MR. WEGENAST: Why?

MR. HINSDALE: Because we have had sometimes twenty auditors in the field, and we have a large office staff. We have had thirty-five employees, and at one season we had forty-nine employees, and to pay all the expenses and salaries, and buy stationery out of \$6,800 a month, was a difficult thing to do.

MR. WEGENAST: In what branches do you expect an expansion of that expense?

MR. HINSDALE: Why, during the operation of the fifteen months of the law, and the preliminary four months in the preparation of its operation, when the commission was entitled to do business, or empowered to act, a good deal of that time there were no claims. Naturally the claims did not come in till the 1st January, perhaps, but now we are in full swing, in the full course of business.

MR. WEGENAST: Then you had to pay for a certain period before the act went into operation?

MR. HINSDALE: Yes, we had to accumulate the information in regard to the industries. We had to send out auditors throughout the state to list them all and to learn their pay-rolls.

MR. WEGENAST: So that the expenses of the first year would naturally be considerably higher, other things being equal, than they would the succeeding years?

MR. HINSDALE: In some particulars they would be higher; now every month may be called a normal month. In the first operation of the act there was no claims department practically, the claims department did not get into its activities.

MR. WEGENAST: What I am trying to get at is, what do you expect to do with the money when you get more money; do you expect to pay higher salaries or do you expect to employ more officers?

MR. HINSDALE: Simply employ more men to do the necessary work of keeping in absolute touch with all building operations. We have had two men in our Tacoma district. The Tacoma district extends through from Puget Sound along the south and central portions of the state, and they have three men in the Seattle district, which extends through to the Columbia river, which is an immense area; and one man somewhere else. We need more men. With the few men we can only get the well-established large firms, but it is beyond the power of two or three men in a district to keep in touch with all the activities.

MR. WEGENAST: That, by the way, is a particularly important factor in connection with the building trades?

MR. HINSDALE: Particularly so.

MR. WEGENAST: Where a contract does not last more than a short period?

MR. HINSDALE: A man takes a short building operation, and it is just as necessary, we believe, to get the contribution due on his pay-roll as it is to get it from the well organized and well regulated firm to which you can go once a year and audit up their books. We would miss the small man, and it would not be fair to make the large firms contribute and let the small ones escape.

MR. WEGENAST: So that you have had that question to deal with in the first year's operation?

MR. HINSDALE: On account of the very small appropriation.

MR. WEGENAST: Then do you see any inherent difficulty in conducting the system efficiently?

MR. HINSDALE: Not a bit of difficulty if we have the men, and well equipped men, and political influence can be kept out absolutely; and if we can select a man because he is an auditor and because his training has enabled him to know what a pay-roll is and to discover, if necessary, a concealed pay-roll—if we have such men we can do good work.

MR. WEGENAST: By the way, do you consider that these men ought to be appointed by the Government, or by the Commission which administers the fund?

MR. HINSDALE: My opinion is that the auditors at least should be appointed by the Commission, subject to discharge by the Commission or, if it could be, by the head of the auditing department.

MR. WEGENAST: And that is actually what is done under the Washington system?

MR. HINSDALE: Yes.

MR. WEGENAST: You did not suggest any change?

MR. HINSDALE: We have not got as far as to permit the chief auditor to discharge an auditor, but his recommendation for the discharge as a rule is followed.

MR. WEGENAST: Mr. Wolfe's next criticism deals with what is called the catastrophe hazard, or in a mild form the danger of insufficient exposure. Mr. Wolfe criticizes your system because, he says, there are not enough firms, not enough employees, and not a sufficiently large pay-roll to afford a basis for an average. In the first place is it in your opinion necessary that an average rate should be maintained from year to year? Take for instance the lumber industries, would it do any harm if the rate for 1911 was one and a half per cent. and the rate for 1912 was two per cent.?

MR. HINSDALE: I do not think it would do any harm at all. If the rate one year happened to be a little lower than another they would be pleased; I do not see why they should be disappointed if in some years it should be higher.

MR. WEGENAST: What do you consider would be the effect of that factor upon the activity of the employers in preventing accidents?

MR. HINSDALE: The cost to the employer depends altogether upon the number of accidents. The award to the workman is fixed by the act; if he loses his arm we give him \$1,500. There is a basic rate stated in the law for the employer, but the true rate he pays depends altogether on the number of accidents. I think that is the finest and most important feature of the workmen's compensation acts, that it leads to the installation of safety devices, and there is a financial reason why the employer should do everything possible to decrease the number of accidents, not only in his own plant, but in the plants of all those competitors in the same line of business.

MR. WEGENAST: Then you do not agree with this statement which is from Mr. Sherman's address. I am not certain whether it was given here or in an address given elsewhere. He says: "This law is not only an accident breeder because it does not differentiate rates but also is grossly unjust to the employers and particularly to certain classes of employers." Referring to his charge that this law of the State of Washington is an "accident breeder."—and that criticism has been made both by Mr. Wolfe and Mr. Sherman---what do you say as to that?

MR. HINSDALE: I cannot imagine why an employer who finds that his rate is increasing, or who is confronted with a demand for a contribution to the fund would not say to himself, "what causes all these accidents?" I cannot imagine why he should not immediately want to install every safety device possible, and after he has installed them in his own place I should think he would require them to be installed in every other place; I think it would lead to class organization. For example, the laundries would be in a class by themselves, and I think the laundry men would get together and would have an inspector go around and put in safety devices and see that they are put in. I think this law would lead to that; I think it will reduce the number of accidents to the minimum.

MR. WEGENAST: Has it had any tendency in that direction as a matter of fact?

MR. HINSDALE: I cannot say it has as yet reduced the rate because we have only been operating a little while, but it has led to the posting of bulletin cards in every place of industry as to how accidents may be avoided, and quoting remarks made by thinkers and writers on the subject, and urging the necessity for every precaution to be taken against accidents.

MR. WEGENAST: In general is it the opinion in your state? I presume you are fairly familiar with the public opinion on this act.

MR. HINSDALE: On this subject I feel I am very familiar with the opinion in the state at large.

MR. WEGENAST: Is it the opinion of the state at large that this act is conducive or does conduce to increase the number of accidents, to begin with?

MR. HINSDALE: Not to increase the number of accidents, decidedly not.

MR. WEGENAST: On the other hand is it the opinion that the tendency of the act will be to decrease accidents?

MR. HINSDALE: Decidedly to increase the number of accidents.

MR. WEGENAST: Referring again to the question of the pay-roll exposure, have you any opinion to express on the question whether the pay-roll exposure in your state is as a matter of fact sufficient to enable you to arrive at averages? Assuming that it is desirable to secure a uniform average is it sufficient?

MR. HINSDALE: With reference to the number of firms and industries, and the size of the industry, and so forth?

MR. WEGENAST: Yes.

MR. HINSDALE: As compared with other states I don't know. Of course the State of Washington is developing largely in large operations such as the construction of power companies, and milling and lumbering operations, I believe they are on a heavy scale as compared with any state, taking into consideration the size of the timbers and the manner in which they are handled, and the use of machinery in logging, and it seems to me it should give us a fair basis for estimating. We have twelve hundred and thirty-seven separate contributors in that particular industry.

THE COMMISSIONER: That is in the lumbering?

MR. HINSDALE: Lumbering, milling, saw-milling. We had 42,164 employees at the time of this list that I have.

MR. WEGENAST: Then coming down to the smaller employers; take the one that has been cited as an example all over, the powder class. What do you say as to the sufficiency of the pay-roll exposure there?

MR. HINSDALE: Of course there is nothing more dangerous than a very small class. If there was only one contributor in a class under our act, why, he would simply be responsible for the accidents in his plant.

MR. WEGENAST: As he has under the laws of some of your states?

MR. HINSDALE: Yes, except under our particular act his liability would be less; that is, it would be limited. We would pay the damages and at the end of

the year; we would tell him what the deficiency was and he would pay it. As a matter of fact in the powder class there are four contributors. I have here an exact detailed statement of their pay-rolls and of how we have worked it out. The result of it in short is this, that the law provides that powder manufacturers in the State of Washington shall contribute at the rate of 10 per cent. and that fire-works manufacturers shall contribute at the rate of 5 per cent. for a three months' operation, the first three months of the law, and after that they shall be called upon as may be necessary. It happens that the Dupont Powder Company is 92 per cent. of all of them, that is their pay-roll is by far larger than all the rest. If they had paid the 10 per cent. on their pay-roll for the first three months, and every other powder manufacturer had paid 10 per cent. on his pay-roll for three months, and in addition to that we had called for two months of the year 1912, omitting the other ten months, we would have had enough to pay all reserves and all losses on account of the disaster which occurred in Chehalis where eight young people were killed. So that a 5 per cent. rate would have been ample even in the powder business during the year; less than that, 4 per cent. would have been sufficient.

MR. WEGENAST: So that a 5 per cent. rate would have been sufficient notwithstanding this catastrophe?

MR. HINSDALE: Notwithstanding that catastrophe where eight children, practically minors, were killed. I have a full statement of the powder situation as far as our state is concerned. There were eight fatalities, and until such time as those children would arrive at the age of twenty-one we would have had to pay them pensions—not them, but we would have to pay their parents amounts in the aggregate requiring a reserve of \$7,659. Now, the pay-roll expense was \$600; we pay \$75 each.

MR. WEGENAST: What is the root trouble in this powder class incident?

MR. HINSDALE: Simply that the Dupont Powder Company did not pay. Their pay-roll for three months was \$36,630.13. Ten per cent. of that is \$3,663.01. We made formal demand upon them to pay that \$3,663, and they did not do it. They replied to us that they did not recognize our right to demand it; they denied the constitutionality of the act and refused to pay it. Others have refused to pay in other lines. We have sued many of them and in every case which has been determined judgment has been rendered in favour of the State. As to a foreign corporation, as far as our State is concerned we brought suit against foreign corporations in the superior courts, and an application was made to refer it to the federal court. The federal court has handed it back to the superior court, and the superior court has tried the case. So that we have been getting decisions all along which have strengthened our position so far as the powder people are concerned, and it is only a matter of time before they come in. We have a very strong position, we think.

MR. WEGENAST: Is the 5 per cent. an exorbitant rate or a large rate for a powder industry?

MR. HINSDALE: Why, so far as the rate is concerned, under our law it makes very

little difference to our employers what the basic rate is, because we only ask them to pay as we need the money.

MR. WEGENAST: Just exactly what it costs?

MR. HINSDALE: Just exactly what it costs.

MR. WEGENAST: But in comparison with the rates of liability companies and the rates in other jurisdictions would you say 5 per cent. was a high rate?

MR. HINSDALE: Oh no.

MR. WEGENAST: So that under circumstances which were peculiar, your system, if it had not been for this unfortunate mix-up owing to the doubt as to the constitutionality of the act, would have shown better results than the ordinary insurance companies?

MR. HINSDALE: The cost would have been very little. It happened there was only one very minor accident that occurred that was entitled to commission in the powder industries, and it only required a payment of less than \$50. although the day I left Seattle one firm called the Hepp Fire-works Company had objected to paying the five per cent. Their rate was specified at five per cent. because they make fireworks. People who make powder are rated at 10 per cent. They have objected to paying even the 5 per cent., and were in default, but Saturday afternoon as I left Seattle a man came in with a cheque to pay it. We took the cheque. I went out on the street and found that one of their men had been killed, at least fatally injured, that day.

MR. WEGENAST: That is not the only incident of that kind you have had, a man coming in with his cheque when he found a workman had been injured?

MR. HINSDALE: No.

MR. WEGENAST: Now, I believe the opponents of the Washington system take that Chehalis incident as a text for the contention that one employer under your system, or that each employer insures not only himself but all the other employers.

MR. HINSDALE: He is directly interested in the upkeeping of those establishments.

MR. WEGENAST: Do you find in your state any objection to that condition of things?

MR. HINSDALE: We do, yes. We have some firms writing to us that they never had an accident, that they have been in business for twenty years, they usually say, and have never had an accident, and they do not want to pay the expenses of some other firm which has accidents. The Hepp Fireworks Company told us they almost never had an accident. It is hard to tell who is going to have an accident.

MR. WEGENAST: Is that opinion supported by general opinion throughout the state: is there any considerable feeling against the act on account of that feature?

MR. HINSDALE: No, sir, I do not think that there is. I think it is so contrary to the spirit of insurance for a man to say that because he has not had any

accident that he should not contribute to pay the expense of the people who do have accidents. We do not do it in any other line of insurance.

MR. WEGENAST: What would be the influence of that feature on the prevention of accidents?

MR. HINSDALE: It would make the man who has a well-conducted factory with every safety advice take an active interest in seeing that all other factories have similar devices, and that they use equal care with him in the prevention of accidents.

MR. WEGENAST: Is there any movement in that direction in your State?

MR. HINSDALE: There is, indeed. The Commission recognizes and is urging the creation of voluntary associations, trade associations, in the different classes, and to appoint safety engineers to inspect the safety of plants and to recommend the installation of safety devices, and to study the causes of accidents. Hitherto under the old system it was impossible often to find the causes of accidents. If an employer would admit it was his fault, or if it was proven it was the fault of his machine, it simply meant heavier damages, but under this system it makes no difference what the cause of the accident was, so far as the workman or the employer is concerned, or so far as the amount payable, but there is every reason for frank investigation and enquiry as to the cause.

MR. WEGENAST: So that one effect of the act is to remove the impediments in the way of investigation of causes?

MR. HINSDALE: Exactly, a frank investigation of the cause, and mutual effort to reduce the number of accidents.

MR. WEGENAST: You regard the grouping of industries then as an important factor in preventing accidents?

MR. HINSDALE: It has excellent results, I believe, and an excellent tendency.

MR. WEGENAST: Mr. Commissioner, I do not think that there is anything in particular that I want to get from Mr. Hinsdale, although I think there is a great fund of information that he could give which would be of benefit to the Commission.

MR. HELLMUTH: There is a little information I would like to get from Mr. Hinsdale.

I understand, Mr. Hinsdale, that your state system is on a capitalized basis, not a current cost basis?

MR. HINSDALE: If I understand you correctly the payment, so far as the injured workmen are concerned, is on a current cost basis; so far as the widows or dependants on account of fatalities are concerned it would be on a capitalized basis.

MR. HELLMUTH: So that really as a matter of fact your system is a mixture of capitalized basis and current cost basis. It has sometimes been spoken of as purely a capitalized basis, but I do not think that is so from what I heard from you to day.

MR. HINSDALE: No.

MR. HELLMUTH: It is partly current cost and partly capitalized.

MR. HINSDALE: If I understand the question, so far as the men who are hurt are concerned, short of fatal accidents, and the employer, it is on a current cost basis.

MR. HELLMUTH: You do not provide a sufficient assessment to capitalize at one time the whole cost of an accident which results in mere partial disablement?

MR. WEGENAST: Not partial, but temporary.

MR. HINSDALE: Permit me, please. I think perhaps I did not quite understand the question, but I might say this, that the cost to the employer, the collection, is the current cost of the accident, and it has also the amount, or it includes the amount which we set aside for a reserve, so that the current cost at this year, or at any time—or the amount we charge may be considered I should think the current cost.

MR. HELLMUTH: Then you do not put it on the capitalized basis at all?

MR. HINSDALE: I do not think it is on the capitalized basis, if I understand your question.

MR. HELLMUTH: Let me understand you. There are two ways, I think, of dealing with accidents. Take a concrete instance: an accident happens by which two men are killed and five men are permanently injured, or say two men permanently injured, and two men are partially injured. The total amount to meet the death claims, the permanent disability and the partial disability would take \$100,000 we will say. You do not levy in one year that \$100,000?

MR. HINSDALE: So far as that year was concerned—the year from October 1st to October 1st we levied all that was needed to pay the people who were hurt, their awards, and we levied also all that was needed for a reserve, which was \$240,000. More than that we levied enough to maintain, as we believe, a reasonable fund to the credit of each class, so that year we did levy enough not only to pay the losses but to pay the reserve. I should think one might call that a current cost.

THE COMMISSIONER: It does not matter what you call it if we know what the thing is.

MR. HINSDALE: No, it does not matter.

MR. HELLMUTH: That year you required to set aside out of that supposed \$100,000 \$50,000 to meet the death claims we will say; now, you did set that whole amount aside?

MR. HINSDALE: Yes.

MR. HELLMUTH: That was the reserves, and so on, for the 1,397 deaths, taking it at \$4,000.

MR. HINSDALE: Yes.

MR. HELLMUTH: You did, I understand from you, set aside a reserve based on the expectancy of life to meet the permanent disability?

MR. HINSDALE: Yes.

MR. HELLMUTH: You did not set aside any reserve to meet the temporary disability; is that not the fact?

MR. HINSDALE: No, we did not set aside a reserve to pay temporary total disability.

MR. HELLMUTH: Now, there is a statement in this copy of Industrial Canada which is put out here, Mr. Hinsdale. I see that would show a net balance in the Accident Fund of \$290,933.29.

MR. HINSDALE: Yes.

MR. HELLMUTH: And you show in your summary of operations an accident report, incomplete, of 1703 cases. Do those mean accidents that have yet to be investigated and claims made or not made, as they may be allowed or disallowed?

MR. HINSDALE: Those claims represent the element that I spoke of whereby you cannot take in the early operation of our law, or even a year from the beginning of the law—from the 1st October to the following 1st October you cannot take them and say that is a complete year. We do not receive claims usually until thirty or sixty days after the accident. We are almost always two months behind the accident.

MR. HELLMUTH: You have not made any allowance, have you, for what may be the result with regard to these 1,703 claims in the appropriation of the moneys—I assume you have not made any allowance?

MR. HINSDALE: This is naturally from the auditing department, and we do not in our books record any claim which has not been approved for payment. This is simply a matter of the records of payments.

MR. HELLMUTH: If a number of these claims are allowed they will have to come out of that balance of \$290,933.29.

MR. HINSDALE: If they amount to anything more than we can collect.

MR. HELLMUTH: Quite so, but I understand those were claims that were presented to you for the first fifteen months or a year and a half. These "Accident Reports, Incomplete, 1703," they are for three months of the year 1911 and the whole of 1912?

MR. HINSDALE: Yes.

MR. HELLMUTH: Then I notice here that you have in your death claims an error in addition, the total death claims are put at 372 instead of 282; I just ran it up.

MR. HINSDALE: Pensions?

MR. HELLMUTH: There are 90 more among your death claims.

MR. HINSDALE: Well, I do not know anything about that magazine; there may be an error there.

MR. HELLMUTH: You see "pensions awarded 121," and then "suspended and rejected, 191." I did not quite grasp the meaning of whether "suspended and rejected" meant "rejected," or whether there were still under the 191 some of those might become valid.

MR. HINSDALE: Of course there are a great many claims come in and every claim is assigned a number, naturally, in the work. It might develop that it is a fictitious claim or a claim entitled to no consideration for various reasons, but we call that a "rejected claim." A "suspended claim" means if a claim comes in and it is incomplete—no report from the doctor, or no report from the employer—we call it on the waiting list.

MR. HELLMUTH: It may become a valid claim?

MR. HINSDALE: Naturally; yes.

MR. HELLMUTH: You have not distinguished then in that 191 which are actually rejected and which are suspended as far as I can see it.

MR. HINSDALE: I have the report here in very much greater detail.

MR. HELLMUTH: Then you say "Under investigation": I should have thought that would have been under the suspended one, 38, and incomplete, 22. Now, has any report whatever been made in those 60 claims—that is the 38 under investigation and the 22—has any allowance been made by way of reserves for these claims?

MR. HINSDALE: As they come in. For instance it is three months now since the 1st October; during these three months we have been paying claims, and I presume that every claim we have paid for sixty days was on account of an accident previous to the sixty days, almost always. We are two months behind the accidents.

MR. HELLMUTH: I am not criticizing it in that way at all, Mr. Hinsdale, what I merely wanted to get was, that this statement here which shows an operation of one year and a certain expenditure during that year does not take into account any possible expenditure in regard to those sixty claims which matured or were brought in during that year.

MR. HINSDALE: No, I presume it does not. I do not know what that statement is copied from, but so far as the financial statement is concerned it has only reference to payments made and audited on approved claims.

MR. HELLMUTH: Then I wanted to ask you a question or two, but perhaps my want of knowledge of arithmetic renders me incapable of understanding it, but in this Chehalis disaster or this powder class list which you deal with in this list, I cannot understand why you added to your receipts there what you allege to be a shortage, \$4,302.86. You see the first item is ten per cent. of pay-roll for October, November and December, \$3956.49. That I understand you to say includes the Dupont contribution.

MR. HINSDALE: Yes, at ten per cent.

MR. HELLMUTH: Then if you will take the third item, ten per cent. of pay-roll from January 1st to October 1st \$11,811.99.

MR. HINSDALE: Oh, that was worked out as an estimate of what it would be for the year.

MR. HELLMUTH: Those two together would represent, would they not, what would be the receipts—that is the first and the third items,—from the contribution on the pay-roll? Why you should put in \$4302.86, which was a shortage, into your receipts rather got over my knowledge.

MR. HINSDALE: There is no difficulty about that in my mind. The situation is this: we were advised that the end of the year referred to in the law as the time when we should make good deficiencies, might require them to be made good, was the 1st January. The powder contributors or manufacturers owed \$3956 on the first three months' operation of the law. Now, at that particular time we were supposed to find out what the deficiency was. I think probably it does not appear in that particular document, but we had imposed a penalty of \$1297 on the Imperial Powder Company on account of two deaths of young people under age who had been employed in violation of the statute.

MR. HELLMUTH: I see that here.

MR. HINSDALE: Well, the total amount then that would have been due on account of the operation for those three months was \$5253.

MR. HELLMUTH: You have taken that into account in the other page.

MR. HINSDALE: Now, then and there we had to figure out what the shortage was. Now, the shortage or the total liability was \$8,259 and it left a net shortage of \$3,005.

MR. HELLMUTH: You take off your \$1297 and you get your shortage just the same.

MR. HINSDALE: We put out a call for shortage then and there; if that had been paid, and also we had found it necessary to call for all of 1912, there would have been a matter of whatever it is stated here.

MR. HELLMUTH: But none of these things were done?

MR. HINSDALE: No, that was put in there to show the situation, or what would be the situation. If they had paid the 10 per cent. and we had collected the shortage and penalty there would have been in the fund \$13,000. That is put in as a matter of general information; we did not have to do that.

MR. HELLMUTH: I understand now your explanation, but what I do not understand is this: You could in addition to the 10 per cent. make a further call to meet shortages?

MR. HINSDALE: That is provided in the law. If at the end of any year there is not sufficient in the fund on account of the regular contribution we then would tax the shortage in that fund pro rata amongst the contributors.

MR. HELLMUTH: Is there no limitation in the law as to what an employer or a class of employers must pay?

MR. HINSDALE: He must pay the losses so far as his class is concerned, according to our law.

MR. HELLMUTH: There is no limitation? If it ran to 50 per cent. of the payroll owing to some terrible disaster all the contributors would have to pay?

MR. HINSDALE: They would have to make good.

MR. HELLMUTH: Then there is just one other question.

As I understand you there is no differentiation in the rates in the same class?

MR. HINSDALE: In the same class, except as the law provides where there is a difference of occupation. For instance in the powder fund the man who makes powder pays 10 per cent. and the man who makes fire-works 5 per cent.; but they are in the same class.

MR. HELLMUTH: I am not dealing with that. If an employer has particular or special safety appliances in his particular class in a powder mill he has to pay the same rate as the employer who is minus the safety appliances?

MR. HINSDALE: He does, yes; that is true.

MR. HELLMUTH: So that every one in the same class pays the same rate and there can be no differentiating by reason of safety appliances taken up or brought into force by one employer.

MR. HINSDALE: There is none under our law; there can be by amendment, but there is none.

MR. HELLMUTH: I am speaking of your law as it is at present.

MR. HINSDALE: There is none.

MR. HELLMUTH: Assume that the Dupont Powder Company did not pay the premium to the State, who pays the loss?

MR. HINSDALE: We issue the warrant as the law provides and send it to the man for whatever he is entitled to, ten dollars a month or whatever it may be and we refer it up to the state treasurer "Not paid for want of class funds."

MR. HELLMUTH: If it is not paid then?

MR. HINSDALE: Our law further provides that if there is not the money in a class that the deficiency shall be made good by general assessment upon the members of the class, but meantime the concern in which the accident occurs shall forthwith make good or pay the warrants that are issued against it. If a man has a warrant drawn on the proper fund, or drawn on the general accident fund, and our State treasurer will not pay it, all he has to do according to law is to take it to the Imperial Powder Company and demand payment, and they by law are required to pay it.

MR. HELLMUTH: That is to say the concern in which the accident occurred?

MR. HINSDALE: Yes. Then any payments made by them into such a fund shall be deducted from any further dues they may owe.

MR. HELLMUTH: I am only asking this for information. Have you any system of factory inspection by the Commission in order to see what appliances are necessary?

MR. HINSDALE: Not as yet. Under the state law there is a State Labour Commissioner, a separate official, who is charged with the duty of seeing that the laws are complied with in regard to such points as the law covers, the machinery laws.

MR. HELLMUTH: You have a factory act?

MR. HINSDALE: Certain requirements about set screws and such things.

MR. HELLMUTH: But the Commission does not deal with it?

MR. HINSDALE: Not as yet. The intention is to make the labour commissioner an official of the Industrial Insurance Commission, to merge the two departments, and to insist upon factory inspection.

MR. TROWERN: I would like to ask if under that lumbering class everyone is included?

THE COMMISSIONER: All the retailers are included in that.

MR. TROWERN: I am pleased to know you anticipate my question. You said some 4700, didn't you? Was that employees?

MR. HINSDALE: In class 10 which includes the saw-mills and shingle-mills and logging camps and the people who make spars with or without machinery, there are 1237 separate contributors, separate employers. That does not include the people who run logging railways; they are separately listed. There are 42,164 employees. That does not apply in any sense to the retail lumber yards in connection with no mill.

MR. TROWERN: Have you a class for the retail people separately?

MR. HINSDALE: Under our act they are not considered unless they are in extra hazardous employment.

MR. TROWERN: So that they are not included under your compensation act?

MR. HINSDALE: The retail lumber yard is not. If a saw-mill operates a mill and has a lumber yard, that is in connection with an extra hazardous industry, but if a man off at a little selling point has a little lumber yard we do not call that in connection with an extra hazardous industry.

MR. TROWERN: And he is left out from the operation of the act?

MR. HINSDALE: He is.

MR. TROWERN: That is what I wanted to know.

MR. HINSDALE: But the man who operates a mill, we make him report his men in the yard.

MR. TROWERN: Of course if the retailers do not come under your operation at all I have nothing further to say, because that is where we want to be put in Canada. We do not want any of this sort of thing in operation here at all. We are not very pleased with the whole thing. In fact I am freezing here this morning on account of the Government heating arrangements here, and I am not delighted with the manner in which the Government operates anything.

MR. HINSDALE: In connection with that last remark, if it would be agreeable, I would like to say a word as to the administration of this act by the State?

MR. TROWERN: I am not referring to that. I am speaking of the Canadian law and not yours at all, but if the retailers are out of it I have nothing further to say. It shows the wisdom of your Legislators in the United States in leaving out the retailers, because I say it with all due respect, and I think Mr. Commissioner will bear me out, that if the retailers are put into the operation of this Canadian law at first it is going to give a great deal of trouble. They are a troublesome body of people wherever they get. I say that frankly. I cannot understand pulling the retail men into this thing. Let the labour people, and the manufacturers, and the socialists, and those who want it have it. We are delighted to let them have it but we want to be left out of it. I am very pleased to know you have left them out in the United States.

MR. BANCROFT: Mr. Hinsdale, I see you have railways tabulated in your schedule. What railways are there in Washington that are assessed under your act?

MR. HINSDALE: Unless it is a logging railway, under our law, of course, and elsewhere in the United States for that matter, the transportation railways are under the Interstate Commerce Act. Naturally the state cannot conflict with that jurisdiction, but the act is considered as including the construction of a railway until such time as it is turned over to the operating department: For example, if the Northern Pacific Railway were renewing a bridge, taking out a trestle and putting in a new one we could not take it as it is under the operating system, but if they were building a new branch line off somewhere we would take in that construction, we would consider that under our act; or if a little railroad is running from one point in the state over into another state it is interstate, and we do not touch it, but if a logging road up in the woods is conveying lumber we do take it.

MR. BANCROFT: That is because of the law relating to interstate commerce?

MR. HINSDALE: We cannot conflict.

MR. BANCROFT: In the other States where they have railways operating in the State they have included railways.

MR. HINSDALE: I cannot say as to other States.

MR. BANCROFT: Is there any railway operating in Washington alone that is not under the interstate commerce act?

MR. HINSDALE: I doubt if there is, because they are loading cars that are under the interstate act.

MR. BANCROFT: That is the reason probably why you do not have the railways under the act?

MR. HINSDALE: As I say we do count the logging railroads, and it is possible that there may be a car on that logging railroad that might have been transferred from some interstate road.

MR. BANCROFT: You say in your report, Mr. Hinsdale, "When the act was under discussion in the Legislature, even after it had become effective, the state-

ment was made repeatedly that no State Commission without the spur of profit could administer the law without wasting thousands of dollars. No state, said the law's critics, can do business as cheaply as a private company. And yet where the private casualty company is spending over 60 per cent. to handle its business the State is doing it for 9 9/10 per cent." Who were the critics in that case? Whom did they represent?

MR. HINSDALE: Well, the periodicals containing criticisms that were mailed broadcast over the state to encourage employers to refuse to comply with the act, and offering to protect them in the event of damages being assessed against them were naturally issued by men whose interest it was that such an act should not be passed—by the liability companies.

MR. BANCROFT: Do you remember, Mr. Hinsdale, I asked you about this part of the report where it says "No State can do business as cheaply as a private company. And yet where the private casualty company is spending over 60 per cent. to handle its business the State is doing it for 9 9/10 per cent." Mr. Sherman, when he was here, in answering questions by Mr. Ritchie, who represents the accident insurance companies here, stated he thought this report was misleading, and seemed to emphasize particularly that that part of it was misleading. I would like you, if you will, to make that clear to the Commissioner?

MR. HINSDALE: I would like to state how we estimated that, and I think a simple statement will make it clear. In our report, for example, on the 1st of January it was thought that we had received contributions to the accident fund from employers of \$1,356,457. During that time the expenses had amounted to \$127,816. When I speak of the expenses I mean the amount we had spent out of the appropriation. The appropriation was \$150,000, and it had to last us twenty-two months. We had spent \$127,816, so that we had handled in fifteen months \$1,484,274.20. Now, we wanted to know where to account for that money, where it was, so I figured the percentages on the cash that we had handled. We had 22½ per cent. in cash; we had in the reserve 22 4/10 per cent.; we had paid in claims 46 5/10 per cent., and the rest which had been expenses was 8 6/10 per cent. up to the 1st January. That was simply a method of accounting where all the money was, and we based it on all the money we had handled, every dollar we had handled—46½ per cent. in claims; 22 4/10 reserve invested; 22½ in cash; and the rest we had spent.

MR. BANCROFT: That was the way of estimating the operating expense?

MR. HINSDALE: That is the way. We simply figured on the amount we had handled. If one had wanted to, it could have been figured in some other way: they might have made a report that their expenses bore such a relation to the amounts that had been paid in claims. We simply said our expenses bore a certain relation to the amount of money we had handled. Personally, I would say it is proper to figure the amount of money for expenses on the amount you handle. It is part of our expense to get some of this money; we had to send out auditors to audit accounts. Supposing we had not paid anything; supposing we had simply collected this money, our expenses would be that proportion of the money we had collected. It might

have been figured the other way, and if so it would have raised it slightly, I presume. If we had figured the expense on the money we had paid out it might have brought it up to 12 or 13 per cent.

MR. BANCROFT: Well, how would your way of estimating the operating expenses of the Industrial Insurance Commission compare with the casualty companies' way of estimating the operating expenses, which is said to be sixty or sixty-six per cent?

MR. HINSDALE: When we speak of the expense in connection with casualty premiums we refer to the premiums, the expense with reference to the amount they collect. For instance, as I have done hundreds of times, in a casualty policy, out of the premium I would collect my commission. Out of the premium they pay the legal expenses, their home office expenses, and all their expenses; so that they figure the same.

MR. BANCROFT: That is what I wanted to get, that really the casualty companies for the purpose of comparison figure out their operating expenses by a method similar to that of the Industrial Insurance Comission?

MR. HINSDALE: I think they do, undoubtedly.

MR. BANCROFT: In this volume at page 46 there is shown two diagrams of the German Accident Insurance, does that compare also with the way you found out the expense of administration? I mean the diagram on the left hand.

MR. HINSDALE: That is the way. That conforms, I should think, to the way we did it; that is about it.

MR. BANCROFT: Then I would draw the inference, Mr. Hinsdale, that the statement made by Mr. Sherman that your report was misleading in that respect is not correct?

MR. HINSDALE: I do not regard it as a correct statement. We had no intention of making it misleading, and I do not think it is misleading to anyone who is familiar with the way of figuring expenses.

THE COMMISSIONER: Did not Mr. Sherman say why it was misleading? If he did you had better perhaps look at it.

MR. HINSDALE: Of course if we had figured the expense with reference to the claims paid it would give one result, it would put our expense account a little higher, but we figured the expense with reference to the amount of money handled. As it costs money to collect this money, and it made a total accounting of all the money we had handled, I thought it was the only way I could make a report.

THE COMMISSIONER: If they have adopted the other plan these percentages will not be a fair method of comparing?

MR. HINSDALE: If their method is the other it should be changed.

THE COMMISSIONER: Are their percentages based upon the claims paid or as you have based it, upon the money handled?

MR. HINSDALE: My opinion, and I think I am right, is that the statement of expenses is on the total money handled.

THE COMMISSIONER: That would be the total premiums received?

MR. HINSDALE: Yes.

THE COMMISSIONER: One would suppose that would be the way they would do it?

MR. BALLANTYNE: They say the expense ratio as a rule is about 35 per cent. They never heard of any beyond 40, so that the 60 per cent. they are quoting must refer to something else.

THE COMMISSIONER: Unless your information is inaccurate, or that is inaccurate.

MR. BALLANTYNE: Yes.

MR. HINSDALE: There is no other source of money to the companies; that is the only source they have. In our business, as we conduct it, we not only have the money which is handed up in premiums but we have the appropriations, so it is only right and proper that we should include them both.

THE COMMISSIONER: If you deducted the amount received from the State it would only make a fractional difference.

MR. HINSDALE: Very small.

MR. BANCROFT: What criticism has been made of the report by the accident insurance companies doing business in New York?

MR. HINSDALE: Criticism of our report on their part?

MR. BANCROFT: Yes.

MR. HINSDALE: No criticism has been brought to my attention, sir, with regard to any part of the accountants' work or to the report. I am not aware of any definite points of criticism except the general objection to the law on the part of all liability companies.

MR. BANCROFT: That would point out as far as the report is concerned, and even as far as the accident insurance companies are concerned, and the State of Washington is concerned, they seem to regard it as sufficient.

MR. HINSDALE: Oh, I think one has to, if one looks at the way the books are kept. We keep a daily balance; we are like a banking concern, we have a balance; there is no other way, it must be that balance.

MR. BANCROFT: How did you arrive at the monthly payments that you make under the legislation, Mr. Hinsdale; on what basis did you start?

MR. HINSDALE: On account of injuries?

MR. BANCROFT: Yes.

MR. HINSDALE: It is specified in the act; it is clearly specified and there is no uncertainty as to how much should be paid to an injured workman. If he is a single man we give him \$20 a month.

THE COMMISSIONER: You are speaking now of total disability?

MR. HINSDALE: Total temporary disability. To a man who is simply incapacitated we give \$20 a month, and during the first six months of his disability it is increased 50 per cent., so that during the first six months he would receive \$30 a month.

THE COMMISSIONER: Regardless of the wage he was receiving?

MR. HINSDALE: No payment to him shall be over 60 per cent. of his wage, but the amount cannot be in excess of \$20 per month plus 50 per cent. for the first six months, making it \$30. Then if he is married it increases step by step; if he is married and has one child, or two children, and so on. The least amount is \$35 plus 50 per cent., which would be \$52.50 per month, provided that it is not in excess of 60 per cent. of his wages.

MR. BANCROFT: What I wanted to get at really was how did you get that monthly rate as specified in the act; has it any relation to wages?

MR. HINSDALE: You mean, perhaps, why did they assign that rate?

MR. BANCROFT: Yes.

MR. HINSDALE: I think one principle was that the rate provided must not be too much. It should not be so heavy that there would be a temptation for fictitious reports and malingering, or that it should be of advantage to a man to be laid off. We certainly did not want to have it high, and on the other hand they wanted to have it as substantial as possible, and between those two extremes they arrived at that amount, of about \$1.00 a day to a single man, and about \$1.50 a day if he has a wife and one child, and so on; \$52.50 a month you see would be a little more than \$1.50 a day.

MR. BANCROFT: How do those payments compare with the payments under other compensation laws? Take Germany, or Great Britain, for instance.

MR. HINSDALE: The best knowledge I have is from reading and from hearing what has been said on the subject, and that is that our compensation is really heavier than any other country; that is, we give more. Of course we may not give as great a percentage of wages, perhaps,—I think some provide sixty-five per cent.—but in actual cash I think the compensation is heavier in Washington.

MR. BANCROFT: That would mean where they pay sixty-six per cent. in Germany on a labourer's wages, if you take the average, your rates would be higher than the average in that country?

MR. HINSDALE: I think it is undoubtedly true our rates are higher, that they amount to more in dollars and cents, regardless of the percentage.

MR. BANCROFT: You pay just as much to the poorly paid labourer as you do to the highly paid mechanic?

MR. HINSDALE: That is true. Our law does not distinguish between the wages men receive, as to the amount they shall get, except that no man shall be paid more than 60 per cent. of his wages. Of course a man might be receiving \$6 a day in his ordinary work, and if he was hurt he would not receive any more than some other man that was receiving \$4 a day.

MR. BANCROFT: Speaking about the insurance again, I see here that the report of the superintendent of insurance for the Dominion of Canada for the year 1911 shows that twenty insurance companies were engaged in liability business in Canada, and collected a total of \$2,103,375 in premiums, of which \$1,033,496 was written off as loss, and \$927,774 was paid out in claims. In

other words the money paid in by way of insurance premiums was so much, and only 44 per cent. was actually paid out in compensation, and a considerable portion would go to the expense of the legal department, and I believe it is about the same as in the United States. So that in Canada it seems to be 49 per cent., which is getting very near the 60 per cent. quoted.

MR. HINSDALE: When the committee was appointed by Governor Hay of Washington to make recommendations as to a law, they stated in their report that during the previous year—and by the way the lawyer, Mr. Harold Preston, to whom is due a world of credit for the law as it is in Washington, wrote that report, and he said that during the previous year the employers of the State had paid in approximately \$600,000 in premiums to the liability companies, of which \$500,000 was absolutely wasted as between the employer and the workman. He intimates that twenty per cent. was all that really went to the workman. If I may I would like to say why that is true practically: but of \$100 premium paid to a liability company in our State there used to be about \$20 paid to the man who wrote it, to the agent who solicited: at least 10 per cent. to the general agent to cover general agency expense: a good 15 per cent. at least for home office expenses, various expenses, legal expenses and so on; and there was an ordinary margin of assumed profit to stockholders of 15 per cent. You could easily account for 60 per cent., leaving a matter of 40 per cent. to be paid in judgments; so that out of the \$100 which the employer paid there remains \$40 presumably to go in judgments. I do not know how it is elsewhere, but I know under the system of fees that we have there at least half of those judgments go to the lawyer who conducts the case, and the injured workman does not receive more than \$20 out of the \$100. Under our law the claimant is under no necessity of paying one dollar to anybody: there are no fees for making his papers, no litigation, and there is no opportunity for him to employ an attorney nor to pay any third party anything. We cannot spend a dollar of that fund except to the injured workman, and if \$100 is paid by the employer that much is paid to the injured workman or his dependants.

MR. BANCROFT: Is there any way possible, Mr. Hinsdale, for the Industrial Insurance Commission, as has been charged by witnesses here against the German system, to favour one employer in the group system more than another as regards assessments, and so on? Is there any possibility for favouritism of one nature or another?

MR. HINSDALE: Under our law we could not give him a lower rate. If by the inspection of his record of accidents we discover—and we keep a separate account for every firm and we know on the ledger page just the condition of affairs exactly, how many accidents occur—if we find there are a great number of accidents, we investigate, and if we find there is undue hazard in his plant we can raise his rate, but there is not a provision for lowering his rate.

MR. BANCROFT: Mr. Sherman, after referring to the Iowa law, spoke of the Washington law, and said "The state guarantees nothing, but there is only one fund for all injuries." In the first place I think that would be correct, from

the fact that each group maintains its own fund, does it not, by assessment?

MR. HINSDALE: There is only one accident fund recognized by the State Treasurer and referred to in the law as the accident fund, but that accident fund is separated into a number of classes. We have from class 1 to class 48, and an accurate account of each is kept, and the law provides for that segregation, but the warrants are practically drawn on the accident fund. If there is not any money in one class, as in the powder class, before issuing the warrant we would take it up to the State Treasurer and tell him there were no funds in that powder class, and he would endorse it "Not paid for want of funds."

MR. BANCROFT: Each group under the Washington law bears its own burdens?

MR. HINSDALE: Absolutely, and no other burden.

MR. BANCROFT: Now, he says both the Washington and Ohio laws have been made attractive to the employers by exceptionally low rates, although through lack of discrimination their rates are grossly excessive in some cases.

MR. HINSDALE: Is it a comment on our Washington law as to the rate being very low?

MR. BANCROFT: To make it attractive to the employers.

MR. HINSDALE: Well, our experience during fifteen months is that every rate provided by the statute is higher than necessary. We referred, I think, this morning to the powder firms: the law provided a rate of 10 per cent., if 5 per cent. had been collected it would have been more than enough. Referring to the lumber industry, the rate provided by law is  $2\frac{1}{2}$  per cent., and the actual rate charged during fifteen months is \$1.66. The printing rate is  $1\frac{1}{2}$  per cent., to really have paid the accidents that occurred in the printing business for the first year it would have taken seven cents per \$100 of pay-roll; that would have been enough. I will refer to another class that we did not mention, the street railway class. There are eighteen separate street railway companies doing business in Washington with 3,700 employees. The specified rate in the law is 3 per cent.; they are required to pay 3 per cent. of three months' pay-roll. Since that time we have not asked for any money; the 3 per cent. of three months' pay-roll produced \$26,000—I am speaking in round figures, it was in excess of \$26,000—and the total accident cost for the fifteen months was about \$8,000. So that 3 per cent. of three months' pay-roll during a period of fifteen months is about three-fifteenths of 3 per cent.; it would be six-tenths of one per cent.

MR. BANCROFT: But he goes further, and he says these are merely initial experimental rates for the first year and cannot be maintained.

MR. HINSDALE: The law provides for its automatic increase as required: if three per cent. is not enough, at the end of the year we charge them more.

MR. BANCROFT: Then he goes on to say there are not sufficient details to lead to any deductions, except the deduction that such statements as are issued are indicative of mismanagement.

MR. HINSDALE: Of course we have had a very small amount of money available for the operation and maintenance of the department, and every man employed has had to work very hard; we have been working night and day there. When it became necessary to have three people, instead of hiring them we would put up a notice and everybody had to come at eight o'clock in the morning, and come at night, too, if necessary. We have had men there working three nights a week for the last three months.

THE COMMISSIONER: Have you any labour organizations?

MR. HINSDALE: There does not appear to be for state employees. We had to get that information and we had to go through every bit that had been done, all the records, and analyze them, and copy them off. I have brought with me a package of some five hundred pages of printers' proofs. The report is not yet, sir, in the hands of our Government; I just waited until I could get it from the printer for your benefit.

THE COMMISSIONER: Could you, while you are here, prepare from the figures that you have, a statement giving the details that the insurance companies give?

MR. HINSDALE: I think there is a statement in detail on almost every question.

THE COMMISSIONER: Take one of their forms, Mr. Hinsdale, and see the items in their form of return. Could you compile one of those?

MR. HINSDALE: I will do the best I can. I do not know just what questions they might ask.

THE COMMISSIONER: Mr. Wegenast could get that. See if you could compile one in that form?

MR. WEGENAST: Yes, if Mr. Neely will facilitate us.

MR. BANCROFT: Do you mean that Mr. Hinsdale shall give to the Commission a detailed report, which may be a guide?

THE COMMISSIONER: No. They are complaining that this report does not conform or does not give the particulars that they have to give to the Department of Insurance. It will answer that if Mr. Hinsdale will prepare a report itemized as the Government report is required to be in the case of insurance companies; that would meet that objection. You see they are bound to return under certain headings, according to the regulations of the Department. If Mr. Hinsdale could prepare a return of the operations of his commission as if he were under that act, it might answer that point. I do not think it is a very elaborate thing.

MR. BALLANTYNE: The Canadian form is not very elaborate; I think Mr. Sherman referred to the New York State report. I could get a form that they use there.

MR. HINSDALE: I will be pleased to answer anything I can. If there is a form provided I shall have the greatest pleasure in giving the answers. In this report there are hundreds of details given; it is the result of months and months of careful study and work. I doubt if there will be any charge of it being carelessly drawn, because we have taken great pains with it. It is at your service, sir.

MR. BANCROFT: I saw a report that the manufacturers would not pay their assessments, and neither would they agree to come under the act in Washington. Have you found them in the first year's operation? How many are not under the act now that should be?

MR. HINSDALE: Whenever we have found that a man has not paid, and I am scrutinizing the accounts every day, I immediately send it to the Attorney-General to sue; I have referred, I presume, fifty cases there. In almost every case where judgment has been rendered it has been rendered in favour of the State, but in most cases the employer simply sends a cheque to pay I will not say there are none, because there may be somebody who has escaped our notice and attention; but certainly there are very few who have not paid anything.

MR. BANCROFT: How do you find the workers under the act? Have the workers registered any objection whatever?

MR. HINSDALE: The workmen as a class the State over, I am satisfied, are very much pleased with the act. There has been some criticism that our awards are not large enough—some workmen would like to have us pay larger indemnities; I presume it would be impossible to have any act in which some complaint of that kind would not be made. The employers as a class, I am satisfied, like it. On Saturday I called on one of the largest mill men in Seattle and told him what his rate was; we were talking about it, and he said, "I am thoroughly pleased with it; I have no criticism or objection to make to it at all, in fact if it cost us twice that it would be a relief over the old system." I was talking with Judge Reid, counsel for the North Western Improvement Company, which controls some large coal mines, and he said to me, "You are taking care of our coal losses for half what it used to cost us, all things being considered." There is some complaint about the amount of pensions we give on account of fatalities, but some complaint would be made, I presume, no matter what amount we paid. It seems to me that \$20 a month is a small sum to a widow without children, nevertheless it is 6 per cent. on \$4,000, or 4 per cent. on \$6,000. Of course it is not very much, but it cannot be lost, it is permanently hers; it cannot be assigned, and she never will become a charge on account of the lack of that.

MR. BANCROFT: Are the rates that the employers now pay into the fund bigger than they were under the old employers' liability law, and the other remedies for damages that the workmen had in Washington; are they bigger under the Washington law?

MR. HINSDALE: Of course the liability rates have been increased greatly during a period of several years. Some years ago I have known a liability rate for lumbering, for instance, to be as low as a dollar, one per cent., but they greatly increased that as the laws abolished the defences, and as juries gave larger and larger verdicts. I think the liability rate is now about \$1.50 on \$100, about one and a half per cent., or was immediately before this act went into effect. Last year in the lumbering it cost, or for fifteen months it has cost about \$1.66. Now, that is slightly in excess, but when one considers that under the liability rate if you did pay \$1.50, it only protected you to the extent of \$5,000, and if a verdict was rendered for \$8,000 or

\$10,000, why, you did not get full protection. Another thing, you were at a certain amount of expense in connection with the case, and the mere actual rate for the liability charge wasn't the whole thing. In addition to that, I think even the \$1.66 which the lumbermen pay is less than the total cost under the old system, and they have full protection. In other cases like breweries, creameries, laundries, and so on, our rates are ever so much lower. I would have pleasure in giving you the rate on any of our classes, and if you have before you the liability rate, the comparison will speak for itself.

MR. GIBBONS: What is the rate for the street railways?

MR. HINSDALE: The basic rate is 3 per cent. on the pay-roll. The law requires that three months' contributions should be paid at that rate, and it produced \$26,000. The accident costs have been about \$8,000, and there has been no further assessment. They have run fifteen months now for 3 per cent. of three months' pay-roll, that is one-fifth of 3 per cent., or six-tenths of 1 per cent.

MR. BANCROFT: That is all they have paid?

MR. HINSDALE: That is all they have paid, and they have now two-thirds of their money still on hand. There will be no charge on them at all for the operations of last year.

MR. BANCROFT: Mr. John Mitchell was there last summer—Mr. Mitchell, of the American Federation of Labour. Did he speak of the Washington act when he was there?

MR. HINSDALE: Do you know I cannot answer that question.

MR. BANCROFT: I told the Commissioner at a previous sitting that he expressed his approval to me in New York of the Washington act. He was on the Wainwright Commission in New York State. This Mr. Schwedtman, who I think was sent by the manufacturers of North America to Europe to study the question, compared the compensation insurance rates in the State of New York and in Germany, per \$100 of pay-roll. Of course there is considerable difference in the value of the actual wages in New York and in Germany, that is in the purchasing power.

MR. HINSDALE: Surely.

MR. BANCROFT: He says for carpenters under the German system the rate is \$2.57, in New York \$5; masons, Germany \$1.43, New York \$6.25; painters, German rate \$1.12, New York \$5. This is in Germany where the compensation is guaranteed through a mutual trade association of employers, and in New York it is the old employers' liability law. Plumbers, German rate \$1.50, New York \$3.25; steam pipe fitters, German rate \$1.50, New York rate \$6.25.

MR. HINSDALE: I would like to say in regard to this question of rates that if the collections are made only as the money is needed after the first installment which is required then it is in a manner automatic, and it makes to my mind no difference about the rate.

THE COMMISSIONER: What they do is simply make a deposit in the first instance, and then it all wipes itself as it goes along; it does not make any difference what rate you have got.

MR. HINSDALE: No, not a bit under our act.

TRE COMMISSIONER: Unless you have too little to pay for the first three months.

MR. HINSDALE: That is the danger.

MR. BANCROFT: I suppose the criticism will be on the rates published; we ought to have that clear.

THE COMMISSIONER: It is perfectly plain to anybody who thinks for a moment. The amount of the rate makes no difference when a man pays just exactly what the losses are.

MR. HINSDALE: That is true, Mr. Commissioner, and it is very plain to you and to us as we think of it. I have discovered in most cases that where employers have objected to the law they have failed to understand that, and notwithstanding the fact that it has been published and they have been written to and they should have understood it, nevertheless when our auditors go to them to-day to audit the pay-roll for the whole of last year they in their minds apply the rate to that whole pay-roll and say we will have to pay \$30,000, when as a matter of fact they may not have to pay anything.

THE COMMISSIONER: It is perhaps unfortunate that they put it in that form.

MR. HINSDALE: It is a matter of education. I came in on the train from the west with a gentleman who had made bitter objections to this law when it was first passed,—we had all manner of communications from him and his attorneys, but he pays because he had to pay. I found he had quite changed his mind. "Why," he said, "I totally misapprehended that law, it is a fine law. We have just started a new mill over there and the first thing I did was to put ourselves on record as coming in under that law." It is a matter of education. We have tried to be very patient with all enquiries and we have carried on a campaign of education. Before the law went into effect each one of our commissioners travelled about over the state, as far as he was able, conferring and talking and explaining, and trying to get the employers into a proper understanding of the principles of this act.

MR. BANCROFT: The Washington act just merely covers hazardous or extra hazardous employments?

MR. HINSDALE: As specified in the act, extra hazardous employments. If a class in addition to what is specified explicitly in the act should arise it shall be classified, and a rate assigned proportionately to the true hazard.

MR. BANCROFT: Will you explain then why the act is limited in its application; is it a constitutional limitation that you have in that State that would not apply here?

MR. HINSDALE: I think, sir, if a law were passed in Washington applying to all employments generally in every form of work that it would be declared unconstitutional. The underlying principle of this law, and possibly its only

justification is it works for the best interests of the industries. It is in force under the police powers of the State, and supposed to be the thing which shall best promote the welfare of its citizens. Now, in considering the extra-hazardous industries of the state they are considered to just that extent a menace. This is a tax upon them for conducting that kind of business; it may be legally regarded possibly in that light. I think Mr. Preston carefully excluded all kinds of business except the kinds of business which in a sense created hazard or created loss to the State.

THE COMMISSIONER: Does not every business create more or less hazard?

MR. HINSDALE: There is hazard due to all business, doubtless.

THE COMMISSIONER: So it is only a question of degree in the end?

MR. HINSDALE: In the industries the hazard is so enormously increased and creates such great loss.

THE COMMISSIONER: I do not see how that could affect the constitutional question; if it is right to protect against one hazard it is equally right to protect against another.

MR. BANCROFT: Where everything is free to go ahead and pass a workmen's compensation act such as you have there in a measure, would you apply it to the whole industries of the State irrespective of extra hazardous industries; would you make it general?

MR. HINSDALE: It would vastly increase its scope and the work of administering, and there would be such a multitude of cases turning up all the time in regard to difficult points. For example, men will get sick; they catch cold at their work; everybody has troubles, and there would be such a multiplicity of troubles reported to the commission that unless there were some limit it would fall of its own weight possibly. It would be very hard to administer, I think.

MR. BANCROFT: The German method is to cover everybody.

MR. HINSDALE: In addition to that there was bitter opposition on the part of the farmers to include them in it; they did not want to be included. Now, the work of teaming under the German and other statistics is a hazardous occupation, but we do not consider the work of teaming a hazardous occupation unless that work of teaming is in connection with an extra hazardous industry. If a saw-mill has a team we call that in connection with an extra hazardous industry, and if a packing house has a team we call it an extra hazardous industry, but if a dry goods company has a team we do not consider that incidental to an extra hazardous industry. I do not know if we are justified, but that is how we do.

THE COMMISSIONER: You do not take the teamster doing his own business?

MR. HINSDALE: No, excepting the law provides moving sinks is a hazardous occupation, and we enlarge that to include moving heavy machinery, but that is one of the difficulties. There are many little difficulties.

MR. BANCROFT: It says in the report that the preliminary figures in one thousand cases indicate that less than 3 per cent. of all accidents reported under

*MR. HINSDALE.*

the workmen's compensation act show a liability that would be good for a verdict under the old law, and 47 per cent. of all the above cases would be probably uncompensated under the casualty system.

MR. HINSDALE: In this report I refer to the particular committee in which Mr. Preston was very active in recommending an act. He says that observation shows that in accidents about one in eleven was followed by a lawsuit, and in the suits brought but one in ten was successfully prosecuted and led to a verdict; that would be one in one hundred.

THE COMMISSIONER: That must be under the common law system.

MR. HINSDALE: Yes.

THE COMMISSIONER: Your law before this was passed was the old common law?

MR. HINSDALE: Yes.

MR. BANCROFT: Mr. Sherman called it the tort law.

MR. HINSDALE: There has been a somewhat careful study of these from that point of view; of course it has not been exhausted, but it has been referred to examiners.

THE COMMISSIONER: The cases where they recover can be counted on your fingers.

MR. HINSDALE: We figure that not over 2 per cent. could be successfully prosecuted at common law.

MR. BANCROFT: We have the Factory Act of Ontario, Mr. Hinsdale, and it shows last year 985 accidents in Ontario and I believe, if my memory serves me aright, only fifty of them were fatal. How does that compare with your State? Have you anything like that?

MR. HINSDALE: I believe the fatalities in the lumbering in our State, owing to the enormous size of the trees and the fact that all work in the woods is done with machinery—the team work has all gone—I think there are a great many more fatalities. In the work of logging, saw-milling, shingle-milling, and so on, we had 129 deaths, fatal accidents, during the first year. In this connection I may say that we had 42,000 employees listed during the year, and 129 fatalities. A great many of those men left no dependents entitled to pensions; we are only paying pensions now on account of fifty-five deaths in the logging industry, so that a great many of those did not require a pension. There must be a wife or there must be children under sixteen, or there must be parents who are dependent, and not only dependent but who did receive compensation from this man during the previous year. It is not enough simply to show he had parents who are needy, it must be shown he had contributed.

THE COMMISSIONER: Is there a table in this report showing the number of fatal accidents in respect to which claims are made?

MR. HINSDALE: I think there is, sir.

MR. BANCROFT: This is just a list of the accidents reported to the accident inspectors' department; there were 985 in Ontario reported this year. I suppose there are many, of course, that would not be reported?

MR. HINSDALE: We had for the first year 6,300 that we paid on.

MR. BANCROFT: Our population here is about twice yours.

THE COMMISSIONER: Those 985 would be accidents in factories coming under the act where five or more are employed.

MR. HINSDALE: There are lots of accidents. I doubt if there are accurate, really accurate statistics in any State about accidents. I think when a compensation act is passed you would have a great many more accidents. You will find it at pages 120 and 121 of the report of the State of Washington.

THE COMMISSIONER: 279, is that it?

MR. HINSDALE: Yes, and 129 in the operation of Class 10, and cost us \$172,000.

THE COMMISSIONER: What is the total accidents of all kinds?

MR. HINSDALE: 279 during the year.

THE COMMISSIONER: But of all kinds of accidents?

MR. HINSDALE: We have them on a different page; it will run to 3,650.

MR. BANCROFT: I was told in Washington, D.C., by a supposedly reliable authority that there had been 50,000 fatal accidents in the United States in the last year. It would require a Federal compensation law to compensate them.

MR. HINSDALE: Of course there has been a great deal written on the subject.

MR. BANCROFT: Here is Clause 16, with reference to coal mining. The legal rate is \$3.00 per \$100, and it took \$1.50, which shows you only have to assess them at half the legal rate. They have only collected six months. The same thing applies to the legal rate of \$4 in quarries. In Ontario we have a considerable amount of mining, and there are many workmen who will probably come under this act. Take for instance the silver mining and nickel mining and gold mining, or any other mining industry. The argument has been used that the fundamental basis on which the experts have gone is that in the last analysis the consumer pays the cost of compensation. The argument has been used and the question has been asked here, "Is the employer who is engaged in mining any of these commodities able to raise the cost of his commodity as a manufacturer would be?" How did you come to include the coal mining under the act, and assess them, if it was a burden upon their shoulders?

MR. HINSDALE: I am satisfied that so far as the coal miners are concerned they are pleased with the act.

THE COMMISSIONER: Coal is a local production. That is not a fair comparison. None of the coal of your State goes out of the United States, does it?

MR. HINSDALE: I presume not.

THE COMMISSIONER: It is not like the silver, where the world markets govern.

MR. HINSDALE: What I meant to express was that the cost to the coal mining industry in Washington since this law went into effect is so much less than it

MR. HINSDALE.

was previously that they are pleased with it. As I have said, Judge Reid, now the Third Vice-President of the Northern Pacific Railway, an eminent attorney, told me that we were taking care of his coal mine cases for half what it used to cost them; so they like it.

THE COMMISSIONER: You take in quarries and smelters?

MR. HINSDALE: Yes.

THE COMMISSIONER: Do they like it?

MR. HINSDALE: The Tacoma smelter is the largest contributor in the smelting class and they do not object; I have not heard any definite objection from them at all. They are rather critical, which is right and proper; but they do not object.

MR. BANCROFT: The only objection you heard from the workmen was as to the amount of the payment under the act?

MR. HINSDALE: Yes.

MR. BANCROFT: Otherwise they are very well pleased with it?

MR. HINSDALE: Yes. Of course they would like to have the act enlarged.

THE COMMISSIONER: Take in everybody?

MR. HINSDALE: No, I cannot say I have heard a complaint with regard to that, but they would like to have the cost of treatment provided for. That is a large subject by itself. There is a strong desire in Washington to-day to increase the scope of the act, and provide for the payment by somebody of the hospital and medical expense for treatment during incapacity. They speak of it as "first-aid," but the ordinary understanding of "first-aid" means immediate attention. Some people think that, but the meaning of the term, as I understand it, is the entire treatment cost.

MR. BANCROFT: So when you come to compare the payments under the Washington act, which does not pay medical expenses or anything else, with the payments under the British act or the German act, they may be considered low, but taking into consideration the medical expenses of the sufferer they may be very high.

MR. HINSDALE: That is very true. We have no provision at the present time for paying his doctor's bill or buying his medicine, or paying any of those expenses. We simply pay him for his loss of time and loss of wages.

MR. BANCROFT: There is no danger of the Industrial Insurance Commission going back to the old casualty system?

MR. HINSDALE: I do not think there is any chance in Washington.

MR. BANCROFT: How are the street railways grouped over there; are they all grouped in one class?

MR. HINSDALE: All grouped together, yes.

MR. BANCROFT: So that the efficient street railway helps to pay for the inefficient street railway?

MR. HINSDALE: It does indeed, and that is true of the telephone companies. To illustrate it with regard to the telephone companies: it is impossible to tell where the accident is going to occur; it may occur in a well equipped plant of a solvent employer, or it may occur in an inefficient, ill-equipped plant of the man who is utterly irresponsible. We had a case where one man was employed in a mill putting up a telephone system; he climbed a pole, climbed too high, came in contact with a high power voltage, and was killed. The institution was not responsible at all, but of course they paid their contribution and we had to pay the amount. If it had been a question of individual liability on account of that particular man's death his employer possibly never would have been able to carry out his obligation to the beneficiary. On the other hand, if the big Sunset Telephone Company, which conducts almost all the industry in that line in our State, if they said: We have to stand the loss of that inefficient employer it would have been true, they did; but that man might have got killed on the other pole. I think the whole principle of insurance is that the man in whose plant the accident does not occur helps to pay for the plant where it does occur.

THE COMMISSIONER: In the group?

MR. HINSDALE: Yes.

MR. GIBBONS: Does the same thing apply in fire insurance?

MR. HINSDALE: Absolutely, and in life insurance.

MR. GIBBONS: A man might say he should not pay any life insurance because he may never die?

MR. HINSDALE: Yes, and in cases where accidents happen the other people do not pay; they could not pay it.

MR. BANCROFT: Take the municipalities of the State of Washington, supposing they engage in building sewers, and so on, do you cover them too?

MR. HINSDALE: Yes. The municipal work is given by contract by the various cities, and the cities are instructed to withhold payment until a pay-roll has been submitted and contributions deducted from the contractor.

MR. BANCROFT: That applies to all municipalities?

MR. HINSDALE: All municipal work, and even state work. If the state is building a hospital or a prison, or whatever it may be, the contribution has to be paid to the accident fund.

THE COMMISSIONER: That man is in business within the act?

MR. HINSDALE: Yes, any work of construction.

THE COMMISSIONER: No matter for whom he is working?

MR. HINSDALE: No matter, no sir.

MR. BANCROFT: The labour men in this Province have asked to have included all those engaged in hazardous industrial occupations; we have asked for a wide application of the legislation.

THE COMMISSIONER: I do not think that is what you mean, if I may suggest a doubt as to what you mean. What you mean is that the municipality should be directly liable instead of any other employer.

MR. BANCROFT: Yes.

MR. HINSDALE: That has helped us very much.

THE COMMISSIONER: I do not know whether you have gone so high or so low, whichever way you like to take it, that the work is done by day labour in the municipalities. In your system where a municipality was constructing a sewer by day labour would it be bound to contribute to the fund?

MR. HINSDALE: Yes. If a man is hurt in a sewer he is barred from bringing suit against the city.

MR. BANCROFT: Do you say if your act was amended to make the municipalities directly responsible to the Industrial Commission by tax on the wage-roll for all works in which they are engaged it would be better?

MR. HINSDALE: It is so now. We hold the city responsible. Section 17 of our act holds them responsible for the payment of the levy. The contractor must make a statement to the city of the pay-roll, and the amount due to the fund shall be deducted from his pay, or paid to him for transmission to our commission. The contractor and the sub-contractor are subject, and the contractor can charge it up to the sub-contractor, but no employer can charge it to his men. That is strictly prohibited by law with a heavy penalty.

THE COMMISSIONER: They cannot make any agreement with the men?

MR. HINSDALE: No, not of any kind, and he must include the total compensation paid, whether it is paid by boarding, piecework, or otherwise. Some men have tried to evade the law by giving out a great many contracts: of course a contractor on his own work does not have to pay contribution. There is no question of master and servant. If the contractor personally works he does not pay contribution, but he has the privilege of doing so. In reporting the wages paid to his men he must include piecework and board. Some men have tried to get a contract from all of their men, or give a contract to all of their men. One man in the city of Pascoe practically wrote a contract with every man on the job, but we did not stand for that.

MR. HALL: How would you collect from a municipality?

MR. HINSDALE: We require the contractor's statement.

MR. HALL: Where the municipality is doing it by day work?

MR. HINSDALE: Well, once a month, or every six days, an auditor would go there and go through the pay-roll and classify the work.

MR. HALL: Can you under your act collect from a municipality?

MR. HINSDALE: Oh, yes, they are regarded as a contractor.

THE COMMISSIONER: It is expressly so provided.

MR. BANCROFT: Had you an employers' liability law in Washington?

MR. HINSDALE: If I understand you, of course we had the liability insurance business conducted in the State.

THE COMMISSIONER: Had you any law extending the common law liability of the employer before this act was passed, such as the British Employers' Liability Act, where he may be liable for accidents that he would not be liable for at common law? You had no law of that kind?

MR. HINSDALE: I do not think we did.

THE COMMISSIONER: This was the first labour legislation of this kind you had?

MR. HINSDALE: Decidedly so.

MR. BANCROFT: What I want to get at is this: In Ontario we have an employers' liability law, if this act only covers extra hazardous industries, such as yours does, and takes the place of the employers' liability, as yours has taken the place of the common law, there is no appeal practically from the Industrial Insurance Commission?

THE COMMISSIONER: That is not the scope of their act. They take away certain of the defences. That applies to every occupation, does it not?

MR. HINSDALE: That is preceding this act there were various laws passed limiting the scope of the fellow-servant doctrine, and assumed risk.

THE COMMISSIONER: So that if a man that is injured does not come under this law he has his ordinary remedy of suing for compensation?

MR. HINSDALE: Yes. I think this bears on the question. We had forty-seven classes, and the law provided for the creation of an additional class which should be called a non-hazardous class, contribution to which was voluntary, and it had to be by mutual agreement between the employee and the employer, and if in any particular line of business there was really non-hazardous work, as we would say, the employer could sign an application for such and such of his employees, and he himself be given the privilege of the act, and under that appeared the signatures of the employees in question. They must forego any right of action. They are put into a class by themselves, a non-hazardous class.

MR. BANCROFT: That wasn't exactly what I wanted to get. Your act wipes out all that has gone before in Washington on workmen's compensation?

MR. HINSDALE: Yes.

MR. BANCROFT: But outside of that act the employer who is not under the administration of this act and does not come within the law has still to deal with the accident insurance companies to protect his liabilities?

MR. HINSDALE: Yes.

MR. BANCROFT: Then take the case of Ontario. If the act is made wide enough in its application and takes in everybody, then, of course, the wiping out of the Employers' Liability Act as at present would not mean much perhaps, but if it only applies to certain industries then the question as to how far the workers will surrender their rights under the Employers' Liability is a very serious one to us. That is what I want to get.

THE COMMISSIONER: I do not understand the force of that at all. If certain industries get the increased benefit under such an act as the Washington act what concern is it of theirs that certain other industries are not under the act and are left to their common law liability? Unless they want to make trouble I do not see what there is in that.

MR. BANCROFT: From the employers' standpoint it is a great question. If there are any rights to sue left under the Compensation Act it means the employer has got to insure twice. On the other hand, to the worker it is a consideration, because unless these defences are wiped out he will not get the generous compensation from employers that probably we might expect.

THE COMMISSIONER: That is another point; that is not the way you were putting it before. As far as those under the act are concerned, the Washington act gives them those benefits and takes away any other right they have got. If they are not under the act they are just as they were before.

MR. GIBBONS: Take the class represented by Mr. Trowern—the retailers—those employees would have recourse at common law.

THE COMMISSIONER: The Employers' Liability Act would probably apply to them, or whatever law took the place of that.

MR. BANCROFT: The question comes up as to the terms of the legislation. It only covers certain industries. If they are going to have taken away the right to get damages, which they consider perhaps in some cases may be greater than the compensation under the act, that is a great consideration.

THE COMMISSIONER: Yes, but with regard to those who are within the act they get the compensation, and their remedy at common law is taken away, or under the employers' liability: is that not justice?

MR. BANCROFT: Well, that is the case in the Washington act, but they had no employers' liability law as we have.

THE COMMISSIONER: What difference does that make? As far as they are concerned they get their compensation under this act?

MR. BANCROFT: Well, I would say in that case it is a good argument for the wide application of the legislation in this Province where there are no constitutional restrictions such as they have in Washington.

THE COMMISSIONER: If that is the view you have you have not followed Mr. Hinsdale's statement. His view is to extend it to all industries would make the machine break down of its own weight.

MR. BANCROFT: But it has not broken down of its own weight in Germany, and neither would it break down in Great Britain, where they are asking for state insurance.

THE COMMISSIONER: They have not got it yet.

MR. BALLANTYNE: I understand all the expenses of administration are borne by the State?

MR. HINSDALE: By the State.

MR. BALLANTYNE: And I also understand you to say that they limited the amount that you could expend during the first twenty-two months?

MR. HINSDALE: They simply gave us \$150,000, which in that way was limited.

MR. BALLANTYNE: And you had to keep your expenses within that mark?

MR. HINSDALE: Yes.

MR. BALLANTYNE: And you found it insufficient?

MR. HINSDALE: Well, we have done the work, but it would have been done perhaps better.

MR. BALLANTYNE: Your organization has not been as complete as it should have been?

MR. HINSDALE: No, we would have liked to have had more men.

MR. BALLANTYNE: And you are asking now for \$250,000, which you think is necessary to provide the machinery necessary.

MR. HINSDALE: For two years. I think surely we ought to have \$10,000 a month. We have had \$6,800. It does not take a great many men to use up another \$1,000 a month, you know.

MR. BALLANTYNE: So you think it ought to be almost double what you have been getting?

MR. HINSDALE: Ten thousand dollars a month is \$240,000 in two years; it wouldn't be double, it is not twice as much by any means. We ought to have a little more than we have had.

MR. BALLANTYNE: If the amount you think necessary is provided it would mean that the percentage of expense would be increased from 9 to about 13 or 14 per cent.?

MR. HINSDALE: Oh, it would not have much effect on the expenses; it would increase the expense some.

THE COMMISSIONER: That can be calculated easily.

MR. WEGENAST: Mr. Commissioner, I would like to have an opportunity of going through that report of Mr. Hinsdale's and have him appear again in case there is anything to be asked about. I would like to ask Mr. Hinsdale whether he has any way of making an estimate of the amount of that overlapping liability for temporary disability.

MR. HINSDALE: It would be pretty hard to tell what temporary disabilities exist which may eventually develop into total disability.

MR. WEGENAST: I was thinking more of the man who is given compensation for a temporary disability, say in the last part of December, and whose payment will continue into February and March perhaps. Have you any way of estimating what that will amount to, because that is what Mr. Hellmuth alluded to when he spoke of your system as being operated on the current cost plan. Have you any way of estimating what that would amount to, and what the probable rise in the rates would be for the next year?

MR. HINSDALE: I have not been able to learn sufficient facts, or so to assemble the facts that I could estimate that. It is an element to be considered, but how much it is I don't know. I think it will be slight.

MR. WEGENAST: You do not think it will be a serious factor?

MR. HINSDALE: No, but how much it will be I cannot tell.

MR. WEGENAST: That would only obtain, of course, as between the first and second year of operation?

MR. HINSDALE: Yes.

MR. WEGENAST: There would be no such increase between the second and third year because the over-lapping liability from 1912 to 1913 would counter-balance that between 1913 and 1914?

MR. HINSDALE: Yes. It will take a little while before you can take an even year. There must be enough unfinished business to counteract the unfinished business of the other year.

MR. WEGENAST: But in your estimation it is not a serious factor?

MR. HINSDALE: I would not think it is. I believe it is not a serious factor.

MR. WEGENAST: Then a point came up in connection with the number of accidents compensated under the old law, and the estimate was made that only 2 or 3 per cent. of those now compensated would have been compensated under the old law. Had you not in mind the number of accidents which were reported instead of the number of accidents which were compensated?

MR. HINSDALE: What I had in mind was, sir, of the total number of accidents, in quoting the report of the total number of accidents, about one in eleven was followed by a lawsuit, and of those about one in ten was successful.

MR. WEGENAST: That estimate was not made upon the total number of accidents reported during your first year?

MR. HINSDALE: Oh no, previous to the enactment of the law.

MR. WEGENAST: Your claims, I believe, are outlawed in one year—a man must make his claim within one year after the injury?

MR. HINSDALE: Yes, the law so provides.

MR. WEGENAST: In fact there is no possibility of a deferred liability arising years hence on an accident occurring this year?

MR. HINSDALE: With that provision in the law that a man is limited to one year I should think it would bar earlier claims.

MR. WEGENAST: Subject to the possibility that an injury might be found to be more serious than it was first adjudged to be?

MR. HINSDALE: Yes. We have had also a case where the local doctor said a man's eyesight was destroyed—an electric flash probably had rendered him in such a condition that he could not see—and the physician would say his eyesight was destroyed; after paying him his pension for a little while, but not regarding it as a total permanent disablement, we find his eyesight gets better.

and is finally all right. We have had some very interesting correspondence with some eminent physicians in Germany with regard to the result of electric flashes on a man's eyesight. They tell precisely how it hurts the vision for the time but it all passes away. If we had put such a man as that on the total disability list we would have made a mistake for it was really a temporary disability.

MR. WEGENAST: So that there is a possibility of a counteracting factor?

MR. HINSDALE: Yes. You do not want to be too hasty about putting a man on the total list.

MR. WEGENAST: You have stated there is not a differential in favour of the careful employer or efficient plant in your system, but there is a penalty on the inefficient plant and the careless plant?

MR. HINSDALE: Yes, we can penalize a plant that is careless or does not guard machinery according to the law.

MR. BALLANTYNE: Has that penalty ever been imposed?

MR. HINSDALE: Yes, a small amount of money, but nevertheless a penalty on a laundry because they would not put a guard on a machine after the labour commissioner had called their attention to it. They ignored it, so we raised their rate, and then they did put in the guard and protected the machine, and we withdrew the rate, that is, we put them back where they were before. That is all provided in the act.

MR. WEGENAST: So that even at this early stage in the administration of your act you are paying considerable attention to that feature?

MR. HINSDALE: We are, indeed. In another case we fined them, and they improved their conditions.

MR. WEGENAST: Is there any inherent difficulty in making differentials in favour of the careful employer by reducing his rate—I mean apart from the terms of your law?

MR. HINSDALE: As far as our act is concerned there is no provision for it, but I see no inherent difficulty in constructing an act in such a way that it might be a special inducement to a man. You might have the rate modified or graded possibly.

MR. WEGENAST: I notice in casually looking through your report on page 255 that your commission is now making a suggestion of such differentials. That was one reason, Mr. Commissioner, why I thought I would like to have an opportunity of glancing over this report.

MR. HINSDALE: I think the commission feel, as in fire insurance, that if a man has a stone wall through the middle of his building, for example, that he should have a certain concession in his rate, and that if he has certain other provisions, such as a sprinkler system for instance, he should have a concession in the basic rate. I think something might be done in that way; if a certain definite thing is put in that a man might get a graded rate. It might work very nicely, but on the other hand if it is simply a provision that enables an employer to say he knows his plant is very safe and wants a

special exception made in his case I think it would impose such a burden it would interfere with the work of the Commission.

MR. WEGENAST: What would you say as to leaving the matter of differentials to the voluntary associations? I understand you expect to get them?

MR. HINSDALE: I think that is the source from which the suggestion should come. If the Commission has a power or a leeway of increasing or decreasing a rate by one per cent., say, to one deserving it, I think it would be a very admirable adjustment.

MR. WEGENAST: One suggestion of your Commission is the power to increase the rate not to exceed one per cent. as a penalty, or reduce the rate not to exceed one per cent. as an incentive to prevent accidents, would give considerable leeway to the Commission for classification, and you go on to say it might be possible to classify the lumber mills into classes A, B, C, and D, etc. So that you would establish a differential amongst the basic rates, and then the assessment system would work automatically in imposing just the proper proportion of premium on the particular industry.

MR. HINSDALE: It would work that way; or one might have a clause in the law, I should think, if after a certain length of time there had been no losses in an establishment they would give a slight concession on the rate.

MR. WEGENAST: Does not your act at present work that way in respect to the sub-classes under your different classes?

MR. HINSDALE: Absolutely, with reference to the whole class.

MR. WEGENAST: For instance in class A8, road-making with blasting, 5 per cent.; concrete side-walk laying, 3 per cent.; plank road, street or sidewalk, 2 per cent.; new road grading without blasting 2 per cent.; brick or clay paving 2 per cent., and so on in the different classes. Then the effect of that is to fix the proportion amongst the different sub-classes, leaving the actual requirements to be taken care of by the assessment?

MR. HINSDALE: Yes, that would work that way. We would not individualize between any classes: we would call on the whole class, but they would only pay at their own rate.

MR. WEGENAST: It is sub-classifications, not classification.

MR. HINSDALE: Our most serious troubles have been from small classes. I am in hope the coming legislature will merge classes rather than sub-divide: we would like a fewer number of classes. On the other hand the average manufacturer, if you read the enormous correspondence, writes that his plant is an exceptionally safe plant, and he wants to be in a class by himself, but if it is fully explained to him I think he will appreciate the larger the class the more the element of insurance enters into it.

MR. WEGENAST: And still you have not found, referring now to the powder class, that it would involve a very heavy rate even in cases of catastrophe?

MR. HINSDALE: 5 per cent., half the legal rate, would have been sufficient.

MR. WEGENAST: You spoke of the employee's resorting to his claim against the individual employer in case the fund is exhausted. Now, does he resort to the individual employer before an attempt is made to assess the cost on the rest of the employers? Take for instance in the powder class, do the Dupont victims apply for their compensation to the Dupont Company before an attempt is made to assess the cost on the rest?

MR. HINSDALE: No, sir; I don't really know; we take no official cognizance of what they do so far as their claims against the employer are concerned. If there is a shortage in the class we put out a call to the contributors in the class. If we have to pay out any money on account of such a class we would simply hand out a warrant endorsed "Not paid for want of funds," and the law provides that they may collect that from the firm in which they are hurt. There has been no case except that powder case; none at all.

MR. WEGENAST: You say there is a strong feeling in your state in favour of an amendment providing a first-aid fund?

MR. HINSDALE: There is an active desire on the part of a great many people; on the other hand, of course, it is very bitterly opposed by others.

MR. WEGENAST: On what ground?

MR. HINSDALE: Well, the manufacturers feel that they are contributing according to the rates and the accidents, and say they see no reason why they should have to pay the cost of medical or surgical treatment, and of medicine during the continuance of the trouble. It is merely a matter of who is to pay for it.

MR. WEGENAST: There are two suggestions really for a first-aid fund?

MR. HINSDALE: Yes.

MR. WEGENAST: The workmen's suggestion being that the employers should pay it all, and the employers' suggestion being that the workmen should contribute.

MR. HINSDALE: All the employers really are pretty united in the desire that the law be given a few more years of application as it is before they increase its scope to that extent.

MR. WEGENAST: Would the addition of a first-aid provision add much to the burden of administration?

MR. HINSDALE: It would simply be like an enlargement; it would enlarge the scope of the work. We would have to employ a good many more men, and create some other departments; it would be something like bringing in all the employees of the State. I have said it would create a very unwieldy machine, but possibly it could be done; it is only a matter of using men, and good men, to do it; there is no inherent difficulty about it. With the appropriation we are able to get from the Legislature I thought it would become an unwieldy affair.

MR. WEGENAST: You would not have enough money to manage it?

MR. HINSDALE: Unless we get a larger appropriation; they will decide that question very shortly now, I presume.

MR. HINSDALE.

MR. WEGENAST: Have you had any complaint from the street railway companies on account of being grouped?

MR. HINSDALE: The street railway companies are very much pleased; one of them called their men in and they discussed it. They were rather apprehensive about the law at first, but as the law went along they saw how few people got hurt, and they liked it extremely.

MR. WEGENAST: You are a Canadian, I believe, Mr. Hinsdale?

MR. HINSDALE: I lived in Canada a good many years.

MR. WEGENAST: I believe you spent a good part of your lifetime in Canada?

THE COMMISSIONER: That does not help me any. I have no prejudice, as far as this is concerned, in favour of the Canadians.

MR. WEGENAST: Engaged in a position in one of the large banks?

MR. HINSDALE: I was in Washington in a bank; I was running a business of my own in British Columbia.

MR. WEGENAST: But you are generally familiar with the railway situation in this country?

MR. HINSDALE: Reasonably so.

MR. WEGENAST: You know that we have three large railway corporations, and several small ones?

MR. HINSDALE: Yes.

MR. WEGENAST: Do you see any inherent difficulty in grouping the railway companies in this province, and imposing a rate on all of them?

MR. HINSDALE: Not as far as the administration of the act is concerned; with respect to paying the losses, and so on, I do not know why there should be any difficulty. I know nothing, of course, of the legal aspect.

MR. WEGENAST: Assuming there is no legal difficulty?

MR. HINSDALE: Assuming that there is no legal difficulty I think it could be handled to the great satisfaction of the men and all would like it. I know they want to come under it in Washington, but we cannot take them.

MR. WEGENAST: The companies?

MR. HINSDALE: The men want to come in.

MR. WEGENAST: For what reason?

MR. HINSDALE: Well, because they know they are in a hazardous employment and are liable to be hurt, and they know out of the number of their friends who have been hurt there are only a few who have received compensation because their risk is largely an assumed risk, I presume, and they would like to know that if they get hurt they will receive a certain measure of compensation.

MR. WEGENAST: It has been contended here that to group the railways would be penalizing the careful railway and would tend to increase the number of accidents.

MR. HINSDALE: I cannot understand that argument. It may have force, but I cannot see it. I think there is every reason why with such a law that it should set loose machinery for the prevention of accidents; it should be the greatest financial inducement to every employer to see his plant well guarded, and to insist that every other plant should be well guarded.

MR. WEGENAST: You agree then with this passage in my brief which refers to your act, "There is every reason to anticipate for the act of Washington a similar measure of success. . . ."

THE COMMISSIONER: Has Mr. Hinsdale not told us that four times, that he is of the opinion that it tends to prevent accidents? Do not let us fill this up with repetitions.

MR. WEGENAST: If I put it in a different way I am subject to the other danger, Mr. Commissioner, of putting words into Mr. Hinsdale's mouth.

THE COMMISSIONER: You have been sinning in that respect before; I suppose there is no harm in sinning a little more.

MR. WEGENAST: I believe the accident at the Imperial Powder Works was caused by the use of an ingredient in the powder which made the hazard greater, and I am suggesting in my brief that the Dupont people, or the other people who did not use that ingredient, would see that the use of that ingredient was stopped in the other places if they were grouped, and that is my argument in favour of grouping. What do you say as to that?

MR. HINSDALE: Well, with reference to the manufacture or the different processes of manufacture, the Chehalis plant adopted a different method of making powder. They claimed they had and possibly thought it may have been a new method; at all events they made powder, and claimed that it was very excellent powder. The Dupont people said that it was an old discarded method of making powder, that they had tried it forty years ago, or some time ago, and that it was a failure. What the merits of that controversy were I do not know, but if the commission should discover later on that that powder creates more accidents, and it could be proven that it is an extra hazardous method, they could raise the rate on that, perhaps prohibit its manufacture. I don't know about that, but they could raise the rate. I think there is no ingredient that the Chehalis people use that the Dupont people do not use, but it is a different method. They are in competition, and the Dupont people want to discredit it, as many competitors will discredit the product of somebody else. This refusal to pay has possibly been the means of attracting attention to the character of that powder.

MR. WEGENAST: So there was good advertising in that incident?

MR. HINSDALE: I do not know really. I think it has attracted a vast amount of attention to what they consider the poor method of making that powder, but that has not affected us.

MR. WEGENAST: You mentioned the cost of the compensation under the new act, and said it was generally not any higher, and as I understand in some cases lower, than the cost of insurance under the old law. Is that partly accounted for by the fact that your common law verdicts are usually larger there than they are in the east?

MR. HINSDALE: They have been growing in Washington. I can not say how they compare with verdicts in the east.

MR. WEGENAST: What would an average verdict be in a case of pure negligence?

MR. HINSDALE: Well, under my own observation I have seen many verdicts for the loss of an arm \$5,000 and \$8,000. There are two cases of fatal accidents being tried to-day against the North Western Coal Mines and \$20,000 is asked in each case. There was one verdict rendered—a man fell off a telegraph pole and became paralysed, a total disability—a very heavy verdict, I think \$30,000, or something like that. These verdicts have been running high.

MR. WEGENAST: There are a number of statements in Mr. Sherman's brief to which I have not yet referred, and I think perhaps I had better just hand you the brief and let you make any comments on it you wish. Look at pages 9, 10, and 11.

MR. HINSDALE: He says here, "What the Washington law does is to make each employer not only the insurer of his own workmen but also an insurer of all the workmen of his competitors in the same trade, thus multiplying his own risk." That would depend, of course, on the point of view, whether it was multiplying his risk or dividing his risk. The Hipp company thought their risk was being multiplied, but when fatal accidents occurred they found it was divided. The whole idea of insurance would not justify the notion that their risk was being multiplied simply because others were in with them. Take the case of the Dupont Powder Company, in the first year we tax them ten per cent, for three months. It says here that the amount of their liability to the defendants might have been thirty-two per cent. The total liability on account of this accident according to the tables used by us is a little over \$8,000.

THE COMMISSIONER: What he means is if they had been adults with defendants it might have reached eight times \$4,000.

MR. HINSDALE: That is true; if there had been eight men killed leaving widows requiring \$4,000 apiece it would have been \$32,000. There are of course objections to our law, and I know the commission has had a good many perplexing points to decide; they have had to decide them all, and naturally some mistakes have been made. It is sometimes hard to define where the hazard is, and to draw the line between hazardous and non-hazardous.

MR. WEGENAST: I believe you secured some opinions from these men in the state for the purpose of giving us an idea of what they thought of the act?

MR. HINSDALE: I have not yet been to the Post Office, but when I go there I am satisfied that I will find a number of letters from people whom I told to address me here. I received a letter here the other day from one of the

men who is charged with preparing a law for Oregon; in fact he and his commission have prepared a law for Oregon which is modelled on the Washington law. I sent him quite a number of annual reports; he said he wanted to have one in the hands of every newspaper man in the west, in Montana, Oregon and Idaho. He says, "I think you have accomplished more in one year along the lines of Industrial Commissions than any other commission in the last forty years." I have a great many letters from prominent mill men who speak very highly of the administration of the act, and express their approval of it.

THE COMMISSIONER: What is the population of your State?

MR. HINSDALE: At the last census, sir, it is said to have been 1,100,000—a little over a million.

THE COMMISSIONER: Can you give me the proportion of rural and urban population?

MR. HINSDALE: I think one might conclude fairly from these facts what it is. Seattle has about 200,000; Tacoma about 100,000; and Spokane a little over 100,000. That is 400,000, and all the rest of the State would have about 700,000. Of course there are lots of smallish towns, but I should think half the State will be in fairly sized cities.

THE COMMISSIONER: Separating practically the farming community from the rest? You see our farming community is considerably less than 50 per cent. of the whole population. How do you think your State runs?

MR. HINSDALE: We have three cities which hold one third of the people of the State, and I believe there are a great number of small towns.

MR. WEGENAST: And a great many engaged in lumbering and fishing?

MR. HINSDALE: I think the figures are 368 incorporated towns.

THE COMMISSIONER: Would it be about half and half?

MR. HINSDALE: Leaving in towns of over 20,000?

THE COMMISSIONER: No, living off the land.

MR. HINSDALE: I do not believe we have as large a proportion of farmers as that. I am inclined to think that the people who live outside of incorporated cities are a very much smaller proportion than you intimate. It would be a guess, but I should say 25 per cent. would be a big estimate.

THE COMMISSIONER: Can you give an estimate of the number of workmen in industries covered by your act?

MR. HINSDALE: We have listed on the different pay-rolls that are sent to us and on file 138,000 men.

THE COMMISSIONER: How many would you add to that for people who have not made returns?

MR. HINSDALE: I should think 150,000 would be about accurate.

THE COMMISSIONER: Are you able to say generally how the industries of your state compare in character with the industries of Ontario; are they similar or do they differ materially?

MR. HINSDALE: I have no doubt, sir, that your manufacture of goods is very much larger, the factory work very much larger. We do some manufacturing there, but not to any great extent. Our lumbering industry would probably be a much more hazardous class of work than your work here.

THE COMMISSIONER: What are your principal industries?

MR. HINSDALE: Fishing is a large industry, and lumbering.

THE COMMISSIONER: I mean of those covered by the act.

MR. HINSDALE: Well, salmon canning is quite a large industry; the output is very valuable. They have been very efficient in their work and we have not had to pay much. We have quite a lot of machine shops, but I presume your work in that line would be much heavier than ours. We have over six thousand separate employers. I would like very much to compare the industries.

THE COMMISSIONER: You classify them according to the nature of the industries?

MR. HINSDALE: Yes, according to the nature of the work. I have a sheet here showing the number of industries in every line of work, the number of employees, the number of accidents, the number of fatal accidents, the amount they contribute, and so forth. We have four hundred and fifty contributors in machine shops and foundries.

THE COMMISSIONER: How was the table of rates formed which the act contains, and by whom? From what data?

MR. HINSDALE: It was a matter of a great deal of thought and of discussion and with the assistance of an actuary; I think it was adopted from the liability rates at a guess.

THE COMMISSIONER: Would your act be any different in its application if instead of a rate it said that each class should make a deposit equal to a certain percentage upon its pay-roll to meet the claims for the first three months? Was it any more than that?

MR. HINSDALE: That is all it really was.

THE COMMISSIONER: What object is there in calling it a rate, and incurring the enmity—perhaps not the enmity—but it enables your rivals to badger you about your rate?

MR. HINSDALE: Of course in making a deposit one has to name how much the deposit shall be, and it must be at a percentage.

THE COMMISSIONER: It gives the enemy a chance to say that that is where you are all wrong.

MR. HINSDALE: Well, we really have not worried about it. They have said a lot of things, but I do not doubt they would say them no matter what we did.

THE COMMISSIONER: Well, as I understand it, beyond making your three months' rate, whatever you choose to call it, deposit, or rate, or ready payment, you assess for the losses that are to be payable during the term, whatever it may be, and perhaps enough to give you a little money ahead. Am I correct in that?

MR. HINSDALE: That is correct. The initial payment covers three months, and after that we call for money as it is needed either to pay the money on claims or to maintain the fund to a reasonable proportion.

THE COMMISSIONER: Now, as I understand you, in the case of temporary disabilities, you do not treat them as a liability of the fund as you do the death claims or the permanent disability; you meet them from year to year?

MR. HINSDALE: From month to month.

THE COMMISSIONER: As they occur?

MR. HINSDALE: If a man is hurt by the time we have got his report and the time his doctor and employer, and probably the physician has said he is still in the hospital, why, we are able to pay him an amount, and in a little while another amount—a sort of follow-up system—until he is discharged from the hospital; then his payment ceases.

THE COMMISSIONER: If it develops into permanent disability then the capitalized sum has to be assessed upon the class and paid in?

MR. HINSDALE: Yes, charged up.

THE COMMISSIONER: And so in the case of death or fatal accidents?

MR. HINSDALE: Yes.

THE COMMISSIONER: Has there been any objection on the part of the manufacturers to the burden of that upon the industries?

MR. HINSDALE: A great many individual people have objected, and a very great many of them have withdrawn their objections, and are now pleased, who used to be unfriendly to it. It would be impossible to say that nobody objects, but in the vast majority of cases they approve of it.

THE COMMISSIONER: Would you think a system under which, instead of say dealing with those two classes of claims you treated them all as you do your temporary disabilities, would it be financially sound or desirable?

MR. HINSDALE: That is if when a man died we simply paid?

THE COMMISSIONER: Simply pay—allow them the monthly payments that are made for his dependants: would you think that a sound system?

MR. HINSDALE: Why, it might be sound, except, I think, there ought to be a modification of rates with a view to that point, unless you do write off a certain amount so that each year shall take care of its own accidents, which is our system. If one did not do that I think there ought to be a sinking fund rate, or something like that, which would accomplish the same purpose.

THE COMMISSIONER: You have obviated what is raised as an objection that you make the employer of to-morrow bear the burdens that the employer of today ought to have borne.

MR. HINSDALE: If the rate was not increased, and if you did not charge off a reserve, and simply charge this year with the pensions on account of this year's debts, we would be in trouble sooner or later. We have either to charge it over as we do, in my opinion, or have in the rate a loading which shall be set aside, which amounts to the same thing, except it affects the period for several years, that is all. It would take longer to do it.

THE COMMISSIONER: Let me go back a little. Was there any other reason than the constitutional one you have mentioned which led to including in the act the hazardous or extra hazardous industries only?

MR. HINSDALE: Yes. The farmers, of course, have a lot of representatives in the legislature, and the grange instructed their members, or kept advising them, to fight anything which included the farm labourer or farm hand. They did not want the work in connection with drainage and ditches, or work on the farm, included. They objected very strongly to it, and it was excluded. So that there was that feature beyond any constitutional difficulty.

THE COMMISSIONER: Would extending it to every industry not enormously increase the labours of the commission: in the first place of collecting them or rounding them up, and then keeping track of them and of all the claims?

MR. HINSDALE: Well, I feel that it would. Further, we have had some cases where a man has been at work and has felt a pain; he has gone home, and something has been found to be the matter with him, and he has been sick; but there was nothing about his work or nothing had occurred at the time to make him sick. It could not be regarded as an accident: it was simply a failing of his system at that particular time. We have had a good deal of difficulty in excluding such claims: sometimes we have had to pay them. If a man is working in a mill and meets with an accident, bruises himself or something, he comes in in consequence of that accident. After a little while it seems to bring on a tubercular condition perhaps and he dies: the heirs, of course, claim that it is the result of the accident in the mill. It appears to be held out there that we have to take men as we find them; if they happen to be at work and have constitutional troubles of some kind that develop in their work, we have to pay them. If we had the act extended to farm hands and to the whole population of the state I am afraid we would find a great many cases of that kind, and that would be very difficult.

THE COMMISSIONER: What would you think of beginning with a plan—an act—for improving the condition of the workmen in the claim that he could make against his employer, and get rid of these common law provisions: then provide that certain industries, picking out the ones that would probably form the best test and grouping them as you have grouped them, or on some similar lines, be withdrawn from the operation of the general law and remitted to claims under this act. Then from time to time as experience indicated it was expedient to do so, introduce other classes, until perhaps in the end you embraced all the classes. What would you think of such a system as that?

MR. HINSDALE: Well, sir, I should think in view of the fact that oftentimes an accident occurs in a line of work that would not be indicated by the nature

of the business of the man—I should think if a state desired to include a certain list it really ought to include a large list; it ought to include all where there is much hazard. I think it might be difficult to make it a small list; it ought to be a pretty large general list, and pretty clearly defined as to what was not included.

THE COMMISSIONER: Make a list that would be a fair test of the system.

MR. HINSDALE: It would be pretty hard on those who were not included, if they were in hazardous work. The employers would be deprived of the right of the old defences and rather at the mercy of the employees, but it might be a very good way.

THE COMMISSIONER: All the workmen who are not within the classes are just in that position under your law. These common law defences are taken away from the employer and they are left with their remedy against him individually; is that not so?

MR. HINSDALE: But we do include all extra-hazardous employments even though we do not specify them. There is a clause that if there be an extra-hazardous class we have the right to add it.

THE COMMISSIONER: You have not, as in Ohio, a limit as to the number of workmen?

MR. HINSDALE: No, sir, we have no limit.

THE COMMISSIONER: I think it is five there.

MR. HINSDALE: I think it might be a very excellent addition to our law if we did have.

THE COMMISSIONER: Would there not be this difficulty: to-day a man may have five and to-morrow he may have two; there is a great deal of uncertainty about it. Then a man is in a shop where there are fifteen and he comes under the act; the man next door is hurt and he is not under the act; he has to submit to the old system; would he not swear at the law?

MR. HINSDALE: Yes, if it could be clearly defined as to who is a workman, whether the man who is casually employed for an afternoon or a day to do an insignificant piece of work is a workman, and if it were definitely stated in the act whether such a man was or was not under the act, we would like it better.

THE COMMISSIONER: I was coming to that. Unless it has been changed, casual employees are excepted from the provisions of the British act?

MR. HINSDALE: Yes.

THE COMMISSIONER: What difficulty would there be under such a system as yours of including the casual employee, because only the amount paid for the time he was employed would be included in that year to form the basis of assessment?

MR. HINSDALE: It is regarded that the casual employee is excluded under our act.

THE COMMISSIONER: The man may be working to-day for Smith and to-morrow for Jones. He may be working in different classes, of course.

MR. HINSDALE: Yes.

THE COMMISSIONER: But it would not do to leave him out in the cold, would it?

MR. HINSDALE: Under our act we regard the workmen as protected.

THE COMMISSIONER: Whether he is working for a day or a week or a year?

MR. HINSDALE: Yes, unless he is working in connection with an industry which in itself is not hazardous. For example, if a man is running an elevator in an office building the commission claim that the running of that elevator is incidental to the operation of the ownership of real estate, which is not an extra-hazardous occupation.

THE COMMISSIONER: Here is a question I would like to ask you: "An individual employer, or any member or officer or any corporate employer, who shall be carried upon the pay-roll at a salary or wage not less than the wage or salary named"—an individual employer; that must be a misprint for employee?

MR. HINSDALE: We interpreted it in this way: If in a mill or the operation of a company, the officers of record of that company, or if it is a firm the members of that firm, or the individual employer, is not under the act as far as he personally is concerned unless he wishes to be, but a great many people have claimed and have tried to set up that if a man is a stock-holder he is an officer of the company. I have written a great many letters to people—

THE COMMISSIONER: If his salary is put upon the pay-roll as \$500, what happens then?

MR. HINSDALE: Well, for example, if a member of the firm deriving all his profits from a division of profits, on no salary, when the auditor goes round or when he makes a statement of the pay-roll, if he wants to he can put down his wages at a reasonable amount for his own services equivalent to a day's work of another man.

THE COMMISSIONER: He cannot come in at a nominal sum?

MR. HINSDALE: No, he has got to come in at the normal rate of wages, and he has got to come in before the accident, and he has to pay the money before the accident, before we will pay.

THE COMMISSIONER: How did the Commission come to recommend and the State to adopt a system by which lump payments could be made, instead of adopting the British system of periodical payments?

MR. HINSDALE: Lump payments in regard to the loss of an arm?

THE COMMISSIONER: Yes; that would be partial total disability.

MR. HINSDALE: Yes, partial total. There is nothing in the law permitting the Commission to make partial payments for such losses, but the Commission, I am satisfied, is of the opinion that it should be the case, that they should have the privilege of making those payments in yearly items.

THE COMMISSIONER: Would it not be better to adopt the British system and make the payments periodical; with the right in cases where it was proper to be done to allow a lump payment?

MR. HINSDALE: I think each one of the Commission would approve of that.

THE COMMISSIONER: It seems to me if you do not do that one of the great objects is lost, protecting the man from being a charge upon the community afterwards. If a man gets his lump sum and squanders it he is back upon the community as a charge, which is one of the objects of this law to prevent.

MR. HINSDALE: We watch those cases as carefully as we can. I remember one case where a young man lost an arm and was paid \$1,500; he lost his money in two weeks in some dissipation. In other cases where they have received that amount of money and it has been conserved it has done them substantial good. Of course for these widows and dependants who are entitled to an income or pension, we set aside a reserve, and if they can make a very excellent showing substantiating it, and it is thought by the Commission that there should be some of that paid over to them, we pay it over.

THE COMMISSIONER: They have power to do that?

MR. HINSDALE: Yes, we have made a number of payments.

THE COMMISSIONER: One can readily understand there may be cases where it is desirable to have that power.

MR. HINSDALE: Yes.

THE COMMISSIONER: You said something that rather indicates that you were two months behind in dealing with a number of claims that had come in. What is the length of time between the happening of an accident, in an ordinary case, and the man getting his payment?

MR. HINSDALE: The payment could hardly be within a month because we would not pay until he had lost a month, so that naturally it would be a month anyway.

THE COMMISSIONER: Why?

MR. HINSDALE: We pay for a month's disability, you see. Of course so far as that is concerned we might pay it more promptly, but we cannot pay a man for a month until he has lost a month. In looking at the great number of claims, several thousands of them, one finds there is so much correspondence about each claim, and getting the claims and the papers, that by the time the claim is finally ready for payment there is at least sixty days as a rule from the time the accident has occurred.

THE COMMISSIONER: The accident insurance people will tell you that they settle the claims, when they do settle a claim, in two or three days.

MR. HINSDALE: If they can make a settlement that they are thoroughly pleased with, but if the claimant wants his idea of the settlement it may take several years.

THE COMMISSIONER: What is the unfortunate man's family to do while he is waiting: he is getting no wage? Ought there not to be some provision by

which while the claim is being investigated the Board might have a discretion to make a provisional advance to the man and keep him going?

MR. HINSDALE: I can only say that we have not had very many cases where men have been in such urgent need that their employers have not done something for them. The Commission would be in a very difficult position if it paid out a cent of money and then found the claim was not well founded, that the employment was not under the act. We cannot pay out any money until we are sure.

THE COMMISSIONER: If you had any legislative authority it would be all right, but would it be expedient to do that?

MR. HINSDALE: We hope very much by some system of automatic draft, after he has prepared his papers, signed by himself and his witnesses and his doctor perhaps, that right in that bunch of papers part of it should be a draft which would be cashed after the papers were in order.

THE COMMISSIONER: By whom?

MR. HINSDALE: By any bank. It would be a draft on the Commission, you see; but we could not do that under our particular act.

THE COMMISSIONER: Would it be desirable to give authority to the Commission to make the advance that you say he might get from a bank as soon as his papers were complete?

MR. HINSDALE: I think it would be a very valuable privilege occasionally to do it.

THE COMMISSIONER: Now, what is the modus operandi in dealing with claims?

MR. HINSDALE: Every employer either has or can easily get a set of claim blanks. One document is the formal application for relief by the workman; the next one is the employer's notification of the accident to his man, and a statement in detail of the injury; then another document is the witness' report; each one of these states all the details. Then there is the doctor's blank. There must be an explicit statement of exactly what happened to the man.

THE COMMISSIONER: That is the doctor who has attended him?

MR. HINSDALE: His own doctor; we have nothing to do with the selection of that doctor. It is supposed to be a very excellent medical blank to fill out. I would like just at this time to say, if I may, that the doctors of the state have done wonderful service to the state: they have in a painstaking manner carefully prepared these reports. There is no provision for their being paid as it is a state work: it was imposed on them as a duty. It has been largely due to such excellent work that the law has been such a success. So that there is the employee, the employer, the witnesses and the doctor: they have to corroborate each other; they have to be in harmony. Then, if it is a short disability, there should be a surgical discharge. Then there should be such information as what wages the man was getting, and the family's status, so as to work out his claim.

MR. WEGENAST: We will supply those forms.

MR. HINSDALE: Then the medical man looks after the medical feature of it: he initials it OK. It goes through to the computing department to find out

how much the man is entitled to; and finally an award is issued, and the voucher is made in duplicate ready for him to sign. The file is then in shape to go to the Commission. All this is done by the employees of the office, except the doctor's work. Then they come over to the Commission—great stacks of them, three or four hundred—and they are individually examined; if there is any question of doubtful hazard or doubtful jurisdiction they talk it over, and finally when they pass them they sign them. Then that voucher is mailed to the man for his signature, and his acceptance; it is a receipt for the money. All that takes time; he may be some distance away; he has to sign before a witness and mail it back; then we enter it in the auditing department, that takes a little time; then we send that voucher up to the State Auditor, another department, and they issue the warrant. There are great numbers of them and there is always delay. Then the vouchers have to be recorded in the State Treasurer's office, which is also a different department; then they come back to us and we enter them in our books according to number; then they are mailed to the man who owns them. There is a little delay in every man's hands, naturally; we fight against it and work against it, and do the best we can, and we think we are doing it pretty rapidly.

THE COMMISSIONER: You are dealing now with a case in which an employer, employee and medical surgeon agree and your officers see nothing to complain of. Supposing you get a claim from a workman and the employer differs from him and says it is not an honest claim, that the man wasn't hurt.

MR. HINSDALE: We obtained the services of a claims agent who used to be in the service of a Milwaukee road, a bright man, and in a great many cases we send out a special representative and get at the cause of that accident. We try to hunt it down and see why the employer will not sign, and what the cause of the trouble is. If it is a fictitious claim or an invalid claim he so reports; if, on the other hand, it is a proper claim and the employer will not sign it simply because he is ignorant or opposed, it may be we start proceedings and summons him to make him sign it, or produce his books in court before us; we have done that in a few cases.

THE COMMISSIONER: In what proportion of cases are they simply like the ones you first described?

MR. HINSDALE: Well, sir, I think among those simple ones are oftentimes ones that will have to be thrown out; but every month we find that the claims are being presented in a better manner. In a very great many cases the doctor looks over the medical report of the local doctor, and writes to our doctor in that locality—we have a doctor specially designated in the state as our doctor. We write to our doctor to go and examine the man and see if the treatment is progressing favourably. He makes his own report. If it is an eye case we send the man perhaps to Tacoma or Spokane to be examined by an expert, and we pay those doctors for that service.

THE COMMISSIONER: They must be very good people in Washington if they are all such simple cases as this. There are lots of cases to fight about.

MR. HINSDALE: Well, there have been appeals.

THE COMMISSIONER: Appeals from what?

*MR. HINSDALE.*

MR. HINSDALE: From our decision as to the amount of the award.

THE COMMISSIONER: There is an appeal from your decision?

MR. HINSDALE: Our law specifies that for the loss of the right arm at the elbow we shall pay \$1,500, and other losses are settled in proportion as they compare with that loss. Before the law went into effect we wanted to know how much we should pay for a hand, or some other injury; a great many eminent doctors, sixty I think, conferred. We asked them for the sake of uniformity to answer in degrees; we said, "Assuming the loss of the right arm at the elbow to be worth \$1,500, what is such and such worth?" Then there is the whole list of what might happen in the way of amputation; for instance, the loss of fingers is considered one-sixtieth; we considered all those things. We took the damage statistics, and arrived at it on that basis, and averaged what a year's pension would be; the result is just exactly what we pay for any specified injury. If a man is hurt and we pay him the amount of money which we think is applicable to his injury, if he wants to appeal he can appeal to the Superior Court from the Commission's decision.

THE COMMISSIONER: Only as to amounts?

MR. HINSDALE: The degree of injury and the amount.

THE COMMISSIONER: Not as to whether he has a claim or not?

MR. HINSDALE: No, I do not think so.

THE COMMISSIONER: Is it desirable that there should be any such appeal if the commission is unanimous; I suppose it cannot be one-sided, if the man can appeal the employer can appeal?

MR. HINSDALE: We have had one or two employers appeal. I think there is one case where an employer did not want us to pay a claimant because he did not think his injury was due to any work arising in the course of his employment. We have a very interesting list of causes for rejection, but we have really had very few appeals. In one case in Spokane we were beaten; we produced testimony showing how the report came to us originally, but in the greater light of the testimony on the appeal we found we should have paid more compensation than we did on the first report.

THE COMMISSIONER: Would that not all be cut out by enabling the Board to reconsider?

MR. HINSDALE: I do not know what legal difficulties there would be as to depriving a man of the right to appeal.

THE COMMISSIONER: We have no such trouble here. I suppose that was one reason that was left in your act, on account of your constitutional troubles.

MR. HINSDALE: If we deprived him of his right to sue and we had to guarantee him a certain amount of money in lieu of it—I do not know that we could deprive him of his right of appeal as to the degree of injury.

THE COMMISSIONER: It is almost a negligible quantity from what you say; there are not many cases.

MR. HINSDALE: Very few. It is specified in the report: I am satisfied there were not a dozen.

THE COMMISSIONER: Somebody suggested there was a good deal of politics in the administration of the acts in Washington and Ohio?

MR. HINSDALE: I can say that none of us who have been identified with the administration since it began were ever asked what our politics were. I know they never asked me, and I know I never asked an applicant for a position that question.

THE COMMISSIONER: I thought in your country everybody knew everybody else's politics.

MR. HINSDALE: Well, there may be something in that. We have had rather unfortunate experiences in several cases when some politician has practically insisted that we find a place for some particular man, and we have done it. I remember one very influential man imposed three different people on us, but we got rid of them.

THE COMMISSIONER: Has that at all entered into the administration of the law and the adjusting of claims or allowing of claims?

MR. HINSDALE: I think, sir, it has no effect practically upon the administration of the act in Washington, so little that it is negligible.

THE COMMISSIONER: Take the simple case you have described. Is there any danger of a workman and an employer sometimes colluding and presenting a fictitious claim?

MR. HINSDALE: Of course such frauds might be perpetrated in almost everything. He would have to have the doctors in collusion and the witnesses in collusion, and the fellow-workmen would be pretty quick to report anything of that kind.

THE COMMISSIONER: How many medical men have you in the service of the Board outside of the men who are at outside points?

MR. HINSDALE: They are listed and enumerated in one of the pages of the report.

THE COMMISSIONER: How many in the office?

MR. HINSDALE: We have our chief physician, Dr. Marlow. He practically gives his services gratuitously; he was an enthusiastic advocate of the law, he liked the law; he spent half his time at least in the service of the Commission, and he has done it at \$200 a month.

THE COMMISSIONER: You are making a point against your 9 9/10 per cent.; when you come to pay him you will have to increase your percentage.

MR. HINSDALE: Well, I do not doubt they hope to. There are fifty-four on that list who are special examiners of the Commission in different cities. None of these men are on salary: they are simply paid a fee; if we ask one of these doctors to inspect a man's condition he does it for a fee. They are deserving, as I say, of every possible credit for the work they have done, the painstaking and careful work they have done for the small amount of money they have received.

THE COMMISSIONER: Then take your temporary cases: How do you watch them so as to stop the man when the time comes for getting the amount?

MR. HINSDALE: As soon as an award is made, or as soon practically as any document comes in about a claim we send his employer a postal card saying that a claim has been received from workman so-and-so, one of his employees, and that such-and-such additional papers are needed. That card notifies the employer that one of his workmen has put in a claim, and if it had not already been brought to his attention or if he thinks it is fictitious he might write to us; in other words, we tell him we need his report.

THE COMMISSIONER: I am not speaking about that. The claim has been allowed, but the man recovers in a month; how do you keep track of that?

MR. HINSDALE: Simply by a follow-up system. We have requirements every month for the protection of the fund. We require proof that the man is either in the hospital, or that he has been discharged, and when he was discharged: we require further proof from the employer when he returns to his work, and if he did not return to his work whether he went somewhere else, if this man knows. We insist upon information.

THE COMMISSIONER: Supposing a man's doctor reports that he has got a serious nervous shock, and your physician at the head office thinks that is not so, and you send a doctor to decide and he comes to the conclusion it is not so: how is the thing determined?

MR. HINSDALE: In a case like that he would not be entitled to any lump sum payment anyway; he would be entitled to monthly disability.

THE COMMISSIONER: In other words, are you justified in acting upon the report of your own physician, although it is opposed to the evidence that is offered on the part of the man?

MR. HINSDALE: The Commission does do it. In a very great many cases they require one of these named physicians to go and examine a man who has been reported upon by some other physician, and the man has to show he is incapacitated from work.

THE COMMISSIONER: That physician reports that there is nothing wrong with him and that he could go to work?

MR. HINSDALE: Then we reject the claim.

THE COMMISSIONER: Has he any appeal?

MR. HINSDALE: No, sir.

THE COMMISSIONER: That is an end of it?

MR. HINSDALE: I think I am right in answering that No. He may possibly have some appeal from the decision of the Commission in the court as to whether he is entitled or not, but it would be only against the Commission even if he should be successful. He could not get over his \$20 a month, or whatever sum it might call for.

THE COMMISSIONER: The act would show that?

MR. HINSDALE: Yes, but we have had very few cases. We have had several cases like this: A man would say he was hurt in the eye, that his eyesight was destroyed; on very careful investigation we found his eyesight destroyed, but that it was not destroyed at that time—it had been destroyed the year before.

THE COMMISSIONER: You must have some malingerers?

MR. HINSDALE: There will be some people who will endeavour to defeat the law.

THE COMMISSIONER: What would you think of a law that would enable a Board to determine finally—refer it to their medical referee and that will be the end of it? You will never get to an end by having doctors on each side.

MR. HINSDALE: I think it would be fine if they could finally determine, have the ultimate authority rest in the Commission, so that it would absolutely eliminate the law suit; I certainly do.

THE COMMISSIONER: Well, assuming that our industrial workers who would be within the scope of an act were double the number of yours, would the expense of the administration of the act increase in the same proportion: that is, in proportion to numbers, or would it be less in proportion, do you think?

MR. HINSDALE: The most expensive work is in the thinly settled districts. If you concentrate it into your cities I think the expense would be proportionately less.

THE COMMISSIONER: What I mean is if it cost per case say \$10 with 130,000 men, if you had 260,000 men would it cost the same \$10, or would it with the larger number be less per head?

MR. HINSDALE: Less per head. It would certainly seem so to me.

THE COMMISSIONER: Then I think I understand that all your State does is to supplement the fund by whatever the legislature chooses to vote, and that fund is what you have to look to; there is no obligation of the State outside of that.

MR. HINSDALE: Absolutely none. The state does not guarantee and, in fact, it cannot loan its credit to any company or institution or scheme. We keep the administration fund separate, as they do for the maintenance of every other state department: they appropriate a certain sum of money to be used in that department. They happened to appropriate \$150,000 for that department and we have had to keep within it: it is against the law to spend anything more than that.

THE COMMISSIONER: Are the salaries of the Commissioners and those employed liberal or otherwise?

MR. HINSDALE: They are paid very small salaries: the supreme court judges get \$6,000; the Governor, \$6,000; the Railroad Commissioner, \$6,000; our Commissioners get \$300 a month.

THE COMMISSIONER: Does it take all their time?

MR. HINSDALE: It does take all their time.

THE COMMISSIONER: And the officers are paid somewhat in proportion, I suppose?

MR. HINSDALE: Yes.

THE COMMISSIONER: You hope for better things in the near future?

MR. HINSDALE: I think now that the Democrats have got in they will give us more money, although I am not identified with the party. The law prohibits us from getting more than \$6 a day exclusive of Sundays; in fact my salary is limited to \$6 a day.

THE COMMISSIONER: You ought to have included yours with those doctors.

MR. HINSDALE: The chief medical examiner gets \$200 a month.

THE COMMISSIONER: They are sacrificing themselves at small pay.

MR. HINSDALE: It has not been very liberal.

THE COMMISSIONER: Would there not be danger with such small salaries that they will not always be able to have good men?

MR. HINSDALE: They have been wonderfully fortunate. I do no know why it is, but as a matter of fact the work that has been done by the employees of this department is worthy of all credit; they have been very earnestly interested in their work, all of them, and they have worked very hard. I would never undertake to ask employees in a private institution to work as hard as those employees in that auditing department.

THE COMMISSIONER: Are you able to tell me how the wages in Washington compare with wages in Ontario?

MR. HINSDALE: Out of 1,200 cases that we took at random—I think it was 1,260 awards we took to hunt up that question—we found that \$3.02 a day was the average in those cases, that is of all the different people who were hurt.

THE COMMISSIONER: No matter what their employment was?

MR. HINSDALE: Yes. It just happened that was the result of the investigation of those cases, \$3.02 apiece. There was lost to the State of Washington during the first year 225,000 working days, which at \$3 a day would be \$675,000 lost on account of those injuries. I think in that particular connection where those figures are, if I remember right, it goes on to say that it is practically equivalent to 750 men idle all the time on account of injuries in Washington.

THE COMMISSIONER: How much an hour does an ordinary labourer get as a wage in Washington?

MR. HINSDALE: Well, I should be able to answer that very easily.

THE COMMISSIONER: As much as 16 or 17 cents an hour?

MR. HINSDALE: Well, all through the mills, which is the great work we do, they are paid pretty good wages; very few men are working in the mills for less than \$3 or \$2.50.

THE COMMISSIONER: I suppose the fixing of the contribution upon the basis of the pay-roll is perhaps scientifically not perfect. Mr. Wolfe has pointed out that in one factory a man employs 500 men to whom he pays \$7 a week on the average, and the next factory pays \$8 for the same kind of work. One of those men is bearing a portion of the other man's burden. Is there any basis upon which it could be rested that would not be open to that, or as great or greater objection?

MR. HINSDALE: I know of no other way; the pay-roll is a matter of record, it is a matter of book-keeping and you can find out what his pay-roll is.

THE COMMISSIONER: It is not necessarily the test of the premium the man ought to pay, is it?

MR. HINSDALE: Under our act the rate is based upon the pay-roll.

THE COMMISSIONER: But I am going behind that; is there any other better basis that could be suggested?

MR. HINSDALE: As has been suggested one might adopt a method of charging so much per day per man, arbitrarily—I do not mean per day, but say per month per man, or figure it on a per day per man basis. That would not be so bad.

THE COMMISSIONER: Some trades are based according to the tons produced, in some countries. In the shipping federation it is according to the tonnage of the vessel?

MR. HINSDALE: We have never had any difficulty really in finding out what a pay-roll was, and as far as I know it has never been criticised. I do not think anybody has taken exception to it.

THE COMMISSIONER: Did you not see Mr. Wolfe's criticism?

MR. HINSDALE: I mean among our own residents.

THE COMMISSIONER: I do not suppose you can get anything that would be scientifically perfect. Have you got any limitation as to the right to claim on the fund based on the amount of the salary? Now, in England as you know, persons receiving salaries over a certain amount do not come within the act. Have you any limit there; supposing a man was getting \$10,000, as the chief man in an establishment, would he be entitled to compensation?

MR. HINSDALE: As a matter of actual practice with us he would be probably excluded as a non-hazardous risk, because our law provides that if there shall be employees in a plant whose duties are exclusively of a non-hazardous nature, especially if there is a department of a non-hazardous nature, that is easily separated from the other departments, it shall not be included. So when we audit a pay-roll the auditor is instructed to have the office force excluded—they are supposed to be excluded anyway, but for the purpose of making it clear we like to have it put down—the stenographers and book-keepers, unless they have occasion to go into the mill; if they have occasion to go into the mill they are included, and it must be so stated.

THE COMMISSIONER: Would the general manager not have occasion to go into the mill?

MR. HINSDALE: Yes, we always count him.

THE COMMISSIONER: Would that not be pretty rough on a concern that had a high priced general manager and he had to pay a premium based upon that?

MR. HINSDALE: Well, it does add to it. In one of the largest concerns there, a logging company, the officer told them that their general manager and foreman need not be included, and they made great objection to that and insisted that they should be included. It shows how they feel; they want to have them covered and we do not make any distinction. I think we should; there ought to be a little more paid to a high priced workman than to a low priced workman.

THE COMMISSIONER: Have you any suggestion as to how that could be brought about? You have a maximum of \$20 that is where the trouble comes.

MR. HINSDALE: Of course we would have to change the law radically. A modification of that kind would not be in harmony with our law. We provide they shall receive \$20, \$25, \$30, or \$35, or at least increase it 50 per cent. during the first six months, provided those amounts are not over 60 per cent. of his wages.

THE COMMISSIONER: With these laws increasing the obligation of the employer has the effect been to prevent old men or men who are not of full strength from getting employment?

MR. HINSDALE: I have never heard that it has.

THE COMMISSIONER: That is one of the things that is said.

MR. HINSDALE: I have never heard that it has, and the statistics, so far as I have been able to observe, do not show any bad condition. Now, of the people to whom we paid indemnities to the amount of \$6,300 odd, there were over 50 per cent. born in the United States. We had an idea that perhaps such a law might lead to the employment of foreigners, people who had no dependants, but as a matter of fact the nationality and the social condition of the claimants does not show anything of that kind.

THE COMMISSIONER: It has been said that in some hazardous industries they took care to employ bachelors and people who had no dependants?

MR. HINSDALE: We are informed that the Dupont Powder Company make a practice of employing single men.

THE COMMISSIONER: You do not think that has much effect, or any effect?

MR. HINSDALE: I have talked with a very great many mill men on the subject of employment of married men and single men, American citizens and foreigners, and they are very generally of the opinion that they want married men, and they want white men, that is, Americans or British subjects, or Canadians. They do not want the Southern European population if they can avoid it. Out in our saw-mills they want the married men, and I do not think any consideration in our law about not having to charge up reserves has any weight with them.

THE COMMISSIONER: That is not exactly what I meant. You see the danger of an accident to a man 60 years of age, or a man who has not all his

faculties perfect, is greater than with a man who has them; would there be any discrimination against the first class because of that?

MR. HINSDALE: Theoretically there might be, but I know of no instance where such has been the case.

THE COMMISSIONER: Well, how can you justify this state of things. A man is injured permanently, and his annuity is payable for his life; in the natural course of things if he lived he would not be able to work till his end came. How on any principle on which these laws are based is that imposed upon the employer, the burden of keeping that man after the time which in the ordinary course of things he would have to give up work?

MR. HINSDALE: That point has been raised with regard to the pension payable to the parent of a minor child. According to our act if a young man is under twenty-one and is hurt, and has no wife but has dependent parents, we have to pay those parents a certain amount of money until such time as the boy would become twenty-one. Well, there is quite an agitation in some quarters to extend the scope of that so that we would have to pay those parents right along regardless of when this young man would come of age, but there is no provision for it.

THE COMMISSIONER: That is the other way. Take the case I put, a man with partial total disability lives to be eighty years old. Now, the chances are one hundred to one at 60 or 65 he would have been incapacitated from working altogether. What is the justification for making the employer pay for the added fifteen years?

MR. HINSDALE: Personally I would not think there was any financial authority for it; on the other hand I think that such cases would be very rare, and in spite of that the impaired lifetime and the early deaths of the others would more than compensate any special cases.

THE COMMISSIONER: There is the social side of the question, that otherwise the man would be upon the state or the community. What is your view as to who pays the burden imposed by this law eventually?

MR. HINSDALE: Eventually I think the consumer does.

THE COMMISSIONER: Is it not practically a tax upon the community and that the person upon whom the burden is imposed is the tax-payer?

MR. HINSDALE: It eventually goes to the consumer just as broken machinery or anything; it is passed on to the consumer.

THE COMMISSIONER: As an economist ought not the logical result of that to be that it should be paid at first by the community, that it should be a tax upon the public?

MR. HINSDALE: In the first place not upon the employer?

THE COMMISSIONER: What is the use of all the machinery if ultimately it is borne by the public? You have to deal with conditions as you find them, I suppose.

MR. HINSDALE: Centralize the cost upon the agency that produces the cost.

THE COMMISSIONER: I suppose that in some cases it is not upon the community; if a man cannot put it on the article it comes out of his profits.

MR. HINSDALE: Every other form of damage in manufacture comes out of the consumer; it is added to the cost; life and limb ought to be added to the cost just the same as burst boilers, or anything.

THE COMMISSIONER: Will that stand analysis? You may say the inanimate machine never has anything to do with the trouble that occurs, while the animate machine very often has.

MR. HINSDALE: It has been the only form of loss created in mills or plants or industry so far that the consumer did not have to pay. Any other form of accident that happened, if it were machinery or the risk of burning the plant, they had to get it out of the consumer, it was part of the cost of operating, but if a man were killed the cost frequently escaped altogether.

THE COMMISSIONER: Are you able to say anything as to a scheme for first-aid? Perhaps you could tell us what has been suggested which seems to you the best system, if it is to be adopted at all.

MR. HINSDALE: It is a point that has been discussed; it is a very large subject. The Commission themselves do not altogether agree, and the manufacturers do not agree with the employees. Of course there are various ways to accomplish it; it depends on who has to pay for the child. If it were possible to divide industry into classifications of hazard, not very many but a few, so that in one class certain employers should pay twenty-five cents a month per man; the next class, thirty-seven and a half cents; the next class, fifty cents per month per man, and the next class perhaps more. With the number of employees we have, some 138,000, I venture to say it would produce \$800,000 a year at least even on that basis. Now, if they were required to pay that into the fund per man, and you gave them authority to charge it to their men, then you are throwing a burden on the men. It might work finely if the men were willing to do that. Of course under the old system back on the coast it is very common for men to be employed under what is called the hospital system, and they take fifty cents a month or one dollar a month and give them surgical attendance, and not only that but give them medical attendance, all of which is outside of this law.

THE COMMISSIONER: Such as it is sometimes.

MR. HINSDALE: Oftentimes it is very poor. Although such cases are rare we believe it is a fact that some employers take the dollar from the man and make a private settlement with the doctor for fifty cents a month.

THE COMMISSIONER: Would the act not require them to provide that in certain cases?

MR. HINSDALE: Sometimes they charge the men and make a profit on it. If the employers were required to pay into a State administered fund so much a month per man, and then the State had hospitals here and there some people would be pleased with that. If they were given the privilege of charging it to their men, then the burden of it would fall upon the men; if they were prohibited from charging it to their men, then the burden falls upon the employer; that is where the kick comes.

THE COMMISSIONER: There are a great many men who might not be in the hospital at all; they would be at home and want care at home, and perhaps medical attendance there; no one wants to be in the hospital when he can be at home. It is a pretty difficult question, I fancy.

\* MR. HINSDALE: The fact is that even under a Workmen's Compensation Act such as we have in Washington, the workman really does pay the large share of the ultimate loss of the accident, regardless of the fact that the employer pays enough to pay his contribution; the worker is only getting sixty per cent. of his wages anyway, and in the next place he is charged for the expense of his treatment. It is a difficult question and it is a question that should be carefully thought out.

THE COMMISSIONER: On the other hand the manufacturer says he gets that rain or shine, it is a certainty.

MR. HINSDALE: Yes.

THE COMMISSIONER: I do not think we can make anything quite perfect, Mr. Hinsdale.

MR. HINSDALE: No, sir.

The employers in our state would like very much to let the law remain as it is for a couple of years.

THE COMMISSIONER: Well, what would you advise a province like this to do: to - wait a couple of years to see how you get along, or to go right on and follow in your footsteps?

MR. HINSDALE: The question of adopting such a law as ours, and the question of enlarging our law and adding first-aid is a very different thing. Personally I like our own law, and Mr. Preston told me a day or two ago that it had far more than justified his hopes in its operation.

THE COMMISSIONER: Can you say any more than that it is a healthy child?

MR. HINSDALE: Well, that is a good way to put it.

MR. WEGENAST: Would it add to any considerable degree to the work of your Commission if you had in the case of each claim to adjust the claim on the basis of wages instead of paying a flat sum like \$20 or \$25?

MR. HINSDALE: Very easily, if they wish to make the award with reference to the wage, such a percentage of the wage regardless of any special sum; there would be no difficulty about that.

THE COMMISSIONER: Then you would have to exclude from the benefits of the act people getting salaries over a certain amount because they can insure themselves. That is the theory upon which they are excluded.

MR. HINSDALE: That is true.

MR. WEGENAST: Would you not be apt to have disputes with regard to the extent of the injury, with regard to the wages or earnings, and so on?

MR. HINSDALE: There is a great temptation for a man. We find even now letters come in wishing to amend the statement, that such a man getting \$2.50 was really getting \$3, or a man getting \$3 was getting \$3.50.

MR. WEGENAST: Or that he had been earning something outside?

MR. HINSDALE: Yes, something like that.

MR. WEGENAST: Then another thing I would like to suggest is; in your method of collecting and disbursing funds you have no difficulty in getting the services of the banks at a reasonable rate?

MR. HINSDALE: That costs us absolutely nothing. We simply deposit our cheques every day and hand them over to the banks; and we make a remittance every day to the State Treasurer.

MR. WEGENAST: You keep a regular bank account?

MR. HINSDALE: Yes, we send formal notices out for amounts that are due—make a call, as we say—and give them thirty days in most cases where it is renewing a fund, or ten days where it is an original payment. The moment it becomes in default, when the thirty days or the ten days are up, we make a draft as a matter of courtesy so that he shall not continue in default inadvertently longer than necessary.

MR. WEGENAST: Have you any cases where your cheques or drafts have been returned "no funds"?

MR. HINSDALE: A dozen or so, I guess. We simply correspond with the man at once.

MR. WEGENAST: You have had no difficulty in the technique of collecting?

MR. HINSDALE: Not a bit. We have never had to pay a cent of exchange, and never took a dollar off a pay-cheque.

MR. WEGENAST: It is quite possible for an employer to be in more than one class, in fact in many classes?

MR. HINSDALE: It is, indeed. We classify the men according to their kinds of employment, especially if their work is easily separable. If it is inseparable—for example take a street railway company which may run a lighting system; in Seattle the street railway company operate the whole street railway and a portion of the lighting system of the city. A certain amount of their pay-roll is easily confined or found to be applicable to the street railway, a certain other portion of it is clearly in reference to the lighting; but there is another operation called the power plant, and the men who go about fixing poles and stringing wires, and it is rather inseparable; you cannot tell which department they should be in.

MR. WEGENAST: You have to use your judgment.

MR. HINSDALE: In cases like that we get it as fairly as we can and divide it.

THE COMMISSIONER: I thought the act provided that if it were not clearly separable you could put it on either of them?

MR. HINSDALE: We want to credit number 13 just as much money as they are entitled to, and number 14 just as much as they are entitled to, so we make as accurate a sub-division as we can. In that particular case we went into it very exhaustively for a matter of six months pay-roll with their own

engineers. We discovered they only ran a portion of the lighting system, but we discovered that 7½ per cent. of their pay-roll in Seattle, exclusive of a coal mine they operated, was properly applicable to the light plant as we thought, and we charged them 4 per cent. on 7½ per cent., and 3 per cent. on the rest of it.

THE COMMISSIONER: I have not noticed whether there is any provision in your act on this point: An employee in Washington is sent to work in Idaho and injured there.

MR. HINSDALE: He is excluded from the Washington law; we do not pay.

MR. BANCROFT: In the table of the acts passed last year, as reported to the Department of Labour, it says the Washington act gives compensation for injured workmen in Washington whose dependants live outside of Washington?

THE COMMISSIONER: I was not asking that. Supposing a man belongs to an establishment in Washington is sent out of the State,—say a plumber—is sent into Idaho to do work,—according to what Mr. Hinsdale says he would have to depend upon what the law of Idaho gave, whether he would get compensation or not.

MR. HINSDALE: I think we would be restrained.

THE COMMISSIONER: Would that be on account of your constitution, or by the terms of the act?

MR. HINSDALE: Well, the Attorney-General has advised us that we cannot do it, that the liability was against the firm under the Oregon act if a man were killed in Oregon; that if the accident occurred in some other territory our act wasn't applicable.

THE COMMISSIONER: Would that not cause a good deal of feeling of injustice if there were no law in Idaho; that this employer could send him there and deprive him of the right of compensation if he crossed the border?

MR. HINSDALE: It has occurred a good many times.

THE COMMISSIONER: What would you say, if you were framing a law, on that point; ought it to be governed by the place where the establishment is? The German law has some provision about it.

MR. GIBBONS: If a firm here in Ontario that was contributing to the fund sent a workman over into Quebec to do a job and the workman was injured there while working for the firm, why should he not receive compensation? They pay his contribution here on a percentage of the pay-roll.

MR. HINSDALE: I have always assumed it to be purely a legal question. If he were hurt in Oregon, having been sent over from Washington, he would sue under the Oregon law; I assume that, I don't know.

MR. GIBBONS This firm would be in Washington and would contribute on its pay-roll.

THE COMMISSIONER: It would be complicated by the difficulty that there might be in Idaho no law, or there might be a law more beneficial to the workmen

than in Washington. It ought to be settled somewhere in the act how that man is to be treated.

MR. HINSDALE: So far as I can answer the question it is treated just the same as under the criminal law; if the crime were committed in Oregon it would have to be tried in Oregon; if the accident occurred in Oregon the rights and privileges obtaining in Oregon would obtain.

MR. GIBBONS: Would it not be unfair to the employer who is paying on his pay-roll; if the man who goes into Idaho and is injured can bring an action against the firm in that state?

MR. HINSDALE: It is so held with us. As I say the only explanation I can give is that it is purely a legal question, and that I am not familiar with it.

THE COMMISSIONER: That gives another argument to the enemies of this system, the insurance companies, because there would be no difficulty like that if the man were insured in either place.

MR. HINSDALE: We have a great many cases where, for example, a saw-mill is operated in Idaho. There is an immense saw-mill just across the line, and they do their logging in Washington, and they do their river driving between the two as the river is the boundary line. We take their pay-rolls for the work in Washington.

MR. GIBBONS: The case which I was pointing out would be if their mill was in Washington too, but the man was crossing to do something and got injured.

MR. HINSDALE: We have had that case precisely; we would not pay him.

MR. BANCROFT: Supposing the man works in Washington and his wife and children reside in Oregon, and he is killed?

MR. WEGENAST: Supposing the establishment was in Idaho?

MR. BANCROFT: It says only the father and mother is to be considered; it seems only single men are considered in that.

MR. HINSDALE: If I might say a word on just what you are speaking of there. If we have an Italian hurt and he has a wife in Italy, we would have to pay that wife in Italy, and we do. We send it all over the world. If he has a sister or brother, they are not entitled to anything. If there is no wife, but a parent, and that parent can prove that during the preceding year that son had sent so much money to him or her, and they are deprived of that amount of money, then we will pay, but we do not go beyond that relationship.

THE COMMISSIONER: Supposing a man comes in after the pay-roll is returned upon which your assessment is based, comes in the last month, would he be entitled to compensation all the same?

MR. HINSDALE: We certainly regard the payment by the firm as covering all their employees in the hazard during the year until some subsequent pay-roll is obtained and a new call made.

THE COMMISSIONER: Take the case that Mr. Wegenast suggested. There is an establishment in Idaho and they send a man into Washington to do some work, and he is injured; what happens in that case?

MR. HINSDALE: We have a great many cases like that. Bridge companies in Chicago send men up there to put up bridges. The Otis Elevator people send men from various places to hang elevators, and contracts are given to all manner of people all over the states to do work in Washington. As soon as we hear of them working—they generally communicate with us before they come in and say they are going to do such a thing—they make a pay-roll on an estimate and make their contribution. Then later on when we audit the pay-roll it can be adjusted. Now, if they have not reported and it is brought to our attention we write to Chicago or New York, or wherever they are from, where their time can be inspected, and make them pay. We make a formal demand upon them.

THE COMMISSIONER: I do not know whether it would happen under your conditions, but it might happen here; a firm sends a man from Montreal to Ottawa, say, and he is injured, and another man is sent another day. That is an isolated case but you could not deal with them as you are talking about. How would you deal with them?

MR. HINSDALE: Well, we have had difficulty. If, for example, the law said nobody should be counted unless they had five employees, it would let that class of work out, because there was only one man came in. As far as our act in Washington is concerned if a man is hurt in Washington in any of the lines of work called extra-hazardous, and he puts in a claim, I am satisfied our Commission knows of no way to refuse to pay him, and if we cannot get the money from his employer that is our misfortune.

THE COMMISSIONER: Then another difficulty arises: he might have the right to claim against his employer in Montreal.

MR. HINSDALE: I think that is the essence of our treatment of the case. There is some legal difficulty underlying our giving the final release to the employer on account of that liability. I think the liability would exist as created in the state where the accident occurred. I do not think we could do away with the Oregon jurisdiction.

THE COMMISSIONER: Supposing a railway company was made answerable just in the same way, or at least the compensation payable to the man injured was just the same as under an act such as yours, and the Board had the right to determine the claims, settle the amounts, and make an order for payment so as to avoid going to law, with regard to a company say like your Great Northern, would there be any harm to the system leaving them out of the operation of the act, or any disadvantage in doing it?

MR. HINSDALE: Leaving them out of the operation?

THE COMMISSIONER: Leaving them out from contributing, but paying the assessments; just leaving them to pay the claims as they arise as settled by the order of the Board.

MR. HINSDALE: Well, there would be difficulty about that in Washington I am satisfied, because it seems to me it would be the treatment of one man one way and another man another; it might be unconstitutional.

THE COMMISSIONER: Apart from that?

MR. HINSDALE: Apart from that, if it were arranged that they were in a class by themselves exclusively it would amount to precisely the same thing. They have got to pay the award, so that one could put them in under the law the same as anybody else. If you keep them separate and apart from all other contributors and make a special class of them then you have arrived at just that result.

THE COMMISSIONER: If a big railway company, such as your Great Northern, or our Canadian Pacific or Grand Trunk, there would be no difficulty about it?

MR. HINSDALE: No sir.

THE COMMISSIONER: The only advantage I can see they would gain would be that they would not pay an initial assessment; that is all it would amount to.

MR. HINSDALE: I cannot see for my part why they would be in any different position than a great many different employers under our law, laundries for example. The laundries take care of the laundry accidents. If there happened to be only one laundry that did the business they would simply have to pay the losses that occurred in that laundry. In the street railway class we have eighteen separate contributors, but if they were all in one big company it would be the same situation.

THE COMMISSIONER: You have seen the Massachusetts scale prepared by Mr. Wolfe, I believe?

MR. HINSDALE: I have not made a special study of it.

THE COMMISSIONER: That has not been referred to. One of his objections is that the classes are not grouped right, that they ought not to be grouped according to the nature of the business but according to the risk.

MR. HINSDALE: I think the framers of the Washington act tried to group them according to the risk and the nature of employment. For instance the box factories and the ordinary wood-working establishments are classed in Class 29. Veneering work, and institutions of that kind, and planing mills; but the heavier form of wood operations like saw-milling and shingle-milling, lath milling and logging are in a class by themselves.

THE COMMISSIONER: Has that objection any force at all where the system is to assess the class only to provide for accidents within it? If you had a rate like the insurance company has then it would be important, but where you simply make those in the class pay for the risk happening in it does it make any difference?

MR. HINSDALE: I would think it made no difference except that among the industries listed in that particular class there happened to be one where the hazard was probably very small, and he might be permitted to contribute at a lower rate than the others. We have half a dozen rates in some of our classes, and one can equalize the rate to the hazard as experience teaches. In our Class 5 we have the rate of  $3\frac{1}{2}$  for carpentering and  $3\frac{1}{2}$  for brick-laying.

THE COMMISSIONER: I think Mr. Wegenast put it several classes.

MR. HINSDALE: Yes. I venture to say that experience will probably show more accidents occur in carpentering than bricklaying.

THE COMMISSIONER: I got a letter from Mr. Maloney, who wants to be heard before the Commission. Is Mr. Maloney here?

MR. JOHN MALONEY: I have wired to Mr. D. L. Cease, the editor of the Trainman's Journal, and a member, appointed by President Taft, of the Federal Commission on Workmen's Compensation. It is my desire to have him here; I think I could arrange to have him here by to-morrow.

THE COMMISSIONER: I will hear him to-morrow. I would like to finish the evidence as soon as possible.

Mr. Neely, have you a form of return that Mr. Hinsdale can see.

MR. NEELY: We have a form of return to the Dominion Government, and we can get a form as used in New York in the course of a day or two.

THE COMMISSIONER: Does it contain much more than the Dominion one?

MR. NEELY: Railway employees.

THE COMMISSIONER: I suppose Mr. Wolfe was speaking of the New York one when he made the comparison?

MR. NEELY: I think so.

THE COMMISSIONER: Then Mr. Best can be heard at eleven o'clock to-morrow, and Mr. Cease in the afternoon.

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## TWENTY-FIRST SITTING.

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THE LEGISLATIVE BUILDING, TORONTO.

*Friday, 10th January, 1913, 11 a.m.*

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner.*

MR. F. N. KENNIN, *Secretary.*

MR. W. B. WILKINSON, *Law Clerk.*

THE COMMISSIONER: I understand Mr. Best is here and wishes to say something to the Commission. Perhaps you will state first whom you represent, Mr. Best.

MR. BEST: Mr. Commissioner, I am at a little disadvantage in speaking on this question from the fact that I have not been at any of the previous sittings of the Commission until yesterday, and therefore have not observed just what has taken place. My remarks will be specially directed to, or in connection with, the men whom I represent, the locomotive firemen and enginemen.

THE COMMISSIONER: Does that include the locomotive engineers?

MR. BEST: Quite a number, yes. I will also refer to some portions of the memorial which was submitted by the Canadian Pacific Railway Company, with reference to your interim report, and also to a personal pamphlet that was sent out by the Canadian Pacific Railway with the intention, I presume, or the purpose, of endeavouring to secure the assistance of the employees in defeating any compulsory compensation law.

THE COMMISSIONER: Perhaps I might explain to you what the railways say. They are willing now to become answerable for exactly the same compensation as would be payable under the proposed scheme, whatever it may be, and they are content that the Board should deal with all the claims, and make orders upon them, which would have the effect of a judgment for payment wherever the claim for compensation was established before the Board. The only difference between their position, if they were put as they want to be, and their position if they were grouped, would be that all the railways would be dealt with together, and they would be required to make a payment in the shape of an initial assessment into the Board, and be assessed as claims were made.

MR. BEST: I was going more particularly on some of the things in their pamphlet.

THE COMMISSIONER: They have abandoned many of the contentions that were made at first. They wanted to be left entirely out and have schemes of their own, but that they are not pressing for, as I understand their position.

MR. BEST: I did not know the C.P.R. had modified its position in the matter.

THE COMMISSIONER: You had better address the Commission as you intended.

MR. BEST: This matter has been distributed to the employees whom I represent, and as you will notice it is marked "personal." Clause 12 of that memorandum reads this way: "The Company wants to see the principle of Workmen's Compensation adopted." I may say that I as the representative of that portion of the men heartily concur in that. We desire to see the principle of Workmen's Compensation adopted as well. "It is perfectly willing to bind itself to pay the men for all injuries caused by accident in its service up to the requirements of any proposed law, but it objects to doing this through a third party, even if such third party is the State or the Government." That is the point where we differ very materially, for this reason: As I understand that portion of that clause, it is that they desire to be a law unto themselves, as it were, and administer this compensation law, which they say they are in favour of. They desire to administer it themselves, and no third party, even though it be the State or the Government, should have anything to say in administering it. It does seem to me that is not right. In the first place, I may say I want to be absolutely fair, and I do not believe our men desire to have anything that is not fair. They desire to be law-abiding citizens and desire to abide by any law that is made, but it does seem strange that an employee being injured in the service of any railway company should have to appeal to the man who for the present at least is the only man upon whom he is relying for his livelihood, and he must resort to litigation and enter suit against that only person for the time being upon whom he is depending. It seems to me there should be some higher power than the railroad company to

administer the compensation which would be laid down in specific cases of injury as they may be determined, the details of which may be worked out. Coming to the question of grouping the railways, I do not want to say very much on that point. I have not studied it perhaps sufficiently to express myself intelligently, more than to say that to us it seems it is only a detail of the working out of the compensation act, which should be administered by the State, or by the Crown, or the Government. The Government should administer that, not the railways. Let me take a concrete case: a man is injured in the employ of the company and he comes to them and appeals for compensation for injuries received, and even though he is successful what chance has that man of retaining his position with the railroad company afterwards? From my personal experience and observation he has been told in some instances that his services were not required, and he has been dismissed from the service for alleged unsatisfactory service. I refer now to one case in particular, a case that happened in 1909 on the C.P.R., where a fireman after getting on to his engine when he was going out into the yard was working around and getting his fire ready for his train. The machinist who was working at one of the injectors went to try the injector. Part of the mechanism, the regulating valve, had not been screwed in properly, and when the force of the water came on and combined the water with the steam it blew this out, and it struck the fireman in the face. The fireman's eyes were hurt, his eyesight was put out of business; he had to go home and was off for several weeks. The company made no attempt whatever to give him anything, or do anything for him, until he afterwards entered suit, I understand, against the company. He received, I think, \$1,200. After he thought he was able to go to work he went to the company, and the company said: "You can't work for us any more, you are dismissed from the service because your services have been unsatisfactory." That is only one of many cases which have occurred.

THE COMMISSIONER: What investigation have you made of that case?

MR. BEST: Well, I presume the company has investigated the case.

THE COMMISSIONER: Have you, so that you are able to say that that is the fact?

MR. BEST: Yes, I am saying that now, that I believe it to be the fact; it is given to me as the fact.

THE COMMISSIONER: You get that simply from the workman's side; have you heard the other side?

MR. BEST: No, I have not heard the company's side.

THE COMMISSIONER: You see, it is not fair to form a judgment until you have heard both sides.

MR. BEST: It is only a piece of evidence which I believe to be true, and it is a matter of the privilege being given us to see whether it is true afterwards.

THE COMMISSIONER: I suppose there is no reason why you should not give the name?

MR. BEST: If his services were satisfactory up to that time and the accident resulted in his losing his position, even though he had to enter suit, it seems to me a very undesirable state of affairs.

THE COMMISSIONER: Is there any reason why the name of that man should not be given?

MR. BEST: It was Fireman Bennett, and was in August, 1909; it was in the London yard. So that matter can be thoroughly investigated. I would be sorry if I made any remark that was not absolutely true. The facts are given to me, and they are expected to give them the same as if given on oath; they are obligated to do that.

THE COMMISSIONER: The company will have an opportunity to answer that now that you have given the particulars.

MR. BEST: Then I have another case along that line to cite, and that is in reference to an engineer at Galt. This happened on the 24th day of August, 1910. He was in charge of an engine which was disabled on one side. That is, one of the engines was out of commission, and the engine stopped on what is termed dead centre. He could not with the steam move the engine off. At Galt station he had to get the assistance of the yard engine to move the engine off the centre; that was done by means of a stake. The engineer got down to undertake to hold that stake while some one else moved the engine, and it struck the stake with a greater force than was anticipated and broke it in two, and it went through his jaw and almost instantly killed him. No effort, I am informed, was made to remunerate or compensate the man's wife for the loss of her husband. Finally an action was entered, and after two years she received \$1,500 from the company, or rather it was paid to the official guardian, and it cost her, I think, \$75 out of that, in addition to \$25 which went to the official guardian. This is showing the cost to the beneficiary who should get the full amount without any deduction.

THE COMMISSIONER: What was the \$75 paid for?

MR. BEST: For the costs of the attorney's fees.

THE COMMISSIONER: What railway was that?

MR. BEST: The Canadian Pacific.

THE COMMISSIONER: Of course the official guardian's fee is upon an entirely different ground. For the protection of a minor the money is required to be paid into court. There would be no deduction in the case of an adult in a case of that kind.

MR. BEST: Now, I would like to refer to several other things in this personal circular, and while I am referring to this, Mr. Commissioner, I want it to be distinctly understood that anything I may say is not because I desire to be antagonistic to the railway companies. I was employed for twenty-one years with the Canadian Pacific Railway and I have no axe to grind. I resigned after twenty-one years to take my present position, and it is merely to show up the employees' side of it. I do not know just what may

have been said by other representatives at their meetings, but in case it may be inferred that the employees are willing to stand by the company, as it were, and assist in defeating any proposed compulsory compensation, I want to say on behalf of our employees, the members whom I represent, that our men are entirely opposed to having any railway company administer a compensation act. It does seem to me to be entirely unfair that any railroad company or the leaders of any industry should be considered a law unto themselves and be able to administer that when and to whom they desire; it seems to be absurd on the face of it. I have some other references, but it is unnecessary to take up your valuable time in referring to them. I have cases where men have not been settled with until perhaps appeals have been made to the railway companies for compensation for injuries received, and many hardships have been suffered. I will just give you one more case. I cannot just now remember the date, but I will give you the place and the name of the engineer, and the name of the fireman, because it was on the division where I worked for twenty years. The engineer's name was Woodard, and the fireman's name was Stencill. They started out on a night run on a freight train. The fireman was just in the service a very short time, and he had only joined our organization about a month before. About sixty miles east of Chapleau they went up to take water, and because of a condition that obtained particularly that winter on locomotives there were not sufficient torches for the men to use, and the fireman was using what they call a fusee, and did not know the danger of it. He would light it and go to the back of the tank and probably stick it in the coal, and go and take water and probably stick it in the coal again to quench the blaze. After they had taken water at Ramsey station he apparently must have stuck it in the tank, or struck it against the tank too hard, with the result that there was an explosion. There was a greater amount of explosive in it than he thought there was, or anybody else perhaps, and both his hands were blown off. Now, as far as I am aware the company made no attempt to give him any compensation for that. There was an investigation held, and it was claimed by the railway company, so I am informed, that inasmuch as the engineer wasn't using the only torch that was on the engine at that time he had no need to use his fusee, notwithstanding it had been necessary at the other stations, and where perhaps the engineer had got down to look around his engine. It was claimed that the engineer had not used it at that station and therefore it was unnecessary for the fireman to use this fusee at that time, and I presume it was his own fault. Our organization in which he had taken out a policy of \$100 paid him the full face value of his policy within thirty days, even though there had not been sufficient time from the time he joined the organization in which to receive his beneficiary certificate from the beneficiary department of the organization.

THE COMMISSIONER: You said \$100.

MR. BEST: Pardon me, I meant \$1,000. You understand a man can take out benefits to the amount of \$500, \$1,000, \$1,500, \$2,000, or \$3,000, as he chooses when he enters and takes out membership, or rather he can increase that after a time, if he desires, before he reaches the age of forty years.

at which age he is not permitted to increase his beneficiary certificate more than \$1,500. He came to me, and the first time I met him after he came out of the hospital I can assure you it appealed to me as a very pitiable sight; when you go to shake hands with a boy and he has not any hand to shake with it touches you. He asked me what I thought he had better do; he didn't know just what to do; it was a pretty hard plight, and he wondered if the company would do anything. I asked him about the investigation and he told me he thought the company would blame him. Well, I have always tried to go on the principle that probably you can catch more flies with molasses than you can with vinegar, and I said if he went to the company in a humble attitude they might perhaps do something for him. I wrote a letter to the railway company, and I am pleased to say they did recognize it, and I think they gave him \$1,500 or \$2,000. After writing this letter of request they sent a cheque, but if it was \$2,000, Mr. Commissioner, what is \$2,000 for a pair of hands; is there any gentleman here would lose his hands for \$2,000, or twice that amount? Those are just a few of the cases that have happened to our men, and it seems to me there should be something that should say under certain circumstances and for certain accidents a certain amount shall be paid, without any necessity on the part of the employee to resort to litigation. It does not seem to be a twentieth century idea that we should have to appeal to the only man, for the time being at least, whom we are dependent upon for support—our employer—for compensation in case of injury.

I had thought of making one other reference to this memorial, and that was as to the attitude of the company to their employees. I will say from personal experience that the Canadian Pacific Railway has used its employees as well probably as any other railway company in Canada. I know that from personal experience, but there are things they could improve in. They sent out this memorial emphasizing the fact that they have established club houses, and so and so, to look after the interests of the men. I might just say that it is only what any railway company, I believe, should do under the circumstances which exist at the points at which those club houses have been established. Speaking of course from experience, and knowing the conditions which exist in those places, I would say the universal law of supply and demand was the chief factor in the necessity being created for establishing those places. The traffic conditions necessitate large numbers of men going into those places, men who are away from home or have no homes, and they had no place to go but to a hotel—there were two hotels. There was one C.P.R. boarding house, which was full, of course, and the hotels were full. Just picture this condition: a fireman comes off probably a snowplow train, he has been working under severe climatic conditions, probably forty, fifty or sixty below zero, and has been from twelve to twenty hours on the road. Having worked under those conditions he comes in cold and with an empty stomach, probably he has had to thaw out his overalls before he can take them off. These are everyday life occurrences in the winter weather up in that country. At that time the man who is boarding in the hotel, particularly one hotel, the Queen's Hotel, at Chapleau, in going to the washroom has to walk straight through the bar-room—that was the way the hotel happened to be laid out—

it has been changed since then, but at that time he had to walk through there. I do not know what is more suggestive to any man—while I do not countenance it, remember, for I profess to be a teetotaler—what is more suggestive to the man who is going to wash than seeing another man with his elbow bent with something warm before him, after he has been on the road twenty or thirty hours and in that physical condition, all wet and cold and with an empty stomach; what is more likely than that he will go up and take a drink too? The consequences were perhaps there were a number of men who used to take just a little more than they should take, particularly at that time, and when they were required for duty they could not go out, and as a representative of the men I had been appealed to on several occasions to use my influence with the men to endeavour to keep them from this, and to appeal to them on the principle of the thing to keep away from it, that it was their duty to the company to do this. On one particular occasion I spoke to Mr. Murphy, who is now general manager of transportation, because he was brought up on the Chapleau division, and I just explained this case to him that I had known from personal observation. I said I have done all I can do with these men; the men require a home when they are away from home, and they have not got it, one that will be conducive to higher efficiency, to a higher mental, moral and spiritual condition, and I know of no power better equipped and better able to obtain that condition than the Canadian Pacific by whom they are employed, and I appeal to you to try and better this condition. I said if traffic conditions continue to increase as they are doing the company is going to have to take some stand and make some better provision for the men; we are doing everything we can, and we believe that our organization has had the effect of raising the standard of the efficiency of the men; we have tried to do that, but we cannot do it with that environment. Whether this had anything to do with the company establishing club houses which are now run by the Y.M.C.A., and which I believe are serving a wonderful purpose, I do not know. I know that the employees themselves, those who desire to assist their fellowmen, and probably the company as well, have taken a similar stand along that line. I only mention this because in my own case I happened to be one of those who desired to do that very thing. These conditions obtained at these various points like White River, Chapleau, Schreiber, and Kenora is another place that is mentioned in this circular. In 1897 I fired out of Kenora in a wheat rush and I know something of the conditions that obtained at that place: they were unbearable, you could scarcely get decent accommodation, and the men were working very very hard. I want to say, so that the company will not be given the credit altogether, that it was a member of our organization by the name of McRae who came from the New York Central Lines, who took the initiative in collecting money, a very large portion of which was contributed by the employees of the railway running out of Kenora, which erected the beautiful Y.M.C.A. that is at Kenora to-day, and the men are maintaining it and paying to have it looked after.

THE COMMISSIONER: Do I understand that both of these are under the charge of the Young Men's Christian Association?

MR. BEST: Yes.

THE COMMISSIONER: How does that suit the Roman Catholic members?

MR. BEST: Well, as far as I understand the Y.M.C.A. practice, and I had the honour of being on the board of management of the Chapleau one all the time I was there, there is no distinction made whatever, there is no distinction made.

THE COMMISSIONER: Do the Roman Catholics avail themselves of it?

MR. BEST: Oh yes, quite a large number. Perhaps I may frankly say not as many as of the Protestants, but quite a large number have been taking their meals there, and if possible they would get rooms. The buildings are not very large and the demand is greater than the supply. In fact at Chapleau right at the present time they are enlarging the building, and in addition to enlarging they are building a large bunk-room to take care of the surplus men who must of necessity be brought in after the close of navigation, to convey the traffic over that only one pair of rails going east and west. I think it is unnecessary perhaps for me to say anything further in commenting on this. While, as I said before, I recognize the efforts of the Canadian Pacific in doing perhaps more than many other railways have done for their men in the way of safety appliances on locomotives and so on, I do find this, with all due respect, that the railway companies will combine with other railway companies to oppose legislation for safety appliances which may protect from accident their own men. I am speaking now from experience with the Board of Railway Commissioners, where I have heard even representatives of the Canadian Pacific say that safety appliances like dump ash cans, which have been adopted on other roads, and which have been in use in the United States since 1910, were dangerous, and they would oppose them, and they are opposing them. (By this very circular which is marked "personal," they are asking, as I understand it, the men to assist them in defeating some compulsory system of compensation which would we hope entirely eliminate the necessity of an employee after he is injured resorting to litigation.) I think it is only reasonable for us to expect that we should have that, and we do hope that when the final evidence has been taken, and the final report has been submitted, and the final action has been taken by the Government, that we will have something along the lines of a compulsory compensation act administered by the Government and not by the railway companies at all. I see no better plan than has been submitted in that brief which is so well worded, with the little thought I have given to it in going over it and reading it carefully, that was submitted by the Trades and Labour Congress; I do not see that it can be very much improved upon. There may be some of the details that I have not just thought out very carefully, but I know at the present time of nothing that would suggest a better plan than has been set forth in that brief. I thank you, Mr. Commissioner.

THE COMMISSIONER: How many members are there in your organization?

MR. BEST: Do you mean for the Dominion or for the Province?

THE COMMISSIONER: In the Province.

MR. BEST: I could not give you that accurately. The latest figures I have are for 1911. I came here on account of a wire; I left very quickly, and did not have time to look up anything definite. The latest I have is for 1911. We have now between two and three thousand members of our organization in the Province, and about fifty-five hundred in the Dominion of Canada.

THE COMMISSIONER: Dealing with the Province what proportion would that be of the whole?

MR. BEST: Of the whole of the railway employees?

THE COMMISSIONER: Of the railway employees that your institution deals with?

MR. BEST: We profess to represent, speaking now for the Canadian Pacific, about 99 per cent. of the firemen.

THE COMMISSIONER: What do you mean by that 99 per cent?

MR. BEST: Belonging to our organization, and about 30 per cent. of the engineers retain their membership. In fact I have seen figures that confirm my belief that between 30 and 40 per cent. of the engineers have still retained their membership in our organization; they retain their membership after having been promoted. That is speaking of the Canadian Pacific. I have not had anything definite regarding the Grand Trunk and the Canadian Northern, though I know there are quite a large number, because of the superior benefits, or insurance benefits, in our organization.

THE COMMISSIONER: That is pure accident insurance?

MR. BEST: It covers death, and five cases of total disability. For your information—if you desire to have it on the record—it will only take me a short time to read that from the constitution, so that I may make no mistake about it—Section 11 reads: “Disability claims and amputation. A beneficiary member in good standing sustaining the loss of a hand at or above the wrist joint by amputation or actual separation, or the loss of a foot at or above the ankle joint by amputation or actual separation, shall receive the full amount of this beneficiary certificate upon sufficient proof of injury being furnished to the general secretary and treasurer as required by the constitution.”

THE COMMISSIONER: Does that cover death from natural causes?

MR. BEST: Yes, death from natural causes.

THE COMMISSIONER: It is life insurance?

MR. BEST: It is a life insurance, of course, on the assessment system.

Then section 12: “A beneficiary member in good standing upon the books of the Grand Lodge, becoming totally and permanently blind in one or both eyes, or who may become totally and permanently disabled or incapacitated from performing all manual labour on account of Bright’s disease of the kidneys, permanent paralysis of either extremity, locomotor ataxia, or consumption of the lungs in its last stage, shall be entitled to the amount of his beneficiary certificates.” That is if in joining he took \$3,000 he gets the full amount. You understand he ceases to be a member of the beneficiary department after he has once drawn his amount.

THE COMMISSIONER: Do you compensate at all in the case of minor injuries, injuries less than those?

MR. BEST: No, those are the ones that are laid down, and of course for death there is the same; the full amount is given.

THE COMMISSIONER: It does not cover the accidents that do not practically destroy life?

MR. BEST: No. There is a provision made whereby a local sick benefit may be established by the local lodges, and they get paid three or four dollars a week all the time they are off, in many of the lodges. The lodge I belonged to at Chapleau had that for a long time and paid a large number of sick benefits.

THE COMMISSIONER: Do you pay any funeral benefits?

MR. BEST: No. That amount of insurance I might say costs the member \$1.10 a month per thousand, or \$13.20 per year.

THE COMMISSIONER: Irrespective of age; a flat rate?

MR. BEST: A flat rate, irrespective of age up to forty years, after which age he cannot participate in E and F classes, which is \$2,000 and \$3,000, and provided further that after the age of forty-five years he cannot increase his beneficiary certificate.

THE COMMISSIONER: Do any of the railways contribute to the fund?

MR. BEST: No, it is entirely within the ranks of the organization and the members of the organization.

THE COMMISSIONER: What is the modus operandi when an accident happens, with regard to a claim? What is done if a man loses say, both hands?

MR. BEST: Well, it is just a matter of some medical examiner.

THE COMMISSIONER: He sends a claim in?

MR. BEST: Yes, the claim is filed in the regular way with the lodge to which he belongs, and it is a matter of the local medical examiner, and there are certain forms which he has to make out.

THE COMMISSIONER: Who pays the claim, the local or the central body?

MR. BEST: What is known as the Grand Medical Examiner, who is elected by the Head Office, passes the claim. Of course it is usually on the recommendation of the local medical examiner, and the answers to the questions.

THE COMMISSIONER: I suppose there is not much room for a difference of opinion where the man is injured, but take a case like consumption.

MR. BEST: Yes, and partial paralysis, and locomotor ataxia. There are many cases that have had for the time being to be held back until investigated.

THE COMMISSIONER: Do you reject many of them?

MR. BEST: Yes, quite a number.

THE COMMISSIONER: Human nature is weak.

MR. BEST: Yes, human nature comes in sometimes even in the ranks of our organization.

THE COMMISSIONER: Some people would call that the devil.

MR. BEST: Call it what you like, but there is a tendency on the part of some to do the organization; they want to get a little more than the laws of the organization permit, and those things have to be guarded against.

THE COMMISSIONER: How long does it take in an ordinary case between the happening of the accident and the money being forthcoming?

MR. BEST: Well, in the case I mentioned of the boy who had his hands blown off, I think the cheque was back inside of thirty days.

THE COMMISSIONER: Would that be an average?

MR. BEST: Yes, about an average.

THE COMMISSIONER: You don't make any provision at all for what they call first-aid, helping the man before his claim is passed upon?

MR. BEST: No, the local lodges usually take care of that; I do not know of any lodge that does not do that very thing. If a man is laid up in the hospital for a long time they look after him usually, and if it necessary to look after his family, if he has one, they look after them.

THE COMMISSIONER: As a rule do the members of the organization join these local sick benefit branches?

MR. BEST: Yes, very many of our men have taken up accident insurance, you see, merely to cover accidents.

THE COMMISSIONER: In the insurance companies?

MR. BEST: Yes; in the insurance companies.

THE COMMISSIONER: But you said there were local subsidiary organizations for sick benefits?

MR. BEST: No, I meant the local lodges of the organization located at the different points. There is a provision whereby they can do that.

THE COMMISSIONER: That will cover every man who is a member?

MR. BEST: Oh yes, they may establish a weekly indemnity to be paid in cases of sickness.

THE COMMISSIONER: Do they as a rule do that?

MR. BEST: Well, really I could not speak only for some of the lodges that I am personally acquainted with; many of them do, many of them have not done that. They have found in very many cases where men have imposed in that way; for instance, they might have a slight injury, and perhaps they were insured in say the Canadian Railway Accident, and probably the Oddfellows or some other fraternal society, which would pay them \$1 or \$5 a week. We have known a few isolated cases where the man was drawing more money by laying off than when he was working. Some have tried to do that, and some of the lodges have not maintained the local benefits.

THE COMMISSIONER: A man might be in a position that it would pay him better not to work?

MR. BEST: Yes, if times weren't good on the road.

THE COMMISSIONER: A gentleman wrote me and gave concrete cases where the man was better off not working. He was getting so much from this, so much from that, and so much from the other, and he made more than he would when getting full wages.

Under the system that prevails in Washington, and I suppose it would have to be the same in any country where the State managed the fund, the employer reports every accident, and the injured man sends his claim in to the Board, with the names of the witnesses, and a certificate of his medical attendance. Would there be any hardship if they were brought under the act and the Board settled all the claims; would you see any difficulty from the men's standpoint in that? You suggested not liking to make a claim, or somebody suggested that, against his employer, but he makes it even under the State system against his employer, or against the group of employers.

MR. BEST: Well, it would not have just the same effect, for this reason, that if it is as compulsory or obligatory on him as it is upon the railway to submit the account of the accident, he would be merely submitting a statement which would be substituted by the medical examiner, and it would be merely a matter of him carrying out his part of the existing legislation, and the company could not discriminate against him for that reason in the same manner as they could if he made the personal appeal to them. I believe the chances of his getting something would be far far greater under what you propose; I cannot help thinking that.

THE COMMISSIONER: What are the wages of an engineer; between what figures do they vary?

MR. BEST: Speaking for the C. P. R. I understand they vary on different parts of the road.

THE COMMISSIONER: Is it a mileage basis?

MR. BEST: A mileage basis.

THE COMMISSIONER: Is it a flat rate with a mileage added?

MR. BEST: No, it is all mileage, with the exception of the men in the yard service; they are paid at a certain rate for ten hours.

THE COMMISSIONER: This is a little outside, but the next witness is not here and we have a little time yet. You spoke of the ash pans, or some safety device which was asked for; what was the objection urged by the railways?

MR. BEST: The only objection that the Canadian Pacific offered was by Mr. Vaughan, whom I knew quite well, that certain climatic conditions on certain portions of their line would not permit any device that they had known to work successfully.

THE COMMISSIONER: What was there in that objection, in your judgment; was there any force in it?

MR. BEST: Well, I just happened to know from personal observation that there was not an awful lot in it. I had taken a special trip, leaving Ottawa on the 25th December, 1911, and went up, and came around by Toronto, and went to Chapleau and as far as Fort William, and one of the main purposes of my trip was in view of the matter coming up, to see how those engines were working, and knowing the conditions on the Division on which I had worked for twenty years, and knowing the men who would give me straightforward statements and nothing else, and if they were not working they would say so, I felt I could get the correct information on the subject. The thermometer was then about 35 below zero, around the third January. I found those new engines that they had reference to were working quite satisfactorily; they were working a little stiff because they were new, particularly in the cold weather, but a man told me that never in any case had they to go under the engines for the purpose of cleaning out the pans. They sometimes had to loosen them up a little possibly with the shaker bar or the coal hammer from the outside, but the point was we did not desire to have the men going under the engines.

THE COMMISSIONER: What would they go under for?

MR. BEST: To clean out the pans. You will understand they consume from twelve to twenty-four tons of coal in a distance of 137 miles and the ashes have to go some place; a lot goes out of the smoke-stack, but some goes out in the ash pan. The order was issued on the 17th March.

THE COMMISSIONER: You got the order?

MR. BEST: Yes.

THE COMMISSIONER: And there is no difficulty in working it out?

MR. BEST: Well, of course they have been given a certain length of time; they had quite a large number of locomotives and it was only reasonable. The Canadian Northern required two years, but they did not give them quite that long, because I had shown that after the law was passed in the United States according to the report of the Interstate Commerce Commission, with the 24,999 locomotives they had it was executed in the time in which they were given. In the United States there were only some thirty or sixty—it was under one hundred—which did not come under the law, and they were given eighteen months in which to do it, and I contended that the Canadian railways should be just as competent to do that as the railroads in the United States. They are all supposed to be equipped by the 1st December of this year.

MR. BANCROFT: Mr. Best, you represent the trainmen?

MR. BEST: No, I might make myself clear on that. I would not presume to say that I represented any other employees than those I am authorized to represent, and do not presume that any person else would presume to do that. There was a time when we had a legislative representative representing four of the organizations in Canada, but for reasons of not being properly represented, or political reasons, we chose to have a representative from each of the organizations. I think our organization was the first to take action.

and the other engineers and the trainmen fell in line, and therefore I am only representing the Brotherhood of Locomotive Firemen and Enginemen, which I think I am safe in saying represents 75 per cent. of the men employed on locomotives in Canada.

THE COMMISSIONER: Do I understand the opinions you express are those you derive from your knowledge of the views of the men?

MR. BEST: Yes.

THE COMMISSIONER: Is it from a meeting they have held?

MR. BEST: It is from what I believe to be the views of the men whom I have met on this question.

THE COMMISSIONER: You have not had any meeting called?

MR. BEST: Not of the whole of them. Of course I have referred in correspondence with our men to this matter, and that is the most practical way of reaching our men, when I am located at Ottawa. That is part of my business.

THE COMMISSIONER: When does your organization have its annual meeting?

MR. BEST: We are having a meeting next month.

THE COMMISSIONER: Do they send delegates from all the lodges to that?

MR. BEST: Usually.

THE COMMISSIONER: I suppose if there is any question about your representing the views——

MR. BEST: I will be sat on severely if I have said anything I ought not to say.

MR. BANCROFT: This communication from the C. P. R. is "personal," and it has been thoroughly discussed?

MR. BEST: Yes, and that is one of the things upon which very often I have been asked for my opinion. When the interim report came out and the memorial of the Canadian Pacific in reply to that, some of our members sent me a copy for my opinion. Of course I had not an opportunity of going through it very thoroughly, but I could not just see anything in that memorial, although I tried to read it as broadly as I could; it seemed to me it was only to secure, if possible, the assistance of their employees to defeat the proposed law, with all due respect.

THE COMMISSIONER: What is done here is only one step; I am simply to recommend a measure, and the legislature will deal with it later.

It would probably strengthen your hand if at this meeting your body expressed officially its views on the question. Is there any reason why that might not be done?

MR. BEST: I am very pleased to have the suggestion. I feel of course that I am quite capable of expressing the opinion officially.

THE COMMISSIONER: I am only suggesting if it would not strengthen your case, because there are some gentlemen who presume to speak for the employees of a road, perhaps not in the same way. I may perhaps hear something from

those who take a different view, and they may say you do not voice the feeling; that may be the argument, and that is why I am suggesting it—of course you may do as you like about it.

MR. BEST: Of course I desire you to understand, and everyone to understand this: I do not desire, as I said before, to be antagonistic to the railways in anything I express, but I do want to make myself clear in this that I am here to represent the employees, not the railways.

MR. BANCROFT: What percentage of the conductors have you in your organization, Mr. Best?

MR. BEST: We do not cover those; it is just the engineers. We believe we have over 25 per cent. of the engineers in Canada in our organization yet.

MR. BANCROFT: Have they withdrawn or do they still belong to the Brotherhood of Locomotive Engineers?

MR. BEST: Oh no, quite a large number of them do not. There must be 30 per cent.; it is more than that on the Canadian Pacific, but I would not speak positively as to the other roads.

MR. GIBBONS: When a man goes on as a fireman he joins the firemen's organization, and when he is promoted to engine driving he can retain his membership in the firemen's organization, and a great many do that instead of joining the engineers.

THE COMMISSIONER: As I understand, a man who goes in for the first time as an engineer is eligible. He need not have been when he entered a fireman and have gradually risen to the position of engineer. Supposing I am an engineer; came to this country yesterday, and come to you to join, will you take me in as a member, if I am respectable?

MR. BEST: As an engineer, yes.

THE COMMISSIONER: From what Mr. Gibbons said I thought it was only when they were promoted?

MR. BEST: Yes, but you will understand the greater number of the men come in through the ranks of firemen, because our contracts provide—many of the contracts with the companies provide—that the firemen must have so many years' experience before being promoted. We have no legislation along that line, but the contract specifies that they must have so many years' experience—three years I think.

MR. BANCROFT: Supposing the C. P. R. were allowed to administer their own compensation, and the claims awarded by the Board, would not that merely make the Board another court and allow disputing between the C. P. R. and the men on the claims? Would not the C. P. R. oppose the men's claims before the Board just as they oppose them in the courts now?

MR. BEST: I should think so.

THE COMMISSIONER: So they can now; the employer can oppose the claim. There is nothing in that, Mr. Bancroft, I think.

MR. BANCROFT: Under the Washington system the company has not the same interest in opposing the claim when they pay the assessment into the insurance fund, whereas if they have to pay the bill afterwards for it they will fight against the bill.

THE COMMISSIONER: I do not think that would make any difference. If a man has to pay it he will try to prevent a dishonest claim or a claim he does not think there is any foundation for.

MR. BANCROFT: What I mean is this: Supposing I was working on the C. P. R. and I get injured, and the railway company was paying this assessment into the insurance fund, all I would have to do would be to carry out the provisions of the act to establish my claim and get compensation.

THE COMMISSIONER: As I understand their proposition all you would have to do would be to send in the claim and have it passed upon by the Board; it would make no difference if what they proposed in that pamphlet were adopted.

MR. BEST: Might I ask if the other railways are asking the same thing?

THE COMMISSIONER: I think they are making common cause here. Mr. Hellmuth represents all the steam railways.

MR. BANCROFT: In one case you would have the company behind you to get payment, and in the other case you would have the company opposed to you.

THE COMMISSIONER: No; hasn't every employer who has to pay, either by assessment or directly, a financial interest in reducing the number of claims?

MR. GIBBONS: Take in our municipality here. When a man falls on the sidewalk he gets after the city for compensation, and everybody would like to see him get compensation, but if he gets after the particular individual he will fight him. Although that party may be a contributor in taxes he is anxious to see the man get compensation from the city.

THE COMMISSIONER: That does not make any difference if the Board has to deal with the claim; it would be if you had to go to a court of law.

MR. GIBBONS: Just to show how corporations deal with employees I would like to cite you a case which happened with the Toronto Railway Company. On the 14th October, 1911, Arthur Tweedale, now living at 1499 Queen Street West, was driving a motor at College and Yonge. The handle with which he turns on the power became charged and held him fast; then something went wrong with the machine and the box flashed up and burned his eyes, and he was so completely shocked he had to be taken off the car. He was off that time for two weeks and returned to work, but after he was on a few days he found his eyesight was so badly impaired that he could not see a car fifty yards ahead of him, and he had to lay off again; he has only done those two weeks' work since that time. The company assisted him for a time; they have assisted him in all to the extent of \$432, \$165 of which he has paid to Dr. Burnham who is attending him. The Doctor reports he will never recover his eyesight. After the six months had passed in which that man could take action the company paid him nothing more. They offered him

a job in the sheds and he worked there five days, but owing to his eyesight he could not perform the work, and they won't help him one cent.

MR. BANCROFT: Those are tricks that are played where the company is directly liable.

MR. HALL: I would like to make a few remarks, and ask a few questions. In the first place I want to say that I think Mr. Best, either by being misinformed or for some other reason, has tried to create an impression here that the railway organizations that have been here before have endeavoured to relieve the railway companies from the operation of this act. I hope it will be made clear that they have not. They have expressed no desire that the railway companies should be relieved of that principle.

THE COMMISSIONER: That is not quite accurate. In the brief they submitted and in these circulars they did take that position, but they have modified it very much since.

MR. HALL: I was speaking, Mr. Chairman, of the men who were here. They did not ask that the company should be relieved from the operation of the act, or the invoking of the principles of the act. They did ask that if it were necessary to relieve them of the co-operation or the joint obligation under the act they might be so relieved, but that in all cases of dispute between the men and the company with regard to the compensation to be allowed there should be a reference Board. I think that is as far as the men went in respect to this thing.

MR. GIBBONS: Did they not say that they wished to deal directly with the company themselves?

MR. HALL: Direct with the company with a reference Board.

MR. GIBBONS: Didn't one of the men state that he would prefer to deal with the company; that he had gone to Montreal on different occasions and never came away empty-handed, and had been dealt with very generously?

MR. HALL: That was an individual statement of a gentleman, which I think was rather unfortunate.

THE COMMISSIONER: I do not remember that being said.

MR. HALL: I think there was a Mr. Clarke who made some statement of that kind; I do not think it was said with good policy; it was not good judgment. He is an old employee of the company, and no doubt said some things that he would not have said if he had given the matter better judgment, because we all know from experience that there are difficulties and disputes between the men and the companies, especially in regard to compensation.

MR. BEST: Anything I said you will understand is defining the position of our men. I did not see any of the remarks that were made previously. I just merely said that in the event of anything having been said I wanted it to be made very very clear that the attitude of the men whom I had the honour to represent was as I stated.

MR. HALL: All you need is protection, that the railway men should be properly

protected under the provisions of the act. I think that is all you should ask in that matter.

MR. BEST: And not dealing with the railway companies or their representatives direct.

MR. HALL: That is a point I would like to make clear. In the first place I would like to ask you, do you not think that this act will be administered by the State?

MR. BEST: I hope so, by the Government.

MR. HALL: Under the law the companies will be kept in line. Then is there any difference in an application for recompense going to the officers or going to a Board?

MR. BEST: Well, I see a vast difference in applying to the Government or making a statement to the Government and appealing to the railway company by whom I am employed for compensation—a vast difference.

MR. HALL: Would the company not know all about your application?

MR. BEST: Certainly, but the attitude of the company might be somewhat different.

THE COMMISSIONER: I do not think that is a practical question at all. If I have understood Mr. Hellmuth rightly the company is quite willing that the claims should be sent to the Board, just as under the Washington system, and the Board deal with it, and not send it to the company at all, except the Board would notify the company; that is as I understand Mr. Hellmuth. When you get a claim from the workman if you have not got a report from the employer you send him notice of the claim.

MR. HINSDALE: And ask the employer to make the report.

MR. BEST: Of course if that is so the provisions of this pamphlet must have been modified; I had not known of that. I was going merely on this pamphlet that was sent out as a personal to the employees.

MR. HALL: There does not seem to be anybody here who is particularly taking up the time, so we might as well use it. In the company's recommendation or personal letter, in section 15, there are a few words that may mean a great deal to a railroad man. It says "Which will provide compensation in every case of accident not arising out of serious or wilful misconduct," that is, on the part of the employee. I believe in compiling this act that the rules governing the operation of the railway should be taken very seriously into consideration and see what a man can do where he is not liable under the rules. Take a conductor for instance, they impose upon that man a large number of duties and he goes out with fifteen or twenty orders, running late, and running ahead of time, and slow orders at different points, and he may have telegrams for passengers; he may have a hundred and one things to do. Passengers may engage him in conversation, and he may forget something. Now, that is looked upon by the courts as a serious neglect of duty because he has forgotten something. It was not intentional on his part to do those things, but he through some reason or other forgot, which any man is liable to do, I do not care what position

he holds in life. You will recollect a few years ago the prosecutions of railway men were very numerous in this Province. Every pitch-in or collision of any kind where there was an accident there was a prosecution under section 416 of the Railway Act. I am sometimes of the opinion that it was also influenced by a desire on the part of some legal gentlemen to get a few dollars out of it. However, that section of the act was repealed and there has been very few since under that section. Many of those prosecutions were successful where the man was not at fault at all. I believe there is a desire to bring that into this law if they can, but if those words are placed there there should be some saving clause or amplification that the man's faculties and the duties he had to perform at that time should be under consideration.

MR. BANCROFT: Mr. Best, which would the men feel freest under to claim compensation, the Commission into which the company paid their assessment like everybody else or where the company did not pay their assessment but administered their own fund?

MR. BEST: Well, there does not seem to be very much difficulty——

THE COMMISSIONER: What is the use of asking a question which has no bearing on the proposition; there is no proposition at all that the railways should administer their own funds. I am not talking about the pamphlet. Do not let us waste any time by talking about something which is not important.

MR. BANCROFT: This is what the company are instilling into the men.

THE COMMISSIONER: They have abandoned that position. What the companies say, as I understand, isn't: "Do not group us with any other company, and do not make us pay an assessment into your fund as the manufacturers will pay, but when claims are made make an order upon us for the payment and we will pay it." That is the whole difference they seek to what is proposed.

MR. BANCROFT: That is the distinct objection that these men are making to that.

THE COMMISSIONER: What men?

MR. BANCROFT: The trainmen as I understand it.

THE COMMISSIONER: I do not understand it so.

MR. BANCROFT: They have not said anything about the grouping system with regard to the C.P.R., but they have asked that they shall have the same chance as any other workman to go to a public body and claim that compensation.

THE COMMISSIONER: There is nobody proposing that they should do anything else.

MR. BANCROFT: That is a difference of opinion, we hold.

MR. BEST: I am pleased to know the C.P.R. has modified its proposition. The reason I just made a very brief reference to the matter of grouping in the railways was because, as I think I said, that was a matter of detail to be worked out in the arrangement of the act, and I did not desire to express

myself one way or the other, more than to say that if it is going to be such a terrible hardship on the railway companies, as they allege it is going to be, I am not one who will say impose it on them anyway and let them pay it. Suffice it to say that we believe the compensation should be paid to the injured employee without resorting to litigation, and that it should be administered by the Government; that is the position we take. The other is a matter of detail to be worked out.

THE COMMISSIONER: Do you desire to say anything, Mr. Maloney, or are you waiting for this other gentleman?

MR. MALONEY: Yes, Sir.

THE COMMISSIONER: Are you going to say anything yourself?

MR. MALONEY: I think he has more ability than I have, and I prefer him to speak first.

THE COMMISSIONER: I thought if you had anything to say you might as well occupy the time now, because we will adjourn until half past two if there is no one else here to give us any light.

Mr. Hinsdale, did you get that form of return required under the Dominion Insurance Act?

MR. WEGENAST: I have not had time to get it for him yet.

MR. HALL: I would like to ask Mr. Hinsdale a question. You said here yesterday that the railway men of Washington were anxious to come under the Washington act, was that an organized effort or was it an individual effort on the part of the members?

MR. HINSDALE: I have heard a great many expressions of opinion as coming from the railway men that they would like to come under the act. We have to exclude, under the interpretation given by the Attorney-General of Washington, so much of the work that is incidental to railways, for instance, work in car shops, making cars or repairing cars. One might think it had nothing to do with interstate commerce, but it is considered as having to do with it, but those men in the car shops in Tacoma I am satisfied would like to come under our act if they could. The construction of the law is that they are handling cars that are engaged in interstate commerce, and we have to exclude them altogether.

MR. HALL: Those have been only individual expressions, and they have not been united?

MR. HINSDALE: No, I acknowledge I have heard no formal application on the part of a large number of them.

MR. HALL: Of course I am not acquainted over there, but what would be the difference between your State and Michigan? I understand under the Michigan Workmen's Compensation Act, or whatever they have got there, or the Liability Act, they can assess for an accident on a railway. What would be the difference?

MR. HINSDALE: I have some knowledge of the Michigan act, but not very much.

I know this, however, that it is a purely voluntary act, that the men have to agree to accept it, or the railway can consent to accept it. Both sides must accept it, if it is accepted at all, but with reference to the railway men in Michigan I am satisfied that interstate commerce laws and the state laws have the same power as they have in Washington. We cannot touch them; we are confronted with a great many jurisdictional restrictions.

THE COMMISSIONER: Would there be any difficulty if both the railway company and the men agreed?

MR. HINSDALE: There is a provision that by mutual consent on the part of both parties they can come under our law, but the attorneys feel that although the law says that possibly there may be some reason why they may not, or why it might not be a final release, and that perhaps the Legislature cannot set aside the terms of the Interstate Commerce Act even by consent.

MR. HALL: You have so few laws over there that are not unconstitutional. Has yours ever been tested?

MR. HINSDALE: Yes, before the Supreme Court of the State of Washington; not in the United States Supreme Court, but before the State Supreme Court.

THE COMMISSIONER: Has that case gone to the Supreme Court of the United States?

MR. HINSDALE: There is a casee pending, I believe, but it has not been heard. The Supreme Court of Washington declared there was nothing in the Workmen's Act of our state that conflicted with the conditions of the constitution of the state; they also said there was nothing in it that conflicted with the provisions of the constitution of the United States. They universally agreed upon that verdict; one justice disagreed a little with the reasoning but he agreed with the result. Of course one can only say the sentiment out there, from every source I hear—in fact I know a great many of the Supreme Bench personally, and I have heard them say often that there is no chance that the Supreme Court will reverse it. There are a great many decisions. The brief and the whole argument is very long and exhaustive. They feel satisfied it will not be reversed. There is a provision in the act if any section of it shall be deemed unconstitutional it shall simply affect that particular portion of the act, and shall not invalidate any other portions which may be constitutional. I think that is one reason possibly why reserves are set aside to pay pensions, so that they may be permanently secure even though the rest of the act may be set aside, that those pensions to those widows and children shall be secured.

THE COMMISSIONER: I do not recollect whether your act provides for the admission of other classes not in hazardous industries.

MR. HINSDALE: It provides for the creation of a non-hazardous class.

THE COMMISSIONER: Voluntarily?

MR. HINSDALE: A class in which those who come in must not be engaged in hazardous work.

THE COMMISSIONER: How will they come in—voluntarily or compulsorily?

MR. HINSDALE: Voluntarily. Each man must deliberately waive his rights under the old law and accept the provisions of the act.

THE COMMISSIONER: Would it not be difficult to get a group large enough or satisfactory enough under that system?

MR. HINSDALE: During the fifteen months the cost has been so very slight, there have been so few accidents, it is amazing to me there are not more people who take advantage of it. If we got our auditors to do a little publicity work on it I am satisfied we could get a very large class.

THE COMMISSIONER: Would there not be this difficulty: A man has five hundred employees and two hundred of them want to come under and the others do not—how would you manage in a case of that kind?

MR. HINSDALE: We have to have on file the signature of the man himself.

THE COMMISSIONER: His whole industry would not be under it.

MR. HINSDALE: That is true. The people who operate the street railway systems out there had a meeting at which all their department chiefs were present, and they wanted to know about that non-hazardous class. We showed them the form of waiver of old rights which we had, and their counsel prepared a little more explicit form; he said it was not clear enough, that a great many might sign that not realizing what it was and "we wanted it very explicit so that they shall positively know what they are signing, that they are waiving all rights." They prepared a form and they called the men together, and whenever a new man joined they made an explicit statement as to what it means. There is no compulsion, but if he does sign and they send it in to our office then if that particular man is hurt we have to pay.

MR. HALL: You mentioned yesterday about the logging business, that you had quite a number of pensioners now under that business; has the state got to take care of those pensions? My reason for asking the question is this: the logging business has got a limit and you may be through with that in a few years. How about those pensions in the future? Are they guaranteed by the state?

MR. HINSDALE: The state does not guarantee anything. The state is prohibited from loaning its credit to any system of that kind, but if he is totally disabled now and we have him on the current list of monthly awards he continues on that list, and if finally some day it should be discovered that the injury has developed permanently and totally we put him on a pension and set aside this reserve.

THE COMMISSIONER: The reserve is to answer these pensions.

MR. HINSDALE: Yes, and that is sufficient, in our opinion, to take care of that pension until the man dies.

MR. HALL: The widow never dies, you know. For instance, at thirty, as you mentioned yesterday, she is liable to live for many years. She may have had such an experience as a wife that she will never remarry, and she might live for fifty years. Would you have sufficient reserve in the logging business to protect that widow?

MR. HINSDALE: Under our system in each individual case we set aside the reserve tables, and taking into consideration the earning power of the money we set aside a certain sum of money and invest it, and the income from that added to it year by year, with the drain taking place each year, is supposed to be a sum which by the time she, or the average woman, dies would exhaust it. I would like to amend something I said just a moment ago with regard to this street railway system; those remarks apply exclusively, of course, to the men employed by the street railway system in non-hazardous work. Their conductors and all other men in hazardous work must come under the law, but they have a great many men in the office such as clerks, stenographers, book-keepers, and so on, and various people who walk down the street and keep track of the time of the cars and various things, which we consider non-hazardous work; those people can come under the elective non-hazardous.

MR. WEGENAST: But you also have power, Mr. Hinsdale, to bring in hazardous classes if they are discovered, other than those specified.

MR. HINSDALE: Any work that is hazardous.

MR. WEGENAST: Is there any method of classifying them or putting them in one class?

MR. HINSDALE: The law says they shall be rated and classified in proportion to their apparent class; it leaves it to the discretion of the Commission. We had, for example, a case that proved to be a serious case. There was a classification including breweries, it does not include any other occupations in that class; it developed that there was an institution making alcohol, distillers; there is nothing said in the law about distillers, but by virtue of that privilege in the act to classify where it seemed most appropriate we put it with the breweries, and it happened that that particular institution had a fatal accident. Of course the breweries never objected, but they might have come to us and made a great complaint.

MR. HALL: Has the question ever been tested in the courts with regard to the state jurisdiction over railways, other than that of equipment?

THE COMMISSIONER: We have no constitutional limitations like that; we need not enter upon that enquiry.

MR. HALL: The possibilities are that under the Railway Act of the Dominion the railways might fight us here on the question of jurisdiction under the Dominion Act.

THE COMMISSIONER: Mr. Hinsdale would not be able to help us on that; that is a question of our law.

MR. KINGSTON: One question occurs to me. Take a factory, for example, like

a large tin works where there is a great deal of stamping done. Every one knows that is possibly the most hazardous employment, or one of the most hazardous employments, although there are a great many employees in that shop that are comparatively in non-hazardous work. Do you as a matter of practice throughout all of the tin shops have to have groups in one employment?

MR. HINSDALE: We do, and I may say that that very situation has been the cause of a great deal of thought and of difficulty. In an institution such as you speak of they do some heavy stamping of metal, and other places simply do some cutting, and on the other hand they have men go out and do construction work, cornices and such like. They are under three different classifications, and so far as we can we try to adopt a union rule. If the work of stamping, for example, is only done by one man or two men, or a small number of people, we merge it in with class 34, with those handling iron and steel, and employees in machine shops and boiler shops. We group them all under class 34 and charge them two per cent., although we could put it in a separate class.

MR. KINGSTON: The insurance companies make a special exception in insuring a factory such as that. They ask for a special rate on stamping, and for the wages which refer specially to stamping.

MR. HINSDALE: With regard to the logging camp or saw-mill they will have a machine shop. At first those men in the machine shop or the mills wanted to have their men in the machine shop listed in class 34, which was exclusively machine shop men, but the Commission took the position that their little machine shop was simply incidental to the operation of the saw-mill and they applied a union group to those men; although a man might be making a piece of iron in the foundry he would be taking it into the mill and putting it in, and his work would be in the mill.

MR. WEGENAST: What about the tugs used by the logging companies?

MR. HINSDALE: That has been the cause of a great deal of difficulty. The tugs operating on tide water are subject to the admiralty jurisdiction. If it was a tug of a man towing rafts as a business we could not touch him: if on the other hand a saw-mill had a tug which went up the river arranging a boom and it was simply their own work incidental to the operation of logging or milling we would take him, we would have to include a case like that and we would simply count that man on the saw-mill payroll.

MR. WEGENAST: You have not a class for the men engaged in operating tugs?

MR. HINSDALE: Under our State act apparently the only jurisdiction we have on waters is waters not navigable to the sea. We can take rivers like the Columbia running up above the falls.

MR. WEGENAST: You have men engaged on the water?

MR. HINSDALE: Yes, class 20; it is a very dangerous class.

MR. KINGSTON: I take it you think it is very desirable under the system you have adopted to avoid separate groups in one industry, or different groups in one factory?

MR. HINSDALE: We have to do it occasionally, but as far as possible we have adopted the union rule. For example in connection with a big furniture factory they have a saw-mill maybe, and then on the other hand they have finishing rooms where they simply smooth pieces of wood, and they may have another department altogether separate where they do the painting and varnishing; then they may have a big department where they do upholstering. Under a strict interpretation they would come under half a dozen classes.

THE COMMISSIONER: I do not think that would become a very important question in the view I am inclined to take. That would all be left to the Board.

MR. HINSDALE: It is purely administrative.

THE COMMISSIONER: The broad lines would be laid down and the Board left to deal with the details.

MR. HINSDALE: With your permission, there was one subject that has given us a great deal of trouble. The Commission has done the best it could, and I think it is working out very well. It is with reference to the work of construction. The work of construction of all kinds is listed in the first nine clauses of the act. The work with reference to contractors, building houses, and the incidental work of construction, is very different apparently from the condition that prevails in a going concern running a factory. They are permanent institutions and one can get their pay-roll at the end of the year for the whole year and make a call for as many months as necessary, but it is quite possible that a contractor may take a contract to put up a house and do it and be all through with it in a month or sixty days, and may never take another contract, and disappear. We have no means of taking his annual pay-roll, and we have to adopt a different method. In order that there might be no uncertainty in the mind of the contractor as to how much he would have to pay we thought it better that he should know he would have to pay a certain amount, and he could add it to his bill, and all his competitors in making their tender would have to add a similar amount to their bills. Then it was equalized as it ultimately came out of the consumer. It did not come out of his pocket at all if all added it, and it seemed more just that men engaged in the work of construction should pay continuously.

MR. WEGENAST: That is pay on a premium basis instead of an assessment basis?

MR. HINSDALE: Yes.

MR. GIBBONS: Do they have to take out a permit for building?

MR. HINSDALE: In the cities.

MR. GIBBONS: Could you not get that information from the place where they got the permits?

MR. HINSDALE: It would be a most excellent suggestion if at the time he took a permit he had to state on that application his probable pay-roll and anything that would be a means to guide a commission as to what to make him pay. That contractor situation under the operation of any com-

mission I am satisfied will cause a great deal of trouble, but I think personally that it is very much better for a painter to know that he has to pay two per cent. throughout the year on his pay-roll than that there should be any uncertainty about it.

MR. WEGENAST: You are building up a fund there that is probably larger than necessary.

MR. HINSDALE: That has been our experience. Class 5 in which the general work of carpentering, brick-laying, painting, paper-hanging and the general work of construction is listed has become quite a substantial fund. Class 6 in which the heavy work of power construction and water works construction is listed —

MR. WEGENAST: It will be necessary later to lower your rates?

MR. HINSDALE: Yes, by analyzing the claims, and a recommendation will be made to the Legislature to modify that rate.

MR. WEGENAST: At present you are compelled to collect the whole rate?

MR. HINSDALE: We have felt that we ought to do that. There has been more objection to the law on that score than on any other, but the auditing department, and I think the Commission had it in mind to do this, make them all pay for the whole year, and figure out at the end of the year how much it costs on account of each occupation, and then ask the legislature to modify the rate as it is shown would be right. Then they can figure out what those contractors pay and credit them the excess on future payments.

MR. WEGENAST: Provided they are in business.

MR. HINSDALE: Yes, and if they have gone out of business give it back to them.

THE COMMISSIONER: Would that rate be sufficient to provide for these capitalized sums?

MR. HINSDALE: So far as our experience during fifteen months is concerned it will be; it is, of course, impossible to forecast what will happen. There was one blast went off in one shop, for instance, and killed five men, and it might be compared with that explosion in Chehalis where it killed eight people; in that case the entire payment was \$8,000 but it might have been \$32,000. According to my recollection in this other case it took over \$1,600 to take care of the whole thing, but it might have taken \$2,400.

THE COMMISSIONER: Your computation of these capitalized sums is based on a rate, I think of 5 per cent. or  $5\frac{1}{2}$  per cent.

MR. HINSDALE: When they assigned \$4,000 as the amount required for a widow 30 years old, I doubt whether they figured it on the basis of 5 per cent.; it is practically earning a little better than 5 per cent., which is in our favour, but I think those figures were based more on a 4 per cent. rate.

THE COMMISSIONER: What is it now in the life companies?

MR. HINSDALE: 3½ per cent. the big insurance companies usually rate it.

THE COMMISSIONER: I think it is 3 per cent. now.

MR. HINSDALE: If it was figured at that it would raise the amount considerably.

We feel we have a benefit in the situation from the fact that we are making 1¼ per cent., or on the basis of 3 per cent. we are making 2 per cent. more than the rate assumed by the table. Another thing, we feel that the impaired condition of the lives is an element in our favour, and again the element of the probability of remarriage is an element in our favour.

THE COMMISSIONER: Have you no hope that the prevailing rate of interest is going down in your part of the world?

MR. HINSDALE: As far as I am able to discover there has been no downward tendency; I think, really, in the last several years it has been rather an upward tendency.

MR. HALL: How much do you profess to pay on a \$4,000 capitalization?

MR. HINSDALE: If the widow has no children we pay her \$20 a month. If she has one child we pay \$5 more until such time as that child arrives at the age of 16; I believe I am right in saying 16, although I am not absolutely certain. If she has two children we add another \$5. If three children we add another \$5. We put special requirements in our records. As soon as a certain time comes that \$5 is dropped off, as soon as that child reaches the age. So on some of those accounts we have to pay more than \$20 a month for a time.

THE COMMISSIONER: If a plan were adopted not of paying the lump sum, but of paying whatever the percentage is of the wage the reserve of \$4,000 might not be sufficient to meet such claims.

MR. HINSDALE: There is a provision in our law that if our reserve had proven too small we could take it out of the accident class.

THE COMMISSIONER: Supposing a man is totally disabled and you are paying him from month to month the 60 per cent., or whatever it is, of his wage, your \$4,000 would not be enough to provide for the capitalized payment of that?

MR. HINSDALE: Of course if he lived out the full expectation we believe it would be enough; it is figured on that theory. We do not pay him 60 per cent. of his wages, we pay him \$20 a month; it is only to the man who is temporarily disabled we pay 60 per cent. of his wages.

MR. WEGENAST: In cases of total disability and cases of death, but the 60 per cent. only comes up in cases of temporary disability?

MR. HINSDALE: Yes.

MR. GIBBONS: You told us you had your funds invested at 5 per cent.?

MR. HINSDALE: Yes.

MR. GIBBONS: If some of those groups were allowed to administer their own funds you would lose that 5 per cent. on a \$4,000 capitalization. That 4 per cent. or 5 per cent. would bring \$200 a year. If some group administered their own funds, like the C.P.R. propose here, you would lose that \$200 a year on that \$4,000.

MR. HINSDALE: That item of \$200 that you speak of is credited to the reserve; It is simply added to the pension. It would really make no difference, I think, with reference to the beneficiary so long as the party assuming these obligations personally was absolutely responsible.

MR. GIBBONS: You said the payment would amount to \$240 a year. If that \$4,000 was invested at 5 per cent. that would bring \$200 of it, and it would spread the payment over a greater period of years than if the company held that \$4,000 and did not pay any interest but just paid out that amount in spread over payments.

MR. HINSDALE: Well, my interpretation of that difficulty would be the railway which had to look after that pension would probably set aside a sinking fund to take care of that; they would do that sort of thing the same as we do. The reserve amount is no good to us.

THE COMMISSIONER: What he means is that \$200 would be available to the other groups.

MR. HINSDALE: Not with us. We have right at the present moment investments of \$239,000. I do not know just what that amounts to a year, but it is \$10,000 a year or more interest. That interest whenever it comes in is credited to each class reserve. We have a reserve for class 10 and class 34, and the interest belonging to that money is credited to that reserve account for the benefit of those pensions.

MR. GIBBONS: The point is this, the interest must come in to the Commission, and they have that much more money available.

MR. HINSDALE: No, it belongs to the widow; it belongs to the fund.

THE COMMISSIONER: It goes into the group, not for the whole body.

MR. GIBBONS: Supposing there were four deaths in that group, which would mean \$16,000—that is not paid into the treasury and the treasury receives no interest on that money.

THE COMMISSIONER: He would not get it anyway except for that group. It would not go to the benefit of the other groups. Of course the only theory upon which a railway could be allowed to do that would be that it was absolutely certain without a reserve that these payments would be made.

MR. HINSDALE: As long as they are absolutely solvent they can take care of that.

MR. BANCROFT: What is the total wage-roll in Washington that you have taxed?

MR. HINSDALE: I never figured it out. It is very easy to figure it out from this pay-roll, but I never did yet. One could answer the question indirectly by saying that we have 137,000 men listed. On investigating something over

1,200 claims taken at random those men received awards for daily wages averaged at \$3.03 a day. I think that may be high, but assuming it was \$3 a day it would be 137,000 men at \$3 per day.

MR. BANCROFT: What did you say the wage roll was in Ontario, Mr. Wegenast?

MR. WEGENAST: I estimated it at about \$120,000,000, but in the light of the census returns I think that would have to be lowered. It is possibly \$100,000,000.

MR. HINSDALE: That would be \$411,000 a day; I make it about \$130,000,000 in a year.

MR. BANCROFT: That is bigger than ours.

MR. WEGENAST: It cannot be that.

MR. HINSDALE: The tariff for railway construction and the building of power plants and the construction of new enterprises along the waterfront in a new country is very large. Washington is a new country and it is possible that the work of construction as compared with the work of construction here may be very high. New railroad lines are being built all over the state and it is very mountainous; very many of these works are tremendous. Tacoma has just spent \$4,000,000 on water-works up the mountains. It may be the pay-roll on the class of work done in Washington as compared with here may be pretty heavy.

(Mr. Hinsdale put in as an Exhibit a copy of the recommendations to the Washington Act.)

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## TWENTY-SECOND SITTING.

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THE LEGISLATIVE BUILDING, TORONTO.

*Friday, 10th January, 1913, 2.30 p.m.*

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner.*

MR. F. N. KENNIN, *Secretary.*

MR. W. B. WILKINSON, *Law Clerk.*

MR. DANIEL LEROY CEASE, Cleveland, Ohio, representing Brotherhood of Railroad Trainmen.

THE COMMISSIONER: The Brotherhood of Railroad Trainmen is an international organization, is it?

MR. CEASE: Yes.

MR. MALONEY: Mr. Best represents the fireman. That is a different organization.

THE COMMISSIONER: Do they over-lap?

MR. BEST: Oh, no; it is not the same thing.

THE COMMISSIONER: I suppose you are competing with each other for members?

MR. BEST: No, there are two distinct classes of employees; one is in the motive service and the other is in charge of the trains proper.

THE COMMISSIONER: You are occupying the same field to some extent?

MR. BEST: To a certain extent, but not the same employees.

MR. CEASE: Mr. Commissioner, I have written out what I have to say, and with your permission I will read it.

I represent the Brotherhood of Railroad Trainmen, which is composed of a class of employees that are in a way pretty well known to all of you. You come in contact with them, usually on passenger trains and occasionally in the yards and on freight trains. I am sure you will agree with me when I say that they are an intelligent class of men, among the best of America's workmen. The service requires that they must be physically perfect and show a fitness for the work or they are not retained. Only young men are employed who are physically and mentally alert, ready to act on an emergency with sound judgment, for railroad work does not condone mistakes. This is not to be taken to mean that all train and yard men are young; there are many men in the Dominion of Canada who have grown old in the service and whose retention in it is ample proof of their ability to meet all the service requirements, but young men only, as a rule, are employed.

Railway employment differs considerably from that of many occupations in that there is no lost time because of the climatic conditions; in fact, the worse the weather the greater the demands on the employees engaged in the transportation department. They, therefore, are not affected by the change of seasons as are many of our occupations. My purpose in making this statement is to convey the thought that the men I represent are continuously employed and at a fair wage rate, with the hope that in whatever legislation is adopted their proportionate interests as compared with other trades and occupations will not be overlooked.

It is not necessary at this stage of compensation development to offer the arguments in defence of it that were necessary a few years ago. There has been a general recognition of the unfairness of the application of our liability laws and a general acceptance of the need for some plan that will assure equality of payments for the same class of service in all like cases of death and disability. One of the purposes of compensation is to get away from the differences in damages awarded by juries in different courts for the same injuries. The idea is to fix a standard rate of payment for like results of accident and to get away from the abuses and differences that are possible under the liability system of fixing awards for accident cases, and above everything else to insure compensation payments for all cases of death and disability arising out of and in the course of employment.

Thus far the employees of our railway systems have borne the burden of their disabilities except in the comparatively few instances when the assistance of the liability law was invoked and in a few other cases where settlement has been made by mutual agreement between the employer and the employee. The railway employees quite naturally are in accord with any proposition that proposes to better their condition, and so they look upon a compensation act as one of progressive legislation intended to take

the place of destructive litigation or the loss of payment for death and disability.

There is no longer any question of the right of the Government to enact legislation of this class. It is no longer contended that it is an unfair burden on the employer to demand that his business assume the burden of the accident instead of as now placing it upon the shoulders of the injured employee or the family of the deceased employee, who are the least able to bear it. The paramount question to be decided to-day, then, is as to amounts and time that shall be specified by law and which will be of equal fairness to both employer and employee, for this is a question which must conserve the rights of both parties if its operation is to be generally satisfactory.

The question of paying compensation for all deaths and disabilities sustained in the service of an employer has progressed wonderfully within the past few years. The need for and justice of the plan generally are admitted; there is little opposition to it except such as may arise as to the provisions of whatever legislation is contemplated. The subject has been so thoroughly discussed, its merits so well understood and the justice of the demand so apparent that its needs and fairness have thus been expressed: "Compensation to the injured workman is a legitimate charge against the cost of manufacture, and the victim of an industrial accident, or his dependants, should receive compensation, not as an act of grace on the part of the employer, but as a right,"

Speaking for those whom I directly represent and to show the need for compensation as well as to call attention to the like need on the part of the other employees in the train and engine service, is to say that the records of the Brotherhood of Railroad Trainmen show 16.4 claims paid per thousand insured; the Order of Railway Conductors pays close to 12 claims per thousand insured; the Brotherhood of Locomotive Engineers pays eight claims per thousand insured; the Brotherhood of Locomotive Firemen and Enginemen pays close to seven claims per thousand insured, while the Switchmen's Union pays close to 15.5 claims per thousand insured. Fully two-thirds of these claims are for injuries arising in the course of employment that result in permanent disablement. The employment is extra hazardous, so much so that the working life of a brakeman has been estimated to be about seven years, while the average age of our conductors, trainmen and switchmen, killed and totally disabled, is thirty-two. You will note that on the average there is a long period of discontinued total wages, of wage impairment, as judged from the usual life expectancy in other employments. We find that so far as the Brotherhood of Railroad Trainmen is concerned the demands on our beneficiary department from Canada are proportionate to the demands made by the United States as compared with the relative difference in membership between the two countries. The Brotherhood of Railroad Trainmen pays approximately two million dollars a year in the United States and Canada for death and total disability claims. It might be well in passing to say that total disability as defined by the Brotherhood of Railroad Trainmen and associate organizations is not so strictly defined as it is by the statutes, which usually are interpreted to mean that a totally disabled employee is one incapable of performing any work. The organizations pay for any incapacity that prevents following the usual occupation.

We have long since had it demonstrated to our satisfaction that beyond a certain limit safety cannot be enforced by law. Safety appliances reduce the number of casualties of some kind, but where they save life and limb in one way they take it in another. Without safety devices on our railroads it would be impossible to handle equipment as it is now handled. Train capacity in the past twenty years has been increased five-fold at least. Cars and engines are equipped with automatic couplers and air brakes, intended, among other things, to reduce risk, but unfortunately automatic equipment is not always automatic, it needs adjustment; space between yard tracks particularly is so limited that it often happens a man cannot stand between tracks when they are occupied. It is an easy matter to get caught between moving cars between tracks, knocked from ladders or fall between cars in going over the top of the train. The sudden application of air from any cause is likely to unbalance the man on the car and throw him off, usually with serious injury. Very many of our injuries arising from these causes are not paid for and when they are, are recompensed, as far as I can determine, by the limitations of your liability law.

Very many of these injuries are not paid for because when the reason for accident is sought it is impossible to fix the cause of the accident as the fault of the employer, so that while every precaution for the safety of the employee may be observed, the fact still remains that he is subject to death and disability, and in consequence deserves to be protected from wage loss in every accident that may occur to him while in the service of his employer.

It has sometimes been asserted that the employer should not pay for accidents for which he is not responsible, based on the contention that many accidents are the result of carelessness. This argument, of course, has no place in a compensation discussion; it belongs exclusively to liability. The railway employee at times is doubtless careless, but he is not more so than any of us would be in crossing a busy street in the face of wagons, motors and street cars. I think you will agree with me that the railway employee looks upon bodily pain and suffering with the same reluctance as the best of us. The fact that he works for a railroad company does not make him insensible to mental and physical anguish. His apparent carelessness, to the uninitiated, can be set down to the fact that he has not the time to observe safety rules that presumably are made for his protection.

Again, efficiency of the safety device is considerably exaggerated at times. It is difficult for one not familiar with the service to understand that the safety device that appears to be so perfect has not wholly served the purpose for which it was intended, but it is not, because other conditions have arisen with its adoption that have minimized its efficiency. These statements are made for the purpose of emphasizing the need for general compensation law that will adequately reimburse railway employees for their injuries. It is generally agreed that the liability system is wasteful because it is expensive to employers and uncertain to employees, not to mention its effects generally upon society. The system of recovery by mutual agreement or by court decision is slow in operation, causing distress during a period of incapacity when the living demands of the employee are perhaps the greatest. It encourages the making of settlements by duress that

are inadequate and not commensurate with the degree of injury and the loss of earning power. The liability system encourages distrust and antagonism between the employer and the employee and taken altogether is uncertain in establishing the responsibility of the employer and assuring compensation to the employee.

The primary purpose of compensation is to assure equal payments based on earning capacity for like results of accident and give assistance when it is most needed; to assure it through the fact of accident and not make it dependent upon the fault of accident; to protect the employee against becoming a burden upon society; to protect society against directly having to assume the care of the disabled or the family of the deceased and to assure the employer that he will not be subjected to litigation. Generally admitting the undesirability of longer continuing under our present liability system and agreeing to the claims made for the advantages of compensation to the extent that liability is to give way to compensation with its payments for every case of injury, the then important questions to be considered resolve themselves into what legislation shall determine shall be the obligation of the employer, the terms as to amounts and periods of payments and the questions of administration.

One of the first questions to be considered in enacting a law is to determine whether the compensation shall be exclusive in its terms or give the employer and the employee the right to elect as to whether they shall be governed by the terms of the compensation act or whether they will be permitted to take their chances under the existing liability laws. The exclusive plan appears to be the preferred remedy, and for this reason, if the employer is given the right to elect whether he will accept the provisions of a compensation law or take his chances under the liability law, he naturally will accept the method that will permit him to get out of it with the lowest cost. By this I mean that if the terms of the compensation law promise to cost the employer more than it will for him to fight all of his cases under the liability law he will not accept the provisions of the compensation law, which in effect would leave matters the same as if no law had been enacted. The exclusive remedy, which places the employer and the employee under the law and holds it as their sole remedy, makes the law operative in all employments to which it applies and gives the employee an equal chance with the employer in its operation. In the United States the compensation law as enacted by the several States, with two exceptions, are elective, but they have attempted to make them in effect compulsory by taking away all of the defences of the employer in case he does not come under the law. It might be of interest to state that only the smaller employers of labour in all the States except Washington have accepted the provisions of the law. The railroad companies, mine owners, and large employers of labour generally, have found that they can save money by continuing under the liability laws, so that in very many instances the employers of labour the compensation laws intended to reach have not been affected by the enactment of State legislation of the elective character.

The proposed Federal law which, if enacted, will apply to employees of employers engaged in interstate traffic is exclusive in its terms and automatically will place all of the interstate traffic railways and their employees under the operation of the law.

Another question that is of great interest in the enactment of legislation of this character, is whether payments shall be made periodically or by lump sums. One of the purposes of compensation is to protect the employee and his family against want. It seems to be the only certain way to do this is to assure him a certain periodical income, and this can only be done by paying him a stipulated amount from time to time.

The contention has been raised that the employee who is injured and who is entitled to certain payments is able to handle his own money and ought to be given the amount due him in a lump sum. This is arguing compensation purposes to some extent in terms of liability in that it is conceded that the company is liable to a certain amount which must be paid, but by paying the amount at one time society has no guarantee that it will be protected against the man becoming a charge upon it. This, however, is a matter of considerable controversy and usually is argued from the personal view-point of every man who gives the subject a thought. If the primary purposes of a compensation law are to be observed the man must be assured of a fixed income, and he cannot be assured of a fixed income if he receives the entire amount due him at one time. There is no disposition in this way to say that the employee is not capable of handling his own financial affairs, but the purpose is to show that the more certain way to insure the man against becoming a charge upon society is to insure to him the payment of periodical sums. Lump sum payments under special provisions are permissible under the majority of our compensation laws.

An attempt has been made in connection with the payment of periodical sums to encourage the re-employment of a disabled man in some other occupation that in addition to his compensation will add to his income and thus assure a better standard of living than would be possible if he depended entirely upon his compensation payments. The compensation law of England is worked out pretty much on this plan. I have it from one of the railway organizations of Great Britain that while a man is incapable of work he receives his compensation as stipulated by the law, but after he becomes able to work the employer usually finds something for him to do at which time his wages impairment is established and he continues to work at such employment as he is able and the wage impairment is paid him in addition to his regular salary. This is far better than it would be for a man to receive a lump sum and be dismissed altogether from his employer's service.

I take it that it is in order to discuss certain phases of injury the effect of which are apparent at the time of the accident. For instance, if the result of an accident is the loss of a hand or arm, a foot or leg, or of some less part, the result is apparent, and it appears that compensation could be fixed for it within a reasonable time after the happening of the accident. This suggestion contemplates the loss in earning power as between the wages paid at the time of the accident and the amount that likely could be earned after the employee was prepared to go to work. The disposition has been to fix these payments on an entirely too short a period. In the different states the period for which payment shall be made for partial permanent disability pays for the loss of earning power anywhere from one to fifteen years but limited as to the amount fixed by the limitations of the act. While this may be regarded as a reasonable adjustment of the question, there is no getting away from the fact that at the end of the period for

which payment is devised the man is as badly off if not worse off than he was in the beginning. In this the law stops short of its real purpose. The defence for this partial compensation is that the man has a period during which time he is protected in which he can readjust himself in his altered circumstances, and that he then can go ahead and make his living about as well as he did before. I cannot agree with the logic of the argument that insists an injured workman has an equal chance with one who is uninjured, yet it has been found necessary to agree with the limited period for compensation payments in order to secure the establishment of compensation and in the hope that once started the manifest injustice of paying a man for a part of the time of his disability period would assist in the amendment of the law to the advantage of the man.

Then there are still more severe accidents that totally and permanently disable the employee, that shut off his earning power for the remainder of his life, and it is only fair to an employee so situated that there be no limit as to time, except that of his death, to his compensation allowances. These allowances should be liberal and take into consideration the different degrees of disability from, say, the loss of two hands or two feet to that of total paralysis or partial paralysis where the attention of a nurse is required. There should be adequate payments for total and permanent disability that fairly pay the man in a position to wait on himself and higher payments for disabilities where the disabled is totally incapable of self-help. Again, the family of the employee so situated should be protected in case of his death before payments have been made to him a certain number of years. This is in keeping with the idea of periodical payments. If the employee were paid a lump sum and he died before the amount was spent the remainder would be part of his estate and would go to his heirs. The employer is liable for a certain amount of money and regardless of the death of the employee should pay the amount in this instance equal to the amount of the death benefit at least, and if disability payments are still due an employee who dies from any cause the amount due should continue to be paid to his dependants.

And there are other injuries the extent of which cannot be determined at the time of the injury nor until a sufficient time has elapsed to permit the development of the injury. The results of accidents of this character must be provided against by giving the man an opportunity to reopen the case from time to time or by giving the employer a like opportunity to demand the re-opening of a case as occasion warrants, so that proper adjustments may be made and fairness be conceded to both the employer and employee.

In every case of death or disability, if the purpose of compensation is to be served, the law must fix a sum sufficient to maintain a fair degree of living for the injured during the time of his incapacity and provide for his future by paying his wage loss if he becomes able to take up some employment. And it must provide for the family of the deceased and insure their not becoming a charge upon society.

Another very important feature that cannot be overlooked in writing a compensation law is the provision for adequate hospital service with all of the necessary surgical and medical care needed in the case of accident. There is a disposition on the part of very many law makers to limit the

time for which such service is to be given or the amount allowed for payment that is inadequate and is bound to result in placing the costs for the care of disability upon the disabled. If this is done in many cases it will take the greater part of his compensation to provide for his care, which necessarily will leave his family without protection. I am of the opinion that it is altogether fair to provide unlimited hospital, medical and surgical service in every case of accident.

In enacting legislation of this kind it is usual to compare the costs of its operation with present costs under liability laws. If a liability law is unlimited in the amounts that may be collected under it and the usual defences of the employer are taken away there is not so much room for comparison. If the liability law is limited and its limits are excessively low, then the provisions of a compensation law should be made without any regard whatever to the limited provisions of a liability law. It is frequently argued in cases where there are limited liability laws that if certain sums are now being paid in a comparatively few cases the amounts ought to be sufficient if they are to be paid in all cases. I think the position taken is not correct, inasmuch as the amounts provided by the liability law are totally inadequate and in no wise commensurate and should have no place either in the discussion or the adoption of a law that has for its first purpose the establishment of fair and just terms of compensation. I think that any government in endeavouring to readjust its economic problems can very well afford to set aside its present laws and practices if they are not as liberal as they should be.

Compensation, while it has made remarkable progress in this country, is yet approached with a great deal of hesitation and in certain instances with considerable suspicion. By that I mean this: The employee has been so used to meeting the determined opposition of his employer for so many years that when he hears his employer favours a compensation law he looks for, as we say, the nigger in the woodpile. This is not exactly fair to the employer who has accepted the spirit of the age and knowing that whenever public demands crystallize in favour of any general idea it will be brought about by legislation. Again, I am willing to do the employers the justice to believe that any plan that will impose equal demands upon all of them will not generally be opposed, because it will add to the operative costs of all employers alike and not permit any competitive trade advantages so far as cost differences go. As I have said, I believe the employers realize that compensation is bound to come and they are ready to accept the verdict and are ready to co-operate to secure the best legislation they can get at this time rather than to get the worst that might possibly be handed to them, if this legislation only were enacted after a bitter warfare against it. These statements are not expressed in any offensive way. I am perfectly willing to believe the employer recognizes the justice of public demand for compensation and is ready to meet it. As a matter of self-defence he can be expected to use his influence to reduce the time and amount, while his employees will be equally energetic to extend them as far as possible.

The proposition before us now is to set aside this inhuman doctrine of chance recovery and substitute a new doctrine of the killed and wounded which will get away from the law of liability and take up the law of compensation for the purpose of assuring definite payments for all accidents

arising out of employment which are not caused by the wilful fault of the employee.

To-day it is cheaper to kill men than to protect them, it is less costly to fight them in the courts than to deal fairly with them and their families. The practice has not been to adopt the more humane doctrine of placing the burden where it belongs, that is, upon the industry responsible for it, and the outcome is a demand for compensation that will shift the burden.

There is some danger then in the hurry to make up for lost time and in following certain established systems abroad legislators will overlook some of the most important features of the plans that have been tried out abroad. This tendency shows itself in several proposed laws in the form of compensation for a given period only which, if adopted, will merely postpone the period between injury, compensation, its use, and finally a falling back upon charity as we have it.

In the desire to get away from the courts and the lawyers there is danger that we also may get rather far away from the main purpose in view, which ought to be the assumption by the employer of the burden of living for those who have become physically wrecked contributing their share toward industry.

There is every reason for immediate, permanent and commensurate relief which could not in any sense be considered an unfair cost to the employer or as a charitable proposition.

We believe we are both right and consistent when we say in summing up the question that every human sacrifice must be fully compensated, without having to wait for the delays and uncertainties of the courts; we want the injured not to have to suffer mental pain with his physical ills for fear of the future of himself and of his family; we ask medical, surgical and hospital attention; we want certainty of responsibility fixed for the employer, with certainty of compensation fixed for the employee; we want the injured employee and his family to remain just as useful members of society as they were before the industrial sacrifice was made. We want the care of the disabled placed upon the business and not upon the injured employee.

THE COMMISSIONER: Have you anything to add to your statement? It seems very full and complete, but if there is anything to add orally you may do so.

MR. BALLANTYNE: Mr. MacMurchy and Mr. Hellmuth were called to Ottawa and they asked me to represent them before the Commission to-day.

Mr. Cease, you are a member of the Federal Commission appointed to investigate a workmen's compensation act for the United States Railways?

MR. CEASE: Yes.

MR. BALLANTYNE: And that Commission sat in 1910?

MR. CEASE: 1911-12.

MR. BALLANTYNE: And you took evidence, I suppose, and heard all parties who had any statements to make?

MR. CEASE: Yes.

MR. BALLANTYNE: And what was the finding of the Commission on that point?

MR. CEASE: Well, the Commission made no public finding. I see you have a copy of the report. The Commission made no public finding, but after going over the question very carefully and considering the area of the United States and the great amount of work it would bring to the Government because of that area, and the great mileage, it was decided it would build up too much of a bureau and would be too great an expense. For that reason it was not recommended.

MR. BALLANTYNE: Was that the only reason?

MR. CEASE: That is the only reason I remember. I think Senator Sutherland wrote into the report some reference to the adoption of the plan in Germany not being advisable in our country, but the principal reason was that the country was so large that the principle could not very well be applied, and for that reason there was not much further discussion concerning it, as I remember it.

MR. BALLANTYNE: I notice you say, quoting from one section of that report, "The entire administration of the law by the Government would be either vastly expensive or vastly ineffective because if charged with the responsibility of seeing that payments were made in all proper cases or withheld in all improper cases it would be necessary to examine all claims, which would result in enormous expense."

MR. CEASE: That was in reference to having the Government assume charge of the payments and the collection and adjustment, and everything else.

MR. BALLANTYNE: Is there any objection, as far as you can see, to the railways undertaking the management of the matter themselves, providing the liability is fixed by the act?

MR. CEASE: And provided the Government has supervision over the settlements that are made.

MR. BALLANTYNE: As I understand it the recommendation of the Federal Commission was that an adjuster should be appointed.

MR. CEASE: Yes.

MR. BALLANTYNE: In each county, was it?

MR. CEASE: In each Federal District, that is the judicial districts.

MR. BALLANTYNE: And that adjuster should be appointed by the judge?

MR. CEASE: Yes.

MR. BALLANTYNE: And hold office for how long?

MR. CEASE: Four years.

MR. BALLANTYNE: And all disputes should be referred to him and be dealt with by him summarily?

MR. CEASE: Yes.

MR. BALLANTYNE: That was the manner in which these questions were to be determined?

MR. CEASE: In the event of dispute the matter to go to a Board of Arbitration appointed by the men and the employer, and if that fails they can appeal to an adjuster and then he appears on the scene. The adjuster properly is the man who is supposed or is presumed under the law will deal with the majority of the cases.

MR. BALLANTYNE: And would his decision be final?

MR. CEASE: No. Either party may take exception to his decision, and either party may appeal for a trial. They may have a jury trial on request, or if no request for a jury trial the court will hold the trial without a jury, and the court's decision is subjected to appeal.

MR. BALLANTYNE: Is there any objection to that system?

MR. CEASE: I have not seen any.

MR. BALLANTYNE: Would not the relations of the employer, speaking now of the railways particularly, and their employees, be just as harmonious under a system such as that as if a Government Commission were appointed to deal with it?

MR. CEASE: The opinion of the Commission was that it would give an opportunity for the company and the man injured to get together and then they might be more agreeable than if the whole proposition were taken out of their hands and taken care of by an outside party.

MR. BALLANTYNE: So that it would be conducive to better relations between the employee and the employer?

MR. CEASE: Well, that was the idea or the thought of the Commission.

MR. BALLANTYNE: Would that same reason not hold good as between the railways and the employees in this country, where we have large railways?

MR. CEASE: I do not understand why it would not under the same limitation that is provided in the proposed Federal law. One of the reasons of the Commission for this recommendation was this, that the railroads were responsible for their own liability, and the proposition is to make all these claims a first lien against the property. The small employer of labour could not be permitted to take the same stand, or be permitted to have the same chance, under any compensation law, because the employee would not be guaranteed his compensation.

MR. BALLANTYNE: Unless he was compelled to provide some guarantee?

MR. CEASE: Yes, of course, but so far as this applies to railways; the Commission did not have a thing to say about how the law should be administered to any one except railway employees. The same thought, of course, could not be carried out with the smaller employers of labour.

MR. BALLANTYNE: I suppose too that different railways adopt different methods for safety devices?

MR. CEASE: Yes.

MR. BALLANTYNE: One railway is more efficiently provided with safety devices than other railways are, and have better roadbeds and so on.

MR. CEASE: Generally speaking the idea of each railway is to be very well equipped as to its devices, because if it is not and it is caught it pays a penalty. Of course it naturally follows that one railroad takes better care of its equipment than another.

MR. BALLANTYNE: And it has not been the practice of the railways to insure themselves against liability in the past?

MR. CEASE: Well, I could not say as to that; I think not, however.

MR. BALLANTYNE: They have so many employees they have an insurance concern within themselves.

MR. CEASE: Yes. If they have done so I am not aware of it.

MR. WEGENAST: I have just one more question to ask. You consider that the period fixed by such acts as the Massachusetts act, a period of six or eight years, will likely in time be extended?

MR. CEASE: Oh, I do not think there is any question about it.

MR. WEGENAST: When the time comes for the expiration of those pensions?

MR. CEASE: When the time comes for the expiration of these payments and it then comes home to the people of Massachusetts that the beneficiaries under the compensation law are left really worse off than they were when the compensation was commenced to be paid because of their increased age. Why, the very same thought that brought compensation into being will extend it; that is my opinion.

MR. WEGENAST: Then what about the insurance rates in the meantime based on the short period?

MR. CEASE: The insurance rates then naturally will be increased. There is no way of getting away from those things.

MR. WEGENAST: In the meantime the employer is paying only for the shorter period?

MR. CEASE: That is true enough, but when these laws are changed I think they will hardly be retroactive. I think the man will benefit only by the act as he finds it.

MR. WEGENAST: Then the people who are injured before the expiration of the six or eight year period will have their compensation cut off, while those who are injured after will not?

MR. CEASE: That is the way those laws usually apply. It is not a bit comforting to admit that, but that is the way we usually find those things.

MR. GIBBONS: You say the reason you did not recommend the management by the Government was on account of the size of the United States?

MR. CEASE: That is as it applies to the railroads.

MR. GIBBONS: If it were just applying to the separate States, each state working its own compensation, would you advise it being administered by a Board?

MR. CEASE: I see no occasion for it.

MR. GIBBONS: Do you not think that an employee would be more at liberty to make application to a Board for compensation than to go to the company that he has been working for, with the chance of losing his job?

MR. CEASE: I do not look at that in that way. Of course it is natural to suppose that the employee who goes to the employer to ask for any of his money is going to get the worst of it—in the ordinary acceptance of the term you might say he would—but here there is a certain amount provided for the payment of these things, and even though the employer pays the money direct to the employee he does not escape the supervision of the state.

MR. GIBBONS: Supposing there are three or four railroads grouped together and paying into the one fund, don't you think that an employee would feel more at liberty to make application for compensation than if he was making it direct against the road he works for?

MR. CEASE: No, I don't; not at all.

MR. GIBBONS: You spoke about the roads being equipped, that some were better equipped than others. I do not know whether you have it in the United States or not, but in Canada we have a Board which has power to order the companies to equip their roads with certain devices. If those roads were grouped and liable for each other's accidents, if one of those roads was not properly equipped do you not think the other ones would get after that Board and compel them to equip their road, if they were liable for the accident; do you not think it would have a tendency to prevent accidents?

MR. CEASE: It would be something of a reflection on the energetic working of the road in the performance of its duties to have a competitor calling its attention to the fact that it is not minding its own business.

MR. GIBBONS: But the complaint has to be brought before the Board.

MR. CEASE: Well, it seems to me the employees would bring the complaint; they do it readily enough on our side.

MR. GIBBONS: Yes, but by their being grouped and paying into the one fund, if there were a great many accidents on a certain road, and the other roads realizing that was not a properly equipped road, don't you think they would be after them to equip it?

MR. CEASE: I think you will find it the rule that the transgressor after the first assessment has been levied will pay for his losses, while the man who is taking care of his men will have the assessment reduced. By the grouping of employers it does not follow that all employers are going to pay alike, because the careless employer would naturally be in the way of the fair enforcement of the law.

MR. GIBBONS: That depends of course on the terms of the act.

MR. CEASE: Well, everything turns upon that. If you make an act general in its terms and say the employers in certain groups have to pay so much money and leave it at that, that leaves the good employer, the careful employer, subject to the same expense account as the careless one, but those things usually do not follow.

MR. GIBBONS: Let us get away from the railroads and take the manufacturers. An employee is hurt in a certain factory and he applies for compensation and that factory has to pay that direct, do you not think they would oppose his getting that compensation more than if there were fifty factories paying into a pool? They would say we are paying our share to that, and go on and get your compensation.

MR. CEASE: That is a question I cannot answer.

MR. GIBBONS: It seems to me it would have the same effect, and the reason I say that is that if a man who is injured on the city streets here, the people are all anxious that he should get compensation although they are all tax-payers and it comes out of the whole of them, but if one had to pay it direct he would probably fight it. I think the same would apply there.

MR. CEASE: Well, taking an individual who employs an individual, and an individual who employs a group of employees, their business positions and conditions are entirely different. You could not compare the individual who could only employ one man; he could very seldom pay him if he were hurt, and he would naturally have to adopt some co-operative plan to help himself out. I have not very much sympathy with the proposition of the small employers paying the man direct, because he has got to be a very successful small employer if he is going to be able to sustain any loss; one death or total disability might put him out of business, and he is naturally driven to some form of co-operation or some form of compensation insurance, or whatever it may be.

MR. GIBBONS: If you make a law grouping the small industries and leaving the big ones out, is that not class legislation that you are opposed to on the other side?

MR. CEASE: Well, all legislation is class legislation when you get to the bottom of it. I will qualify that by saying the most of it I have had to do with is class legislation because it affects one side more than it does the other.

MR. BANCROFT: The proposed act before the Judicial Committee of Congress, as the result of the investigation, only covers employees engaged in interstate commerce?

MR. CEASE: Engaged in interstate traffic.

MR. BANCROFT: It does not take in anybody else, but it covers it all in the District of Columbia?

MR. CEASE: Yes.

MR. BANCROFT: Was there not a difference of opinion among the Commissioners with regard to the nature of the fund out of which compensation should be paid?

MR. CEASE: No, not as I remember, except in a conversational way.

MR. BANCROFT: Was there not a difference of opinion, for instance, on the question as to whether they should recommend a fund administered by an insurance commission, or allow the railways to still be their own insurance companies?

MR. CEASE: No, as I told the gentleman on my left it was merely a matter of talk and not a consideration, for the reasons I gave him.

MR. BANCROFT: They did not make any recommendation?

MR. CEASE: No, but it was discussed and referred to in the report.

MR. BANCROFT: There was a lot of evidence along that line submitted?

MR. CEASE: There was considerable evidence along that line by the friends of the German system of insurance.

MR. BANCROFT: If it included the manufacturing industries do you not think the Insurance Commission, taking for instance a province like Ontario or a state like Washington or Massachusetts or Ohio, that the management of the fund to pay the compensation would be better by the State than leaving it to them?

MR. CEASE: Well, that is a matter of opinion. The Washington law is the one law now that we all look to as state administration of an insurance fund, and so far as I can gather from reading the reports the Washington people are doing very nicely with their plan. Ohio has a form of State insurance that is not quite in keeping with that of Washington, and so far as we can gather they are getting along very nicely with the administration of their law.

MR. BANCROFT: I do not know whether it has arisen yet, or shown itself, but I think you will know, Mr. Cease, that there is quite a little opposition to the Federal act as it is drawn up.

MR. CEASE: Oh, there is a great deal of opposition to it, so much so in fact that it is not going to pass.

MR. WEGENAST: On what grounds?

MR. CEASE: Because the amounts are not sufficient.

MR. BANCROFT: They do not believe it goes far enough?

MR. CEASE: No, they do not hesitate to say it does not go far enough; that is the principal reason for their opposition, that and the fact that the law is an exclusive remedy, or will be.

MR. BANCROFT: It still leaves the railways practically their own insurance companies?

MR. CEASE: Oh yes, they are the same as they always were; it does not leave them, for there has been nothing done.

MR. BANCROFT: It still leaves them that power?

MR. CEASE: No, it does not take anything away from them; it is a proposed act.

MR. BANCROFT: It does not propose to take the administrative power from the railways, it only wipes out certain defences.

MR. CEASE: Let us get clear on that.

THE COMMISSIONER: We can see that for ourselves.

MR. CEASE: What I want to be clear on is this: We are disposed, all of us, to drop compensation and liability and use the word compensation where we mean liability. In the United States we have a Federal Liability Act that applies to all employees engaged in interstate traffic, but not to internal state traffic, we have no compensation law that applies to these railroad employees: we have a proposed law but it has not passed, so the relations between the railway employer and their employees are not changed by the suggested legislation.

MR. BANCROFT: I mean the legislation, if passed, would not make any change whatever in the railway company's power of administration?

MR. CEASE: It would make this, that whatever they paid would have to be paid under the supervision of the law; their reports would have to be made, and the amounts paid, and the Government would have a complete record of every accident. Our Interstate Commerce Commission, by the way, requires reports of all the accidents that cause the loss of more than three days' work; the compensation law would go further than that and require a report of all payments.

MR. BANCROFT: I heard several gentlemen say down in Washington, or at least one in particular, that possibly a proposition might arise or had arisen, that so many people thought it was taking away more than what it was giving; I do not know whether that argument has been used, or whether you have come across it?

MR. CEASE: Oh yes, we hear that from everybody who opposes the law. They say first as an exclusive remedy it takes away the employee's constitutional rights. By that they mean if we say this law is going to apply to the employer and the employee, they are both under it, and the law says the employee gets so much money, and he must take it, and it says to the employer "You must pay it." Well, the employee says: "Here, I want the chance of either accepting the compensation or bringing suit"; you know the proposition there is to get it both ways. We have had some controversy over there about taking the property of one person without due process, or as we finally got it down, without some compensation, and our best advisers over there say it cannot be done.

MR. BANCROFT: That is all a constitutional difficulty, more or less?

MR. CEASE: Our men, you know when they understand that they are going to be deprived of a right that possibly ninety nine out of one hundred of them never had, it immediately assumes a very exaggerated value, and they say: "Here, we stand to lose, we are going to lose under this compensation law."

MR. BANCROFT: Under this proposed act that is before the Judiciary Committee is it not proposed to surrender what rights the workman had under the employers' liability?

MR. CEASE: There is no question about it.

MR. BANCROFT: And that is causing the trouble?

MR. CEASE: Yes.

MR. BANCROFT: Now, Mr. Brantley was a member of the Commission?

MR. CEASE: Yes.

MR. BANCROFT: I have an article here which I believe came out in evidence before the Commission, that it takes \$5,000,000 to collect \$10,000,000 from the railway companies.

MR. CEASE: That was the estimated or approximate cost of collection.

MR. BANCROFT: The railways over in the United States are their own insurance companies practically?

MR. CEASE: Well yes, that is what they would be. Each company is responsible for its own liabilities. It does not go beyond that.

MR. BANCROFT: They are not a bit better than the other insurance companies. This article says, "the simple statement that it costs \$5,000,000 to collect \$10,000,000 from the railways is sufficient to forever condemn these laws." I would certainly make the claim that if that had been the history of the railway companies in the past, just like any other insurance company, you could not expect much better under a workmen's compensation act, which takes away the employers' liability and evidently has not given the workers very much in return, or as much as they might expect.

MR. CEASE: Well, when you say very much I am asking you to qualify that, and you very likely would qualify it as most of the opponents of this compensation law do. You understand that the Federal Commission first got information from the railways—more than sixty-five per cent. of them reported—and from those figures the estimates were made as to the probable payments and the probable cost to the employees. We also got considerable information from the employees as to what it cost them to collect. The figures in the report are approximate figures, they are not accurate; they are based on the returns received by the Commission. We found the losses to the railways under their liability laws were about \$10,000,000 a year; that is what it costs them to fight and settle their cases. Under the terms of the proposed compensation law the benefits to the employees were estimated as approximately \$18,000,000 a year, except in such cases as in the beginning will naturally go to the adjuster. A number of them perhaps will be litigated, as with all new legislation, but we expect that the whole amount of that \$18,000,000 will go direct to the employees, whereas now he is receiving approximately \$10,000,000 a year, and it costs him half of that to collect it. That is the idea. Then we say this, that if the employee is going to get \$18,000,000 a year approximately, as against \$5,000,000 a year that he receives in actual money, the compensation law is much better than the liability law.

MR. BANCROFT: I can readily understand the argument against the intervention of a Government Insurance Commission of a Federal nature regarding

interstate commerce and railways, but would it not be a concession if the assessment from the railways were paid into a Government Commission and paid out from that Commission without any chance of litigation whatever?

MR. CEASE: You cannot avoid the chance of litigation when you establish a law because you have got to give either party the right of appeal from what he considers an unjust decision.

THE COMMISSIONER: We have no such constitutional difficulty here at all; they can make the Board final if they choose. It is only a question of policy.

MR. CEASE: We cannot do that, you know; we have to give the right of appeal.

MR. BANCROFT: I know Mr. Cease has had a great deal of experience and knows the gentlemen down in Washington. As Mr. Commissioner has pointed out we have no such constitutional difficulty here, the labour representatives almost unanimously have asked for the bringing into existence of a board appointed by the Crown to administer a fund which is contributed to by the employers or taxed upon the wage-rolls, and that the board shall award all claims, pay all compensation; all litigation to be abolished, and all the other sources of friction between the employer and the employee.

MR. CEASE: Now, just let me ask you whom do you expect to bring under the provisions of this act?

MR. BANCROFT: We ask for the widest possible application. In the case of Washington they have listed a number of industries called extra-hazardous, which is within their constitutional rights.

MR. CEASE: What do you want brought under?

MR. BANCROFT: We want everybody brought under, the manufacturers and the railways.

MR. CEASE: How do you want your law applied; do you want to say to the manufacturer that he is under the law?

MR. BANCROFT: Yes.

MR. CEASE: And that is his defence and your remedy?

THE COMMISSIONER: That is what they want.

MR. CEASE: Then they want what we call the exclusive remedy, which I thought you said a little while ago wasn't right; no, I beg your pardon, you said that was an objection on our part.

MR. BANCROFT: You can see the ease with which we could under the British Constitution pass such laws. In Great Britain they have extended the scope of the employers' liability as far as they can possibly go almost, and now they are asking for the state administration of the fund for the purpose probably of wiping out the cost of the private insurance companies. I was wondering whether it has come to your attention, and it is one thing I want to touch on particularly, just by the way—it is claimed in Great Britain that the older the employee gets the less likely is he to retain his employment due to the fact of the present compensation law.

THE COMMISSIONER: Get the views of the witness; we will get yours later.

MR. BANCROFT: Well, it is possibly the insurance companies that have placed that idea before the employer more or less.

THE COMMISSIONER: This witness has not time to listen to arguments.

MR. BANCROFT: I wanted to ask him whether he has found in his investigations that it is not the old employee who gets hurt, or whether he has found it is the young employee more than the old one, and whether that contention is not a good one.

MR. CEASE: We find in our own railroad organization's experience, as I said in my first remarks, that the average age of our men who are killed and disabled is thirty-two. You know that is a remarkably low age or young age at which the employee is killed or disabled.

THE COMMISSIONER: What he wants to get at is whether the existence of such a law would cause discrimination against an old workman.

MR. CEASE: As a matter of opinion I would say that the discrimination against the old man or against the old employee, as a new employee in any occupation is very pronounced at the present time without any law. I do not see where the enactment of a law would make any difference in the practice. The other thing that he perhaps didn't get at was this: "Is the old employee, because of his being likely a greater hazard or being a more hazardous risk than the young employee, likely to drop from the service?" We do not find that, and as near as I can remember the information we last received from England the heads of those organizations over there say there is very little of that, in fact that they could not attribute any of it to the compensation law.

MR. BANCROFT: That is what we want to establish, that it is not the employer who takes that view of it, but it is due to the insurance companies.

THE COMMISSIONER: We do not care who it is that is the father of it if it is unsound.

MR. BANCROFT: Do you know the Washington law, Mr. Cease?

MR. CEASE: Not enough to discuss it unless I have it in my hands; there are so many of these laws.

MR. BANCROFT: You know that it is a State management of the fund?

MR. CEASE: Oh yes.

MR. BANCROFT: Have you any objection to that in the State of Washington?

MR. CEASE: So far as I understand the law I think it is a most excellent one.

MR. BANCROFT: Do you think in any State where they were not encumbered with constitutional difficulties as in the United States that it might work even better?

MR. CEASE: As a matter of opinion I would say it would be equally as good; I do not see why it could not be.

MR. BANCROFT: In a state law of that nature would you cover the railways?

MR. CEASE: No, not on our side.

MR. BANCROFT: But if there were no constitutional difficulties?

MR. CEASE: I would not consider it necessary to do it because the railroads are all responsible for their liabilities, and if they can arrange some plan for taking care of their losses that will meet the approval and be under the supervision of the Government, if they approve of making their payments direct, I see no reason why they should not be permitted to, as long as the interests of the employees are fully protected.

MR. BANCROFT: Supposing the employees consider it is far better for them to come under the common plans and the common fund and appeal to a public body for their compensation just like anybody else engaged in an industry, then would you say the railways should come under it?

MR. CEASE: As representing the employees and trying to represent their wishes I naturally would.

MR. BANCROFT: Mr. Packer was on the Commission, was he?

MR. CEASE: Yes.

MR. BANCROFT: Was Mr. Stetson of the Civic Federation?

MR. CEASE: No, not that I remember.

THE COMMISSIONER: You, of course, are familiar with the provisions of the British act?

MR. CEASE: In a general way.

THE COMMISSIONER: Apparently with the main features you agree?

MR. CEASE: Yes.

THE COMMISSIONER: You mentioned as one of the things that ought to be sought for in any legislation the prevention of litigation how is it possible, under such a scheme as you are forced to propose owing to constitutional difficulties, that you will meet that desideratum?

MR. CEASE: We cannot overcome it, Mr. Commissioner.

THE COMMISSIONER: If you could, in a State or Province like this, with a population of two millions and a half or perhaps three millions, would there be any such difficulty as you thought prevented the adoption of the State Board management—would there be any such difficulty in our case?

MR. CEASE: I would not think so, because the territory is not so extensive.

THE COMMISSIONER: Of course it would be rather autocratic or bureaucratic, but if it were left to a board to determine finally all these claims with no appeal by anybody, simply with the right probably to the board to rehear the case, but leaving that board the final adjuster on the whole, while it might do injustice some times, would it not be the best thing for the mass of the employers and for the employees?

MR. CEASE: Taking up the question of doing away with litigation it surely would.

THE COMMISSIONER: You spoke of continuing the payments in the case of the death of the person who was injured—that although the death was not due to the accident that they ought to be continued—the way in which the claim would now be made up there under the liability law or under the common law, or what Mr. Sherman calls the tort law—that is what you call it on your side?

MR. CEASE: Yes.

THE COMMISSIONER: If a man is claiming damages the jury or the judge who had to determine it would have to consider the extent of his injury, the probable duration of it, and the lump sum that should be awarded; of course there would be compensation for pain and suffering, and for disbursements. Then whatever capital sum would represent that is what the jury or the court would award. Even under a compensation law ought the amount that would ultimately be paid to exceed what he would have got upon such a basis?

MR. CEASE: No. What I intended to convey was this, that any amount unpaid at the time of the death of the employee should be paid to his dependants under the limitations of whatever the law might be, but not to exceed that.

THE COMMISSIONER: Until you had exhausted what he would have been entitled to receive?

MR. CEASE: Yes, to which he is entitled.

THE COMMISSIONER: The British law has no limit to the duration of the periodical payment, has it?

MR. CEASE: Not for disability. They fix the wage premium. It continues.

THE COMMISSIONER: How would you propose to deal with the case of foreign dependants?

MR. CEASE: The state laws vary; some of them regard an alien dependant in the same light as they do their own people. Our proposed Federal act paid one year's benefits to the dependants of a deceased alien not resident in our own country.

THE COMMISSIONER: How much?

MR. CEASE: One year's benefits if they do not reside in the country. If they live in the country then they come under the full provisions of the law; if in an adjoining country such as yours they are given the same compensation and consideration that they would give our own people.

THE COMMISSIONER: Would it not be rather an unjust law that forbade giving compensation to the dependants of a man because they happened to live in a foreign country?

MR. CEASE: Broadly speaking, it would. The contention against paying the full amount has been that the standard of living in other countries is so much lower than it is in our own country that to pay the same amount abroad

as is paid at home would be in result greater to the foreigner than it would be to the men at home; that was the argument.

THE COMMISSIONER: Then there is another difficulty that would arise in the case of the Macedonians and the Bulgarians and these people that we have so many of, and that is in finding their relatives and being certain they were there.

MR. CEASE: That was very much in evidence, Mr. Commissioner.

THE COMMISSIONER: I suppose all you can do there is to try and do rough justice. The German law provides that if a man goes out of the country he ceases to be entitled to his payment, if I recollect rightly.

MR. CEASE: If he leaves the country, yes.

THE COMMISSIONER: What do you think of such a provision as that?

MR. CEASE: Well, I do not think it is exactly a fair provision because a man may see opportunities in another country; he ought to be reimbursed to some extent at least for his loss in his own country.

THE COMMISSIONER: The difficulty there would be in following a man and ascertaining whether he had recovered, if temporarily disabled.

MR. CEASE: You could still do him a certain amount of justice by providing for the payment of a lump sum.

THE COMMISSIONER: He might come back and might be a burden upon you.

MR. CEASE: He would not have any money coming to him. The only way you could prevent that would be to appoint a watchman and shut him out.

THE COMMISSIONER: You did not propose in this Washington act what some people call the first-aid or medical attendance, did you?

MR. CEASE: I don't know about the Washington act.

THE COMMISSIONER: I mean your Federal bill.

MR. CEASE: Oh yes, we provide the first fourteen days, without its being considered as a charge, to the amount of \$200; by that I mean that the first fourteen days of an accident are cared for without any charge against \$200 additional thereafter.

THE COMMISSIONER: I do not follow that.

MR. CEASE: You take fourteen days—the employer gives him fourteen days medical, surgical and hospital attention. Then we believe at that time that an injured man assumes or incurs the greater part of the cost of operations and that sort of thing in cases of that kind, and after the company has provided for two weeks then he is entitled to additional service to the extent of \$200. That is, he gets fourteen days exclusive of the \$200.

THE COMMISSIONER: Who is the judge who determines the amount in those fourteen days?

MR. CEASE: After the fourteen days?

THE COMMISSIONER: During the fourteen days; who is to be the judge as to what he requires?

MR. CEASE: The man usually goes to a hospital. He has the liberty to get his own doctor if the company's doctor does not suit him. He can demand an examination himself.

THE COMMISSIONER: There must be a very large percentage where they do not go to the hospital at all?

MR. CEASE: In minor injuries, of course, the results would hardly be much of an argument. You see in fourteen days if he was not at a hospital he would be attended by his own physician or the company's surgeon in most instances.

THE COMMISSIONER: I suppose Mr. Bancroft did not ask you because he thought what you said implied it, if you were against any waiting period during which no compensation would be payable?

MR. CEASE: Yes, in this way. I believe the employee for the sake of getting larger returns generally could afford, if he were going to be sure of something additional further on if he needed it, to waive his benefits say for a week, with the understanding that if his injury ran over into the second week then his pay would commence with the first day of his injury.

THE COMMISSIONER: It is argued in regard to that with a great deal of force, that if you do it right from the time a great many trivial injuries would have to be compensated for.

MR. CEASE: Yes.

THE COMMISSIONER: That of course is a very important factor. I did not gather, although something you said perhaps indicated it, that you thought there ought to be fixed sums for certain specified injuries. Did you intend to express any opinion?

MR. CEASE: We have that idea in some states.

THE COMMISSIONER: It was in your Federal act.

MR. CEASE: It was in my paper in some of our state laws—not many of them, however—we fix a certain specified sum for certain losses, and this sum is reached by making certain payments over a limited period instead of fixing the wage loss.

THE COMMISSIONER: I did not mean that, but so much for the loss of a hand, and so on; that is the French system and some others have it. Are you in favour of that system or would you leave it for the board to determine?

MR. CEASE: I would prefer to leave it to the board if there were no short limits as to payments. Take the British act, for instance, that lets the payments go on during the lifetime of the man. I would much prefer to have his wage loss estimated and let him have his payment for the rest of his life than fix a certain definite sum and shut him off with that.

THE COMMISSIONER: It is self-evident that the loss of an arm in one case might not be at all as serious as in another case, and yet he is put on the same level.

MR. CEASE: It puts him on the same level. The disadvantage of having a Board say to one man you can earn \$6 a week, and to another man who has been injured in the same occupation and is supposed to be endowed with the same ability, you can earn \$4 a week, and then they do not have to get him a job. It is just a supposition based on the intelligence and possibly the nerve of the injured man; I do not think it works out fairly.

THE COMMISSIONER: It would not be practicable to have that system. It is only possible where there is a lump payment, is it not?

MR. CEASE: Yes.

THE COMMISSIONER: I can understand it would be important to have it fixed where a jury has to deal with it; one jury might give \$5,000 and another \$500.

MR. CEASE: That is our experience under the liability law. In Texas a man will get \$10,000 for the loss of a hand; in Pennsylvania he gets about \$2,000.

THE COMMISSIONER: If care were taken in the selection of the men would the danger of political influences creeping in be great in administering a law such as this, or what do you think?

MR. CEASE: Well, I think, Mr. Commissioner, the political results would largely depend on how your Board was formed and the life that was going to be given to its members, that is, their term of service. If a Board is not subject to political changes and is going to be retained in service during its good behaviour it is not going to be so affected by politics.

THE COMMISSIONER: Supposing the Board were composed of three, would you favour in the selecting of the men the selection of one whose affinities were with the manufacturing class or the employing class, and one whose affinities were with the other class, the working class, or would you prefer a Board of the best men not considering these questions? Would it not practically mean in the first place that the middle man would decide every case?

MR. CEASE: Like the odd man in every case of arbitration; he is the deciding factor.

THE COMMISSIONER: Mr. Hinsdale has been very pleased, no doubt, to hear your commendation of the Washington act. He is the chief auditor.

MR. HINSDALE: I was very much pleased to hear Mr. Cease's good words in regard to the Washington act.

MR. CEASE: They were very honestly expressed.

THE COMMISSIONER: What is your view as to the workmen contributing to this fund?

MR. CEASE: I do not believe the workmen ought to contribute to the fund at all.

THE COMMISSIONER: Have you reasons for that?

MR. CEASE: My reason is that he is forced to contribute, if the law requires it, to a fund without any certainty that he will benefit from it. Again, the compensation proposition is that as we have always understood it the employer ought to bear all the responsibilities; we do not feel that the employee ought to be asked to contribute any amount for the payment of his own relief.

THE COMMISSIONER: I notice you except the case of an accident arising from the wilful act of the man; what do you mean by that?

MR. CEASE: We mean by that a man who deliberately hurts himself, a man who commits suicide and we know that he has committed suicide.

THE COMMISSIONER: That would not be an accident.

MR. CEASE: No, but a man who is injured by a wilful act, not an accident due to a wilful act.

THE COMMISSIONER: Supposing a man knows it is his duty not to do so, and knowing if he does it he is likely to endanger life and property, and he does it, and loses his own life, or injures himself, is there any just cause or reason for compensating that man as far as he is concerned?

MR. CEASE: Yes, there is every reason for it, because in the first place no man in employment takes chances of that kind without some reason for it.

THE COMMISSIONER: I would not agree in that.

MR. CEASE: I know you would not.

THE COMMISSIONER: A man says "I will take the chances." Have you not had some men on your locomotives who get the name of dare-devil or hell-fire on account of their recklessness?

MR. CEASE: We find those dare-devil Harrys usually have the best jobs, and that is the reason.

THE COMMISSIONER: Take this case: if a man sees a certain sign set against him he knows that he ought not to go forward across an intersecting road; he sees that sign and he goes in defiance of it; the only possible excuse offered is that he thought he could get clear. Ought that man if he gets injured be compensated?

MR. CEASE: Yes, he ought to be compensated under the rule of compensation.

THE COMMISSIONER: What for?

MR. CEASE: Because we do not take it he committed that act purposely. For the same reason that any man violates any safety rule; he does not do it to protect his own interests, his only purpose is to get through with his work.

THE COMMISSIONER: In this particular case it was not done to serve anybody but himself.

MR. CEASE: Well, we do not see where any of those cases occur.

THE COMMISSIONER: Supposing that case does happen—we must not have a law that the ordinary man will say contains a provision that shocks the conscience. Just fancy a case of that kind; the man goes on and kills fifty

people. What would the farmers of this country say, what would any people who were not blinded by class prejudice say, if the law permitted that man not only to escape from the consequences of his act, which perhaps under the law would be a penitentiary offence, but that he should be paid for the injury he had done to himself?

MR. CEASE: One of the purposes of compensation, Mr. Commissioner, is to pay for all injuries arising out of the employment.

THE COMMISSIONER: This did not arise out of it.

MR. CEASE: There is always a reason for these things.

THE COMMISSIONER: I am putting the case where there is no reason.

MR. CEASE: I cannot conceive of a case where there would not be some reason. It might appear so to a man who was not acquainted with why the man did this, but he had a reason for it.

THE COMMISSIONER: Here is a railway crossing another road and the semaphore is set against him: he is told, just as plainly as if there were a man there, "it is dangerous for you to cross that track": he crosses it simply because he thinks that he can get in before some train that he knows will be crossing; he deliberately jeopardizes the lives of everybody on his train; he goes ahead and his train is struck.

MR. CEASE: You may have a case of that kind in mind, but I cannot conceive a case of that kind occurring where a man would deliberately cross a crossing in violation of signals. I can see how a man would go by a red board, but not a crossing. I can see where he might pass the semaphore, but that is not the crossing, it is at the proper distance from the crossing.

MR. WEGENAST: I can give an instance of that just within the last few weeks. In the town of Brampton an engineer on the Grand Trunk came down the grade west of the station with the derail set against him at the crossing of the C. P. R. He deliberately ran past the derail expecting that the man at the switch would turn the derail in his favour when he saw him coming. The investigation showed that the man at the derail had to make up his mind whether he would obey the orders he had and throw the train off the track, or whether he would let the man get through and get away with his fool-hardiness. He decided to obey the rules and the train was of course thrown into the ditch and a number of men were slightly injured—it might very well have killed two or three of them; the whole train was ditched and thrown in a scrap heap.

THE COMMISSIONER: If that kind of thing is compensated you will find that public opinion will crystallize into the view that it is a bad law and ought to be repealed, and no amount of political influence will prevent it being repealed.

MR. CEASE: If you commence to separate cases of that kind the whole proposition resolves itself into every case being tested by one in which the employee is at fault. There must be a reason; may be the man cannot help himself.

THE COMMISSIONER: His reason would be given to the Board.

MR. CEASE: Very likely he would have his reasons.

THE COMMISSIONER: Under the British act they carry it a long way; they carry it further than I think the words of the act call for—that the violation of a known rule is serious and wilful misconduct.

MR. CEASE: That one can readily understand. There are a great many rules that are not intended to be observed and cannot be observed; that has been our experience.

MR. HALL: Would not the protection to the wife and family be a consideration?

THE COMMISSIONER: The British law recognizes that because if death happens, or serious and permanent injury, there is the right of compensation. It does not give the right in other cases.

MR. BANCROFT: It takes in intoxication while on duty in the proposed Federal act.

THE COMMISSIONER: Did you approve of that intoxication part of it, Mr. Cease?

MR. CEASE: Oh, yes.

THE COMMISSIONER: That is very much objected to here because they say it is pretty difficult to tell when a man is intoxicated. What do you mean by intoxication?

MR. CEASE: If they do not prove he is intoxicated—

THE COMMISSIONER: It is a word that has a dozen different meanings.

MR. CEASE: Yes, I quite agree in that, but our general idea of the word intoxication is that a man would have to be in a condition that he could not properly perform his work.

MR. WEGENAST: They say here he should not be allowed to go on with his work, that the foreman should look out for that.

MR. CEASE: That is putting an unfair duty on the foreman.

MR. HINSDALE: There is a suggestion in Washington that if it is proven a man is intoxicated the Commission will pay him, but will fine his employer for permitting a man to be working for him in that condition.

THE COMMISSIONER: Supposing the employer does not know.

MR. HINSDALE: It leads them to be very strict.

THE COMMISSIONER: A man may load himself up pretty well before he gets in his cab, and the consequences will not appear until he gets on the road some distance.

MR. HINSDALE: Very true. There should be very stringent rules to prevent intoxication while at work.

THE COMMISSIONER: Then you would be up against the difficulties they have in England, discharging a man when he is drunk off duty. I believe they have had to recall that, but that is a curious country.

MR. HALL: Mr. Wegenast has made a statement here about this engineer at Brampton about which I have got my doubts. With twenty years' experience on the road I have never known of a man deliberately to run himself into danger in that way.

THE COMMISSIONER: I suppose the proper thing is to say that no man ever did anything wrong.

MR. HALL: I think it is a gratuitous insult to the railway men in this country.

THE COMMISSIONER: It is not an insult to say a particular man on a particular road did a certain thing.

MR. HALL: I do not think it possible. I will ask Mr. Wegenast to give me a day and date.

MR. WEGENAST: I can supply the date. What I am stating is the result of an official investigation. I understand the switchman was suspended and that either the fireman or the engineer, whoever it was that was running the train, was suspended. They found the facts I have stated: they reinstated the switchman and dismissed the fireman or engineer.

MR. BANCROFT: If they make a lot of rules the men cannot keep from getting into accidents, and they are blamed for it.

MR. WEGENAST: Here was one man disobeying the rules and expecting the other man to disobey.

MR. HALL: There may have been some reason why he could not stop; it is down grade coming from the west and it might have been that the brakes were not working.

MR. WEGENAST: There was no difficulty about the brakes.

MR. GIBBONS: On the street railway they have a number of rules; you must not run faster than four miles an hour, go slow, must stop. If a motorman runs down Yonge Street more than four miles an hour and kills a man he is disobeying orders, but if he did not run more than that he would not make his schedule and he would not be kept on the road a week.

MR. WEGENAST: This would hardly be a case like that. I cannot conceive of a railway company making rules which would result in throwing a train of cars into a ditch.

THE COMMISSIONER: I desire to thank both Mr. Hinsdale and Mr. Cease for the valuable information they have given to the Commission.

MR. MALONEY: Mr. Commissioner, Mr. Cease brought up the question of compensation where employees would be asked to contribute to the fund. I represent the trainmen in Canada, and at our last legislative meeting they went on record as being strongly opposed to any form of compensation act that would compel the employees to contribute to the maintenance of any fund.

THE COMMISSIONER: I think it may be taken for granted that they are opposed to anything that will make them contribute anything, and in favour of everything that will give them the most; that is human nature.

MR. MALONEY: The record of death and disability on our railways I think will convince most of us that the railway men contribute quite a bit in their sacrifices of life and limb.

THE COMMISSIONER: Undoubtedly they do, too much.

MR. MALONEY: I am satisfied as long as you think that. I might say, too, that the railroad men of Canada, especially the trainmen, have been considering a compensation act for a good many years. They did not take only into consideration the necessity of a compensation act in the Province of Ontario, but they had in mind and have had a proposition for a Dominion workmen's compensation act up with the Minister of Labour for the last four or five years, but have not made very much progress. We recognize the necessity for a Dominion workmen's compensation act if it is possible to get one; there seems to be some question about the right of the Dominion to legislate for the Provinces in legislation of that kind. I am in hope that the compensation act that will be given to the workmen by the Government of Ontario will be a foundation for the Dominion to work on, or if not for the Dominion, for other Provinces. The brakemen and switchmen have had under consideration for the last four or five years a compensation act for the Dominion, and they would appreciate legislation along those lines. I would like to call your attention to this fact also, that we would like a compensation act that will abolish litigation, the necessity of going to the courts. I do not know that I can add anything to what has been said; I think our case has been well covered by Mr. Cease.

MR. BANCROFT: Will Mr. Hinsdale explain to us in reference to the waiting period, what it means by the five per cent. loss? I would like him to explain if they have any waiting period, and how quick the injured one would come under the compensation fund.

MR. HINSDALE: Under the Washington act the claimant is paid from the date of the injury. The next day is the first day lost, but if the loss of time is only five per cent. of a month's time—we do not pay anything if it is so small that the loss is only five per cent of a month; it is considered as meaning five per cent. of a month.

THE COMMISSIONER: Are there many of the claims you allow where the result of the injury does not last more than a week or ten days?

MR. HINSDALE: The average length of time that our injuries have lasted, based on 6,300 claims, is twenty-five days and a fraction. I could give you the exact length of time that injuries have lasted with us in shingle mills, saw mills, logging railroads, and so on. The logging railroad injury, about thirty days, saw mills about twenty-eight days, and the average for temporary disabilities is twenty-five days.

THE COMMISSIONER: Do you have many claims for less than a week?

MR. HINSDALE: We do have a great many. Men put in a claim for almost any injury.

THE COMMISSIONER: What is your view as to the desirability and the fairness of a short waiting period?

MR. HINSDALE: It would appear to me personally that if a waiting period is permitted, that is if the law provides for a certain period during which no compensation shall be given, that that is the beginning or the entrance of the first aid feature. If you are going to make a man wait a week or two weeks and not give him compensation for that time you have in that event to pay his medical expenses or surgical expenses. We have not got that in our law yet.

MR. BANCROFT: Crystal Eastman's figures seem to do away with the idea that it is the old men who get injured.

THE COMMISSIONER: Mr. Bancroft, do you intend to hand in a brief in answer to Mr. Wegenast? We are anxious not to delay the matter.

MR. BANCROFT: We can make ours short in summing up.

THE COMMISSIONER: I would a great deal sooner have a written statement; that is bound to be brief.

MR. BANCROFT: We desire to put in a brief.

THE COMMISSIONER: I understand Mr. Wegenast has something in the line of a brief to put in.

MR. BANCROFT: We are clear that our case is right, and it has taken less time than any of the others. We do not wish the matter to be delayed beyond the coming session. It would be rather hard on us after waiting for the last position to be juggled out of it.

THE COMMISSIONER: You will have an opportunity. When these documents are in I would like to have a sitting or two to discuss around the table some of these questions with those who are interested; after that I can make my final recommendation. I wish to discuss some of the points that are still open, and I may suggest some things as possible recommendations, but nothing will be final until I sign the document, as far as I am concerned.

MR. WEGENAST: I would like to offer some evidence, or whatever you choose to call it, to contradict the evidence of Mr. Sherman. It is mostly in writing.

THE COMMISSIONER: I would be glad if you would put it all in writing; I could then refer to it.

MR. WEGENAST: I will be quite frank, practically the whole of the ground covered by Mr. Wolfe and by Mr. Sherman, for instance, is covered in my brief as it is.

THE COMMISSIONER: They were attacking your brief largely.

MR. WEGENAST: Yes, but the statements of fact which they offered are absolutely opposed to the facts as stated in my brief, and I think I ought to have an opportunity of replying, simply for the sake of saving my face, if it is necessary.

THE COMMISSIONER: I think it is a pity if you had the material to show that what they were stating was inaccurate that you did not face them with it.

MR. WEGENAST: It is pretty difficult for a man to challenge another on a point which involves references to books and authorities. There is one point particularly that I want to go into, and that is the question of the current cost plan. The scientific data and the tables which were presented here are anything but accurate in their presentation of that feature.

THE COMMISSIONER: A witness you have brought here has gone a long way to show that the simple current cost is not desirable, that it has to be a composite thing.

MR. WEGENAST: I do not profess to offer the evidence of Mr. Hinsdale or of Mr. Dawson or of Mr. Boyd as our evidence on that point.

THE COMMISSIONER: It was a very unwise thing to bring them here if you did not want me to be affected by anything they said. Mr. Hinsdale has justified his state legislation against the attacks of Mr. Wolfe largely. He has, by inference at all events, wholly discounted the idea that the current cost covered permanent injury and death.

MR. WEGENAST: I want to take direct issue with that, as far as I may consistent with respect, Sir William. I did not for one moment consider it required justification. It was simply to discredit, if I may say so frankly, the evidence of Mr. Wolfe and of Mr. Sherman that it was not adequate capitalization.

THE COMMISSIONER: Then it was useless to have brought him at all if that was the single purpose.

MR. WEGENAST: It is not necessary, surely, because I bring Mr. Hinsdale or any other man, to adopt everything they say. When it comes to the matter of current cost I want to rely on the evidence of Mr. Dawson who has studied the matter out, and who is an experienced actuary, and on that point I want to offer evidence.

THE COMMISSIONER: The trouble is all these expert actuaries have fads on particular branches; I cannot tell whether a man has a fad in one direction, or in another direction. I suppose I would be told by those who support the views of Mr. Wolfe and of Mr. Sherman that Mr. Dawson has a perfect fad upon this German system.

MR. WEGENAST: But there is the outstanding fact that there has not been any system in North America, except that in the State of Washington, where it was possible to introduce a current cost plan.

THE COMMISSIONER: I am not going to recommend any system unless I am perfectly satisfied, as far as my judgment will carry me, that it is absolutely economically sound; if it were on the balance I would decide against it.

MR. WEGENAST: It is just that I want to meet in your mind.

MR. MEREDITH: Is it a sure thing that the steam railroad men will come in under this act in Ontario?

THE COMMISSIONER: You will be sure of nothing until you see my name signed in my report.

MR. BANCROFT: When we are called on we will be ready.

THE COMMISSIONER: We will meet on Tuesday night next to hear Mr. Wegenast, and on Thursday night to hear Mr. Bancroft; the following week we will get around the table and talk it over.

(Letters to Mr. Hinsdale from Mr. Harold Preston, dated January 4th, 1913; from Mr. E. J. Annin, dated January 4th, 1913; from Mr. George M. Cornwall, dated January 3rd, 1913—filed as exhibits.)

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## TWENTY-THIRD SITTING

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THE LEGISLATIVE BUILDING, TORONTO.

TUESDAY, 14TH JANUARY, 1913, 8 P.M.

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner*.  
MR. F. N. KENNIN, *Secretary*.  
MR. W. B. WILKINSON, *Law Clerk*.

THE COMMISSIONER: Mr. Hinsdale, as I understand it you set aside a reserve in the case of a fatal accident and you set aside a reserve in the case of a permanent disability?

MR. HINSDALE: That is true.

THE COMMISSIONER: Whether total or partial?

MR. HINSDALE: If it is a partial permanent disability, like the loss of fingers or the loss of an arm, or some amputation, we pay that in full; we do not therefore have to capitalize it.

THE COMMISSIONER: You pay the cash down?

MR. HINSDALE: Yes. We do not set aside a reserve; the amount we would set aside as a reserve is the amount we pay.

THE COMMISSIONER: Who fixes that? Is that a matter of arrangement between the claimant and the Board? Who fixes the amount he is to receive?

MR. HINSDALE: The amount he is to receive is based upon the requirements of our act, that the loss of the major arm at the elbow is payable at \$1,500, and every other amputation is with reference to that injury.

THE COMMISSIONER: You have a scale?

MR. HINSDALE: We have a scale; it is a matter of no uncertainty with us how much we should pay; the precise amount as to every injury is agreed upon in advance by our Commission. It is merely a question of what is the injury.

THE COMMISSIONER: It is because the act requires it that you pay those in cash?

MR. HINSDALE: Yes, under the requirements of the act.

THE COMMISSIONER: If it provided for a proportion of the wage during that time you would have capitalized as best you could?

MR. HINSDALE: Yes, as best we could. I might add that the Commission recognize that to make such payments year by year rather than in lump sums and putting up reserves would perhaps be better. We had an unfortunate experience in paying a man \$1,500 for the loss of an arm, and having him spend the money and being as badly off or worse than before.

THE COMMISSIONER: What did you say the average duration of your temporary disability is?

MR. HINSDALE: It is twenty-five and six-tenths days in all classes.

THE COMMISSIONER: What would be the extreme?

MR. HINSDALE: The extreme ones have lasted the fifteen months we have been in operation and are going on still.

THE COMMISSIONER: You cannot give the maximum or the minimum?

MR. HINSDALE: It is impossible.

THE COMMISSIONER: Are there many which are still running?

MR. HINSDALE: Of course there are a great many accidents which have occurred during the past three, four, and six months, varying periods, and many of those are still in the hospital.

THE COMMISSIONER: Take a case which happened in the first month of your operations? Are there any of those cases still on the list for payment?

MR. HINSDALE: There is a surprisingly small number. I might say of all the accidents we have had in the State we have only two out of six thousand and over which we regard as permanently totally disabled—paralysis, for example.

THE COMMISSIONER: That rather leads you, I suppose, to the conclusion that there is practically no necessity for that class of payment to put up any reserve, it meets itself? You meet the awards as they become payable?

MR. HINSDALE: Of course as soon as we are satisfied that the man is permanently totally disabled we then do set aside a reserve, but in the other cases we do not.

THE COMMISSIONER: And there is no need of it with such a small period upon the average?

MR. HINSDALE: Under our system there appears no urgent necessity for it. We pay it currently for a year as it comes. Of course it would tend to raise the rate by just as many as there are.

THE COMMISSIONER: Can you leave a copy of your report with us?

MR. HINSDALE: This particular copy that I have I feel compelled to return to Olympia, inasmuch as it is the authority of the printer for the document; if there should be any error this is a signed copy. If it were not for that I would be very much pleased to leave it with you.

THE COMMISSIONER: How soon after your return could you send a printed copy of the report?

MR. HINSDALE: Immediately. I am surprised that one has not been received already; they assured me they would send one. This document contains a great deal of information, and some very important tabulations.

MR. WEGENAST: There is a statement here that Mr. Hinsdale has prepared in view of the report, in the form of the accident companies' report, showing the method of capitalization and the scale upon which it is based. That is the operations of the State of Washington. (Hands statement to Commissioner).

MR. HINSDALE: That sheet, Mr. Commissioner, is a simple running out of the length of time which our reserve would justify a pension, or would maintain a pension, and annuity of \$240 a year. It is extended at the assumed rate of 4 per cent. interest. We in Washington make 5 per cent. At the age of 30, if a widow is 30 years of age, we set aside \$4,000. If there were no widows remarrying that pension would be paid during their expectancy: their expectancy is thirty-five years and a fraction. If we could earn only 4 per cent. and there were no question of the widows remarrying that would not be enough; that would only run for about twenty-eight years.

THE COMMISSIONER: Did you say thirty-five years was the expectancy?

MR. HINSDALE: Her expectancy of life if she were 30 years old would be about thirty-five years, the average according to the mortality tables for women. The question of widows remarrying is an important one; a great many do remarry, and for that reason we think 4 per cent. sufficient.

THE COMMISSIONER: How long one man will live is absolutely uncertain; it has been said, the average duration of a thousand men on the other hand, is capable of mathematical demonstration. I thought you said there were no means of getting at the proportion of widows remarrying? If you take the number of widows in the state and the number of widows who remarry, would that not give you statistics that would help?

MR. HINSDALE: Yes, we would be able to approximate the number. At present out of two hundred and forty-three, two already have remarried.

THE COMMISSIONER: In a year?

MR. HINSDALE: In a year, yes.

THE COMMISSIONER: Do you find the oldest and the ugliest marry first?

MR. HINSDALE: I do not know; I doubt it. I think really the percentage of widows remarrying will prove to be very great. I think the reserve we provide ample.

THE COMMISSIONER: Especially if the pension continues for a little while after they enter a second time upon that venture?

MR. HINSDALE: We have had this experience a number of times, when it was discovered that —

THE COMMISSIONER: I am not sure whether Mr. Wolfe left his Massachusetts' scale.

MR. MACMURCHY: I think it was incorporated in the statement he handed in.

THE COMMISSIONER: I do not think so. When he talked about there not being enough exposure I understood him that he had left in some way a statement of the grouping. Does that appear in the Massachusetts statute?

MR. WEGENAST: No, the Commission or Board is authorized to make a schedule, and it was for that purpose that the Commission employed Mr. Wolfe.

THE COMMISSIONER: It was not direct legislation?

MR. WEGENAST: No. I thought I would ask those in touch with Mr. Wolfe whether they could get that schedule?

THE COMMISSIONER: I suppose if anybody wrote to the Commission they would send it. It is a public document.

MR. MACMURCHY: Mr. Wolfe is no longer connected with that Commission, but they have expressed themselves as very willing to give any information. I have a letter from their secretary.

THE COMMISSIONER: Mr. Kennin had better write and ask them to send the schedule showing how they have grouped the industries and the rates they have provided. The grouping is under section 13 of their act.

MR. WEGENAST: Of course that section is failing entirely of the object intended. There was no chance for liability insurance when that was passed, and subsequently an amendment was brought in and they had to change their method of rating. It is now run on the individual instead of the grouping plan.

THE COMMISSIONER: That must have been last year.

MR. WEGENAST: The amendment was made a year after the original act was passed. The act was passed July 28, 1911; it is signed by the Governor on that date; there was an amendment a year after.

THE COMMISSIONER: Now, Mr. Wegenast, what do you want to say?

MR. WEGENAST: I propose to leave myself largely in your hands, Sir William, as to the extent of any remarks I may make. I would have liked to have spoken of a large number of things.

THE COMMISSIONER: Have you a statement in writing covering all your points?

MR. WEGENAST: No.

THE COMMISSIONER: Why not, are they so numerous that they cannot be covered in writing?

MR. WEGENAST: I do not want to say any more than you indicate to be necessary. I have a list here of points I would like to cover.

THE COMMISSIONER: Are they not covered in your answers to Mr. Wolfe?

MR. WEGENAST: No, that is simply an answer to Mr. Wolfe.

THE COMMISSIONER: I should think if it takes all that brief to answer Mr. Wolfe it must be a bad case.

MR. WEGENAST: Mr. Wolfe's is a bad case.

THE COMMISSIONER: No, but yours, if it takes all that.

MR. WEGENAST: I hope the proof of the pudding will be in the eating.

THE COMMISSIONER: I must get to an end of this very soon.

MR. WEGENAST: Will you please indicate points you would like me to cover?

THE COMMISSIONER: I have no desire as to any particular point; I want information. Later on I may have something to say.

MR. WEGENAST: I wanted to refer to the C.P.R. brief, to Mr. Wolfe's brief, and to Mr. Sherman's brief. There are a great many things which should not go uncontradicted, unless you think they are of no importance. The C.P.R. have gone out of their way to attack us all along the line.

THE COMMISSIONER: They have repented of that. They have expressed their willingness to go practically the whole length if they are left in their own group.

MR. WEGENAST: In that view I can eliminate most of what I intended to say, except where they attack our position.

THE COMMISSIONER: Mr. Wolfe did that more than the C.P.R.

MR. WEGENAST: Of course Mr. Wolfe's and Mr. Sherman's briefs are merely elaborations upon the C.P.R. brief.

THE COMMISSIONER: To a lawyer's view of the economic aspect I will not pay much attention.

MR. WEGENAST: Then I wanted to refer to Mr. Hinsdale's evidence, particularly in view of your remark that I was committed to Mr. Hinsdale's policy. I cannot stand behind Mr. Hinsdale and Mr. Dawson and Mr. Boyd, all three of them. It was with a perfectly open mind that I brought those gentlemen here.

THE COMMISSIONER: Up to the present, as far as I have gone without coming to a definite conclusion, I think the safest man to stand behind is Mr. Hinsdale.

MR. WEGENAST: I would not like to deny that at this stage, and yet there are certain features of the Washington system which I think Mr. Hinsdale would be the first perhaps to condemn.

THE COMMISSIONER: I would like you to show me why it would be a sound proposition to allow you where there is permanent disability or total disability just to make the monthly payments as you go along.

MR. WEGENAST: I thought perhaps that was the most important point I should take up. In order to do that I would like to place in your hands the German—

THE COMMISSIONER: I do not think there is any ground of comparison between Germany and this country, or any part of this country. This is a new country; the industries are not permanent as they are in Germany; a man is here to-day and gone to-morrow, a fact to be taken into consideration. These things seem to me to have a very material bearing on the question of current cost.

MR. WEGENAST: If you please I will deal with the current cost question. Perhaps it would be better for me to refer first to Mr. Hinsdale's evidence on that point. I had not time until to-day to explain to Mr. Hinsdale our proposition on the actuarial side, until I took half an hour or so to explain to him exactly what we proposed to do, and with your leave I will put some questions to Mr. Hinsdale.

THE COMMISSIONER: No, I am not going to allow it to be buttressed up in that way. Mr. Hinsdale has given us his evidence; it will not do to fill in the kinks that way.

MR. WEGENAST: Mr. Hinsdale is in a position to compare our proposition.

THE COMMISSIONER: Why did you not ask him before?

MR. WEGENAST: He did not know what our proposition was. I brought him right up from the railway station.

THE COMMISSIONER: You had a whole night to load him up.

MR. WEGENAST: Well, I was not loading him up.

THE COMMISSIONER: I did not mean that offensively. I do not think he would let you.

MR. WEGENAST: I do not want Mr. Hinsdale's evidence on the actuarial side to go in as our evidence. It is simply to answer the liability companies, to discredit their assertion that the Washington system is not sound.

THE COMMISSIONER: It is in for all purposes so far as it is relevant.

MR. WEGENAST: If that is so then I would like Mr. Hinsdale to comment on it.

THE COMMISSIONER: You had better go on with your speech.

MR. WEGENAST: Page 15 and the following pages contain several characteristic expressions based upon unfounded assumptions, with respect to the current cost plan of insurance.

THE COMMISSIONER: I do not see any justice in making a man who begins to-day pay the burdens that he had no part in creating, either singly or as a member of a group. It is something more than sentimental.

MR. WEGENAST: I say "unless indeed it would be necessary to impose upon the beginner a rate materially higher than under another plan." I propose to address myself to the question whether the rate would ever be higher

than the capitalized rate that you would start with. Mr. Wolfe has given evidence here and presented a schedule to prove the rate must go higher.

I want in the first place to deal with what I might call the sentimental side.

THE COMMISSIONER: Do you argue that there is no surcharge, as the German calls it? Do you dispute that it would not inevitably lead to an accumulation of these claims?

MR. WEGENAST: No, but the trouble with Mr. Wolfe's schedule is that he does not allow for any surcharge.

THE COMMISSIONER: All that means is that instead of paying down one sum you spread it over a number of years.

MR. WEGENAST: Yes, if you put it this way; you load the current cost with a margin to provide a sinking fund; that is exactly our proposition. I have forgotten for the moment the technical term.

THE COMMISSIONER: Do you know any insurance company in any country that is permitted to carry on business without a reserve to meet annuities

MR. WEGENAST: I know that in all countries where workmen's compensation insurance is in private companies the reserves are admittedly inadequate.

THE COMMISSIONER: The policy is to have a reserve adequate to meet the claims, is it not?

MR. WEGENAST: Yes, but as a matter of fact they are all banking on the future. I submit there is no reason why a Government system should be in any different position, or in any worse position at all events. I would like to deal with the sentimental side of it.

THE COMMISSIONER: I am not concerned with the sentimental side.

MR. WEGENAST: What I call the sentimental side. It is an argument against the current cost plan that a person coming in in the future will have to pay for some of the accidents of the present, but what does he care if the rate is not any higher than it would have been? That is met by this consideration that the employer in the present and for a generation to come must take care of the wrecks of the past, and it is unfair to thrust on him the capitalized burden of the future in addition.

THE COMMISSIONER: I do not understand that.

MR. WEGENAST: The employer of to-day as a member of the community must take care of the industrial wrongs of the past.

THE COMMISSIONER: You mean as a member of the community?

MR. WEGENAST: Yes.

THE COMMISSIONER: I do my small share of that.

MR. WEGENAST: But you are going on the assumption that this will be distributed over the community and that the employer must pay. If that be so you

are not only paying the burdens of the past but you are capitalizing the future.

THE COMMISSIONER: Are you prepared to admit that under a protective tariff the manufacturer has so large a margin that he will be forced probably to pay it out of his pocket?

MR. WEGENAST: That is not in my department in the Manufacturers Association; I am not competent to speak on that.

"Any sentimental objections to the current cost plan on the ground of its deferring for some years the liability are entirely out-weighed by the fact that the rate under the current cost plan can never reach a figure materially higher than the capitalized rate but on the contrary is almost certain never to reach anything like as high a figure. Demonstration of this will be deferred to a later page.

Any sentimental objection which might be urged against having new-beginners in business pay part of the liability in respect of accidents which happened previous to their commencing business is fully met by the consideration that the industries of the present, and society at large, are maintaining and will continue for a generation to maintain, the persons rendered indigent by the industrial accidents of the past. It is true that this relief is not direct and systematic as under a workmen's compensation system. It is carried on through the agency of public institutions and public and private benevolence, but it is done in some fashion. The workman and his family do not starve. Not only is there no injustice in imposing the new order by a sliding scale as the old order gradually recedes, but it would be inequitable if the present in addition to bearing the burdens of the past were required to bear the capitalized burden of the future.

Another aspect of the question giving at the same time the views of the German employer and a concise sketch of the operation of the German plan is given by Messrs. Schwedtman and Emery on page 40 of 'Accident Prevention and Relief.'

THE COMMISSIONER: Do you not think you could leave that text for me to read and just make your oral comments upon it—anything that requires further elaboration?

MR. WEGENAST: I think I can do it in this way much more quickly.

THE COMMISSIONER: By all means take the shortest road.

MR. WEGENAST: At the same time it will provide a text for your comments.

"One more feature of the German system needs to be explained before we go into details. It is the lack of providing for deferred payments in the accident insurance scheme. On this subject the sentiment among employers is almost universal. They claim that even with its acknowledged faults this feature of their system is much superior to the methods used elsewhere of attempting to cover such deferred payments. They say that neither twenty-five years ago, when Germany started, nor now, are there statistics available upon which to base, with reasonable certainty, the future cost of accident compensation. They feel that it would be a most serious mistake to tie up the billions of dollars required to cover any reasonable

estimate of deferred payments and think that the withdrawal of such sums would do much more harm to German industrial development, which now needs all the available cash in the country, than any harm that can possibly come to future industries which necessarily will have to start under a heavier financial burden due to constantly increasing insurance premiums."

THE COMMISSIONER: Is that not weak? All this money would not be put in a cellar; it would be all loaned out to be used.

MR. WEGENAST: I have already referred to that in the beginning of this investigation. It is true that the money is in the country but it has lost its fluidity, and as far as the manufacturer is concerned you can quite understand he is not in the same position. "They feel that such heavier burden is more than outweighed by the strenuous pioneer work which had to be done by the German industries at the beginning and which must be done even now."

THE COMMISSIONER: If they had to choose between the adoption of the British law and a law somewhat on the lines suggested, where they would have to put their hands in their pockets and pay the capitalized value—which would be the choice?

MR. WEGENAST: I want to refer to that, and I may as well say this now:—

If the system is to be conducted upon the capitalized plan, then my instructions are that the manufacturers will not be satisfied unless there is a provision in the act for the formation of private mutual insurance associations which will by selection of risks and by accident prevention reduce the cost.

THE COMMISSIONER: What is to prevent them forming these associations under the present insurance law.

MR. WEGENAST: Nothing.

THE COMMISSIONER: It is in their own hands.

MR. WEGENAST: But the proposition is to impose a much heavier liability on the employers.

THE COMMISSIONER: We have got past that stage, I understand. I thought it was on the ground that the present law was unjust, and that the true principle was that the industry should bear the cost of all accidents. Is that not the basic thing that is conceded?

MR. WEGENAST: No, only with conditions, I want to make my position absolutely clear. We do not advocate—in fact we would make every effort to oppose—a collective system not conducted on the current cost plan.

THE COMMISSIONER: You would prefer to be under the British system?

MR. WEGENAST: No, we are not prepared to go as far as that, but we would say let us form our own mutuals.

THE COMMISSIONER: What is to be your liability: is it to be the same as it is to-day?

MR. WEGENAST: No, we are not saying that. If your act provides a schedule of benefits, and provides, we will say, a State institution, and provides a system of grouping, we want the same privilege that the C.P.R. are asking for, of exemption from the general operation of the act, and to have the privilege of forming groups, or possibly the individual firms, as for instance, the Massey-Harris and the International Harvester, which have their own schemes of benefits.

THE COMMISSIONER: I would not recommend any such thing. I would not recommend the permission that is contained in the British act that there should be a scheme by any class of employers. They must all, as far as their obligation is concerned, come under the act. That is my view at present; I do not think I will change it.

MR. WEGENAST: It is my duty to state the position of the Association in unmistakable terms on that point. Institutions like the Massey-Harris Company and the International Harvester Company are coming in under this scheme for two reasons, one because they expect it to be conducted on the current cost plan, and the other because the compulsory grouping, they think, will reduce the number of accidents all round.

THE COMMISSIONER: Is there one of them that will stand the test that a scheme under the British act has to stand?

MR. WEGENAST: They will stand the test as against the liability of the present law.

THE COMMISSIONER: I am not talking about that. I am talking about a right law.

MR. WEGENAST: If you pass the law then it will be time enough to measure them—

THE COMMISSIONER: I think the highest a man can get is \$500.

MR. WEGENAST: That is as much as he will get on the average under the present law.

THE COMMISSIONER: That is not a fair way of putting it.

MR. WEGENAST: I quite admit they do not measure up to the proposed law or to the British law, but they more than measure up to the present Ontario law.

"They feel that such heavier burden is more than outweighed by the strenuous pioneer work which had to be done by the German industries at the beginning and which must be done even now."

THE COMMISSIONER: Where do you get that information?

MR. WEGENAST: This is from the report of Messrs. Schwedtman and Emery.

THE COMMISSIONER: How do they know what the manufacturers think.

MR. WEGENAST: They went over to Europe and spent \$20,000 to make an investigation of that very thing.

THE COMMISSIONER: It is a fact in some branches of business, even in Germany, they have to put up the capitalized value.

MR. WEGENAST: Yes, where it is necessary, where the industry is not saddled with the obligation of the current cost plan.

THE COMMISSIONER: And where the industry is one that is transient, as very many of the industries in this country are.

MR. WEGENAST: The writer goes on to refer to that.

THE COMMISSIONER: I fancy the Manufacturers Association would say that if the tariff wall were taken down they would have to go out of business.

MR. WEGENAST: There again you take me out of my field; you have the advantage of me.

"However, deferred payments are not altogether disregarded. All employers' associations are establishing reserve funds at increasing percentages. Of last year's premiums nine per cent. was laid aside for reserve to cover deferred payments. Furthermore, some employers' associations—for instance, the Excavating Contractors' Association—covered the whole of the deferred payments because the nature of their work and their membership are not as permanent and steady as those of other crafts."

THE COMMISSIONER: That was not voluntary; it was compulsory, was it not?

MR. WEGENAST: Yes; that I am saying in my brief simply in answer to a passing reference by Mr. Wolfe.

THE COMMISSIONER: Have you any statistics from Germany or elsewhere showing what the average duration of the permanent total or partial disability is?

MR. WEGENAST: I am sure I have amongst my material.

THE COMMISSIONER: Have you it in mind at all so as to be able to say even approximately what it is?

MR. WEGENAST: No. I will look it up.

Now, this portion of my brief, some half dozen pages, deals with the current cost plan of insurance, and deals with Mr. Wolfe's table.

"An effort is made by Mr. Wolfe to show that the current cost plan is unsound and undesirable. A table is given which illustrated the operation of the plan and shows that where the bare actual requirement for compensation payments is assessed from year to year the cost will continue to rise for a time and then reach a point where it will continue on a level."

THE COMMISSIONER: That was not quite his point. It would cost the man more than to insure under the present system; that is what he said.

MR. WEGENAST: That was in another part of his brief: I will deal with that also. I would like to deal with that schedule in Mr. Wolfe's brief.

THE COMMISSIONER: I have never quite grasped the idea that underlies your proposition. Is it that over some number of years the number of claims that fall out by effluxion of time would equal the number of new claims that come in?

MR. WEGENAST: Precisely, and I have a table which shows exactly how the thing would work out.

I notice that Mr. Wolfe is now publishing his brief as presented here in pamphlet form as campaign material for liability insurance companies.

THE COMMISSIONER: That does not hurt it if it is sound.

MR. WEGENAST: I am glad to hear your qualification. I am addressing myself now to the task, although it may seem temerity on my part, to prove it is absolutely unsound.

"From a visual impression of Mr. Wolfe's table it would be gathered that the mass of red figures below the line represented a constantly growing liability. In reality the total deferred liability for instance in 1912 is the single column of red figures in the column for that year, all the red figures under the line for the previous years having been wiped out." All those are wiped out from year to year.

THE COMMISSIONER: I suppose that must be so.

MR. WEGENAST: The single column of red figures below the line represents the deferred liability.

THE COMMISSIONER: What he shows is that the deferred liability increases here, according to this scale, until it becomes stationary in these years, 1918, 1920, and 1921.

MR. WEGENAST: "Thus, supposing the premium to have been constant at one per cent. the deferred liability would amount to 2.1 per cent. In other words, to wipe out the whole deferred liability it would be necessary to treble the premium rate for one year."

THE COMMISSIONER: The less it takes the less there is in your objection.

MR. WEGENAST: Yes, that is true, but you have an existing condition to deal with. You have the furniture manufacturers at present paying a rate of thirty cents on \$100; under a capitalized plan their rate would likely jump to \$1.20. I think that is the rate in Washington. What would these furniture manufacturers say to an increase in their rate of insurance to that extent?

THE COMMISSIONER: They would make another combine.

MR. WEGENAST: Possibly.

THE COMMISSIONER: And we would have to pay it.

MR. WEGENAST: You can understand my position and the position of the Manufacturers' Association in venturing to recommend, or even suggest, a system which will at once impose a rate of that kind on the manufacturers of furniture, to say nothing of the more hazardous occupations.

THE COMMISSIONER: I did not think that the peace that apparently prevailed at the beginning would continue throughout. I do not object to the manufacturers putting their case as strongly as they can.

MR. WEGENAST: I have always guarded myself, sometimes in the face of your intimation that I was doing so to too large an extent.

THE COMMISSIONER: You must bear in mind that the people are greater than all the manufacturers put together.

MR. WEGENAST: We understand that quite well.

THE COMMISSIONER: And what the people say must be done.

MR. WEGENAST: I think I can say, with a pride that is pardonable, that I do not think that there is another body of employers in the world that has taken such an advanced stand.

THE COMMISSIONER: You know only the legal side.

MR. WEGENAST: The table also shows that when the rate has reached its level it will be simply the capitalized rate and no more. This leaves nothing against the current cost except a sentimental objection against a deferred liability like that against the national debt, and the theoretical possibility that the entire cessation of an industry might eventually leave some dependants uncared for. This is offset by the probability that any cataclysm which would wipe out a whole industry group would also wipe out its dependants. I can quite conceive the desirability of building up a reserve quickly in some industries: in other words starting out on a capitalized basis as soon as possible, for instance, the liquor industry. If the liquor industry should in the near future be wiped out there would be the dependants, and I suppose there are questions of that kind which the administering commission would have to consider in fixing the amount of surcharge or margin towards a reserve.

"But it is not proposed that merely the bare annual cost should be assessed. Any rational method of assessment must provide a small margin for a reserve fund, and *the addition of a small margin, even the smallest, to the current cost will eventually bring the rate to a capitalized basis.* A table is given below to demonstrate this."

I would like to call your attention to this table:—

"This table assumes a constant pay-roll of \$1,000,000, and a constant requirement of \$25,000 to compensate each year's accidents, \$10,000 of this being required during the first year, \$5,000 the second year, \$4,000 the third year, \$3,000 the fourth year, \$2,000 the fifth year, and \$1,000 the sixth year."

THE COMMISSIONER: Is it your statement that it all appears from this table?

MR. WEGENAST: Yes.

THE COMMISSIONER: Because I think it requires a good deal more information to understand this table. How do you get at these sums: your \$10,000 is one per cent. of a million?

MR. WEGENAST: No, it requires on the capitalized basis \$25,000 for the year, but \$10,000 will be needed at once and \$5,000 the following year.

THE COMMISSIONER: How do you get at your \$10,000.

MR. WEGENAST: I just assume a pay-roll of \$1,000,000 and a necessary capitalized amount of \$25,000, and then proportion it in that way.

THE COMMISSIONER: How do you get at it that four years or five years would bring it to a level?

MR. WEGENAST: That is what the table is intended to demonstrate.

THE COMMISSIONER: I do not see it demonstrated.

MR. WEGENAST: The first year you require \$10,000. Instead of levying \$10,000 you levy \$11,000; that makes your rate 1.10, and you place in the reserve \$1,000—following the upper line. You have incurred a liability of \$15,000.

THE COMMISSIONER: How do you get at that figure?

MR. WEGENAST: You need \$5,000 the next year, and \$4,000 the next year, and \$3,000 the next year, \$2,000 the next year, and \$1,000 the next; that makes \$15,000. You have answered a liability of \$15,000 against which you have already placed in reserve \$1,000, and you have a total liability over the reserve of \$14,000. It dwindles down to almost nothing.

THE COMMISSIONER: To \$6,000 in twelve years.

MR. WEGENAST: Yes, and it is gradually wiped out.

THE COMMISSIONER: What about the beneficiaries in the meantime?

MR. WEGENAST: I am assuming they have been getting it all. That is what I am providing for.

THE COMMISSIONER: Supposing you wind up the concern in 1921 how would you provide for these outstanding liabilities?

MR. WEGENAST: In 1921 in order to wind up the concern you would have to levy a rate just exactly 50 per cent. more than the current cost. The actual requirements for that year are \$25,000, and you have a net liability over the reserve of \$12,500, and instead of levying \$2.75 you levy \$4.12, you levy half as much again; that is all that the liability amounts to.

THE COMMISSIONER: I think it is unfortunate that you had not something like this when Mr. Wolfe was here; you could have been confronted and have fought it out.

MR. WEGENAST: I did at that time. I said, "Mr. Wolfe, you are not allowing for any addition or any margin."

THE COMMISSIONER: I suppose it goes without saying that if you allow for a sufficient margin ultimately you will get right.

MR. WEGENAST: That is my point.

THE COMMISSIONER: I suppose there is no doubt about that.

MR. WEGENAST: We will go this far: We are content that the Commission should use its judgment as to the amount of margin they should add. They might add 25 per cent. or 50 per cent. the first year in order to get a big sum on hand. Apart from the desirability of allowing the rate to climb during the first few years, it is impossible to capitalize accurately, and if any attempt is made to capitalize adequately it is almost

certain to be over-capitalized, and then you are burdening the industries of the present with the accidents of the future.

THE COMMISSIONER: I do not understand why it is impossible to capitalize.

MR. WEGENAST: Because we are not in a position to estimate all the factors. I think Mr. Hinsdale will be the first one to admit that.

THE COMMISSIONER: Mr. Hinsdale very frankly said that with regard to a total disability or a death it is possible to estimate with reasonable accuracy the amount of reserve required. He said that probably these figures would be more on account of the impaired lives.

MR. WEGENAST: That accounts for only a very small percentage—that is, the case of total disability. In the case of widows remarrying, I am not prepared to accede to the proposition that the Washington rates will not rise. I expect to see a material rise in their rates next year, showing that even the Washington rates are made to some extent on the current cost plan. If, for instance, a widow should live to be 60 and not remarry and the pension continued to be paid, the sum of \$4,000 will not be adequate even at the rate of 5 per cent.

THE COMMISSIONER: But if you take two or three hundred widows the same criticism does not apply at all.

MR. WEGENAST: Then this applies, that it is impossible to strike an average for want of statistics.

THE COMMISSIONER: I do not agree in that. I think it is quite possible for the statistics of this country to show with reasonable accuracy what the probabilities are of women at particular ages remarrying.

If you have the total number of widows and the total number of widows who marry at certain ages, surely it is possible?

MR. WEGENAST: I would not like to undertake it.

THE COMMISSIONER: It seems to me you have all the factors that are necessary, if accurate statistics of that kind are kept, and I suppose they are.

MR. WEGENAST: I would not like to say they are not, but my impression is they are not kept. However, our point is that any attempt to capitalize adequately would, in all probability, mean an over-capitalization, and that the Commission and the fund would be adequately protected if they assessed merely a percentage over the current cost.

THE COMMISSIONER: Perhaps the difficulty might be met by enabling the Commission to loan any surplus to the manufacturer at a reasonable rate of interest.

MR. WEGENAST: I think that is done in some countries, but I am not suggesting it. "It will be seen that for four years the amount of liability incurred would exceed the amount written off. But from the fifth year the amount written off would exceed the amount incurred and the liability would be entirely wiped out at the end of the sixteenth year. It would then be possible and necessary to reduce the rate. It will be seen that the rate

would be slightly above the capitalized rate after the fifth year until the liability was wiped out, but if the rate were left at the capitalized rate after the fifth year there would be a running liability amounting to about 2½ per cent. of the pay-roll."

THE COMMISSIONER: What was the calculation in Germany as to when they would first reach the level; have they not had to shift those estimates a good deal?

MR. WEGENAST: Yes; I am coming to the explanation of that. I think the original calculation was between twenty-five and fifty years, depending on the industry and the character of the persons employed; I may say, however, that the period is now being shifted back, because of the influence of accident prevention.

"A variation in any one of the terms of this illustration would alter the result but not the principle. If the reserve margin were reduced it would take longer to overtake the liability. If the obligations in respect to a year's accidents should extend—and they undoubtedly would—over a longer period than six years it would take so much longer to reach the peak of the liability, and the rate would continue for a longer time to rise.

A factor which has upset the original calculations of the German actuaries is that of accident prevention. The effect of prevention upon the rate, and of the rise in the rate upon prevention, are amongst the most important features of the whole subject of workmen's compensation. It is perfectly apparent what would be the effect upon the less progressive employers, and upon employers in the mass, of the rather rapid rise in the rates for the first few years. It would tend to provoke effort, individual and concerned, to lessen the number of accidents."

I want to interject here that we are depending upon that rise in the rates as an incentive to our employers to join in associations of the character I have already indicated for the purpose of conducting an active campaign in accident prevention. We would like to be in a position to say to these employers, now, we have got to stop these accidents or the rate will rise so and so rapidly; if you do not get together and stop the number of accidents your rate will be so and so.

THE COMMISSIONER: Would that not be so under any system, current cost or capitalized?

MR. WEGENAST: I deal with that further on. It would be to a certain extent, but the experience I think of other countries shows that under the capitalized rate there is not the same inducement.

"The effect is strikingly apparent in the figures of the German system given above. Under normal conditions unaffected by prevention activity the rate should have continued to rise for a generation—until the last of the dependants of the first year's accidents dropped off. But as already pointed out the rise in the German rates was suddenly arrested, in some industries as early as the sixth year, and this is traceable to no other cause than the organized movement for accident prevention.

I would like to point to the schedule to show how the rise in the rate was arrested. In the agricultural machinery works the rates

continued to rise until 1908; I have not looked at the figure for the succeeding years to carry them out.

THE COMMISSIONER: In 1897 it was 96 cents and it had been as high as 1.32 in 1892.

MR. WEGENAST: Yes, then it dropped.

THE COMMISSIONER: That would rather indicate, would it not, that the cost went up again?

MR. WEGENAST: The tendency would be upwards.

THE COMMISSIONER: It is irregular; it goes up and then down.

MR. WEGENAST: I have underscored the peak rate, as you will see. Then take beer-bottling.

THE COMMISSIONER: It has got very near the peak again, only a difference of twenty cents in 1908.

MR. WEGENAST: Yes. Then in carpentry the peak was reached in 1895. In the carpet factories it has gone up until 1908, but there is an industry where the injuries are small and the temporary disability is the large element; there might not be any deaths for a considerable number of years.

THE COMMISSIONER: I do not think this table indicates anything about accident prevention. Is it not an over-ruling Providence rather than accident prevention?

MR. WEGENAST: Absolutely no, with all respect; I have the authority of those who are familiar with the operation of the system. I may put it this way: To what can the effect be attributed if not to accident prevention?

THE COMMISSIONER: It may be the fortunes of war.

MR. WEGENAST: It could not be because the dependants would be lingering on, and they would have to be paid.

THE COMMISSIONER: There are fewer accidents.

MR. WEGENAST: I catch your idea now; it is a good way then to invoke Providence.

MR. MACMURCHY: To introduce workmen's compensation?

MR. WEGENAST: No, to introduce it on the current cost plan.

MR. MACMURCHY: Providence takes care of it then.

THE COMMISSIONER: I do not think this can be relied on as indicating that the German plan causes better accident prevention and therefore reduces the rates.

MR. WEGENAST: But that rate would necessarily, under actuarial calculations, have risen steadily for a period of twenty-five to forty years.

THE COMMISSIONER: They are such irregular figures.

MR. WEGENAST: They are regular in this way, that the peak was reached except in those few instances long before it would, under the actuarial calculations, have been reached; if they were isolated instances it would be different.

THE COMMISSIONER: Does not all you say, if you are right, lead to the conclusion that it would only be for a short time until the manufacturers would be under this larger burden that you are complaining of—only for a very short period?

MR. WEGENAST: I do not see how you draw that inference.

THE COMMISSIONER: You say that in most of these the rate would go down after it reached the peak in five or six years.

MR. WEGENAST: It is because they are conducting it on this current cost basis instead of the premium basis.

THE COMMISSIONER: You are begging the question; I would like to see some proof of that.

MR. WEGENAST: I can only offer that table and the opinions of those who are competent to speak on it.

THE COMMISSIONER: If you compare it with some other rate then of course your argument would be unanswerable, but you cannot make any comparison.

MR. WEGENAST: Not with this scale of benefits, but it is absolutely recognized in Germany that the current cost has had that effect.

THE COMMISSIONER: The obligation to pay is, I am inclined to believe, the thing that has had that deterrent effect, rather than the manner in which the payment had to be made.

MR. WEGENAST: If you impose the capitalized rate at once you will have a great deal of dissatisfaction, of course, but after that any reduction will be so much to the good. You can quite understand our position; if it is to have any effect on accident prevention (and I am asking you to credit us with a sincere desire to cut down the number of accidents), then we ask to have it invoked to our assistance, and I would be robbed of the biggest talking point, if I may so term it, in favour of the organization of these associations for the prevention of accidents.

THE COMMISSIONER: Then the Legislature would have to get after you.

MR. WEGENAST: Then you would choose the north wind instead of the south wind.

THE COMMISSIONER: Sometimes that is better.

MR. WEGENAST: It has not proven as good, as I think is shown in England.

THE COMMISSIONER: Do you think the manufacturer here is any less well equipped to meet the demand of such claims as we are discussing than the Englishman?

MR. WEGENAST: I do not know that I am competent to speak of that.

THE COMMISSIONER: If the English industries can stand the payment of all these claims in cash why cannot the manufacturers of this country protected by a tariff do it?

MR. WEGENAST: There again you get into a field in which I am a stranger, but suppose it were so, we are not asking for it solely on that account. I go on in the next paragraph:

"It is not proposed to enlarge upon the importance of the current cost plan in relation to accident prevention. If the slightest effect can be credited to the current cost plan it is conclusive."

THE COMMISSIONER: It seems to me that if a man knew that every time a fatal accident or one causing permanent disability happened he would have to put up the capital expenditure that he would be much more likely to take care that they did not recur than if he could say, "Oh well, it is all right, posterity will bear that."

MR. WEGENAST: It is only desired to add in anticipation of a possible counter observation that the capitalized plan with the immediate imposition of a heavy rate would at once produce a maximum shock to industrial conditions —itself a very serious matter—after which, the chill having been taken off, as it were, the incentive to accident prevention would be more insistent than it is now.

THE COMMISSIONER: Is it not in line with what you say in municipal matters? People think that if they can incur a debt and keep it off for forty years that it does not make any difference.

MR. WEGENAST: No, we are asking just as in the case of the Hydro-Electric and other schemes, that this current charge be loaded with a surcharge to create a sinking fund: precisely what is done in the Hydro-Electric system.

THE COMMISSIONER: That is different: the whole property of the municipality is answerable for it there.

MR. WEGENAST: But your suggestion is applicable. Supposing the Hydro-Electric system should go to pieces in five years: it is just as supposable as that the furniture industry will be wiped out.

THE COMMISSIONER: It is not as supposable as that one industry will go to the wall in five or ten years. What was passing through my mind a little while ago was this: supposing you have one hundred and fifty factories in a group and twenty-five of these have each fatal accidents; the twenty-five go out of business—fail, who is going to bear the burden?

MR. WEGENAST: I would say that they would more likely merge. If they failed the others would fall heirs to their business. The reserve would provide for that very contingency; the German reserve was for that very purpose, to provide for just such cases.

THE COMMISSIONER: In this country, it seems to me, without any catastrophe a number of industries will go to the wall, break down, and you propose to shift their burdens upon the others in the group at the time and upon those who come in afterwards. That is hard enough anyway, but if in

addition you make them pay the capitalized sum which the industry that has gone out of existence should have paid —

MR. WEGENAST: Is it more unjust to spread it chronologically than it is to spread it over the industries of the present?

THE COMMISSIONER: Perhaps there may be a hardship in spreading it over all the industries at present; I can readily imagine that in some cases there would be hardship.

MR. WEGENAST: My point is that it is no greater hardship to spread it over the future than it is to spread it over the present.

THE COMMISSIONER: That means that because you do a little thing it would not do any more harm if you did a big thing.

MR. WEGENAST: Well, you can put it that way; the objection is equally applicable in both cases.

THE COMMISSIONER: It is in principle but not in degree.

MR. I. B. LUCAS: What would happen with the firm that goes out of business in five years?

MR. WEGENAST: The others will have to pay for its accidents, but the others get the business.

THE COMMISSIONER: If it was simply paying the current cost it would be harder.

MR. WEGENAST: Then there is this answer; the German rate shows that the rate will never rise as it would have risen if it had been at the capitalized rate at the beginning.

THE COMMISSIONER: You recognize that there must be a reserve, a reserve sufficient to provide ultimately for all claims?

MR. WEGENAST: Yes.

THE COMMISSIONER: And it is only a question whether that reserve should be provided at the time the accident happens or be spread over five or six or seven years, as you say.

MR. WEGENAST: I do not say that.

THE COMMISSIONER: You say the peak was reached in that time.

MR. WEGENAST: Yes, in Germany. I think it could be well left to the administering Commission, and in certain industries the Commission could, if necessary, at once put on a surcharge of fifty or one hundred or two hundred per cent.

THE COMMISSIONER: We have in this country an industry that has practically gone out of existence, the oil refining industry. I can recollect the time when there were one hundred oil refineries where, I suppose, there are not three to-day. Would it not be pretty tough to load upon the three survivors all the accidents that have occurred?

MR. WEGENAST: If you loaded all the accidents—nobody proposed that—it would only represent probably a trifle of the insurance rates. Of course there would be a small pay-roll perhaps; there is the contingency against which the German system provides a reserve fund. It was frankly intended from the beginning not to set up capitalized reserves but to provide a fund which would take care of industries in times of financial depression.

THE COMMISSIONER: There is another class, the lumbering industries; there are dozens and dozens of those that have been in existence and have gone out.

MR. WEGENAST: Yes.

THE COMMISSIONER: That does not apply to the very large companies; would you not load up the survivors pretty heavily?

MR. WEGENAST: If it did, then it would be a question for the Commissioners to consider. .

THE COMMISSIONER: I would not like to leave the Commissioners to be log-rolled too much; I would avoid that as much as possible. I would not like to have Mr. Smith and Mr. Jones, and Mr. Brown, coming and saying: "Oh, I ought not to be called upon to pay." That would be very undesirable.

MR. WEGENAST: But it would not work that way. Mr. Smith's Association, the Lumbermen's Association, would come before the Commission and ask that their rate be reduced. They will say you are putting on too much of a surcharge; you want to pile up this reserve too quickly; we are not going out of business for fifteen or twenty years.

THE COMMISSIONER: I think if I belonged to that Association I would not come; I would sooner pay than take the chances of being loaded up with a lot of claims of people that had gone out. Take all these combinations that have been going on where the little men have been bought out, who would provide for their cases?

MR. WEGENAST: If they are bought out the industry goes on.

THE COMMISSIONER: No, lots of them are bought out to close them out.

MR. WEGENAST: Then somebody else is going to do the business they did.

THE COMMISSIONER: I suppose there would not be much harm in making those who have crowded them out pay.

MR. WEGENAST: There are those theoretical objections but they fade into insignificance, I submit, beside the practical results. One of the parties in this investigation, I think it was the C.P.R., talked about "the glamour of things German," and referred to the tendency on the part of Englishmen to consider things German—

THE COMMISSIONER: I thought it was just the other way.

MR. WEGENAST: I would have thought so, but I want to say this: we should surely impute to this German information a basis of actuarial soundness. If any nation should be credited with a desire and a care to put their

finances on a sound basis, to conduct things soundly, I think it is the German nation.

THE COMMISSIONER: I do not care what scheme you adopt it must be largely experimental. There has not yet been sufficient experience to warrant anybody in saying of any scheme that it is not open to objection, or that it may not turn out not to answer anticipations. Would it not be a great deal better to start as Washington started, and if in the course of a short time it is found that it is not necessary to make these reserves, that the thing can be carried on successfully upon the principle you are advocating, then that could be substituted?

MR. WEGENAST: If it were not for two factors, the immediate increasing of the cost by three or four times, and the avoidance of the incentive to accident prevention.

THE COMMISSIONER: You know the manufacturers could never be better off than they are to-day; had they not better pay when they are flush?

MR. WEGENAST: Mr. Commissioner, you should address those arguments to our Committee. I cannot go beyond my instructions; there are hundreds of members of our Association who believe we are going too far in this thing.

THE COMMISSIONER: I do not want you to acquiesce in anything; as a representative of the manufacturers I would not expect you to give way in anything whatever I might get you to do privately.

MR. WEGENAST: Well, privately my opinion is just as strong; stronger, if it comes to that.

THE COMMISSIONER: No man can estimate his unconscious bias, how far it may affect his judgment.

MR. WEGENAST: I suppose that is true, but I do not think I am any more subject to that than the ordinary man.

THE COMMISSIONER: I do not suggest that; you would be more than human if you were not subject to it. You seem to have got a kind of scunner against the C.P.R. You must not forget that Mr. MacMurchy is a poet and why should he not put it in poetic form?

MR. WEGENAST: It was not the poetry I was objecting to, it was the prose part.

THE COMMISSIONER: That was just apropos of what you said about the "glamour of things German;" that was a nicely turned expression.

MR. WEGENAST: "Reference is made by Mr. Wolfe to the danger that industries may be driven to the wall by increase in the rates and the system therefore collapse like an assessment life insurance system. Sufficient has already been said with the German rates as illustrations to dispel any practical apprehension. Theoretically it is of course possible to conceive of an industry, such as for instance, the liquor industry, being wiped out. But it could scarcely be considered within the realm of practical possibility that a whole industry-group should perish from the imposition of any reasonable premium rate such as the German rates are."

THE COMMISSIONER: Everybody is joining in throwing stones at that industry; why are you throwing stones at it?

MR. WEGENAST: It furnishes a ready example.

THE COMMISSIONER: It is an easy thing to shy at, I suppose.

MR. WEGENAST: Yes, it is everybody's mark.

"In any case, as has been pointed out, the total liability would be only a small percentage of the pay-roll. Any danger there may be is of course a matter for consideration in determining the amount of reserve-margin which should be imposed, and it might be found advisable to charge a higher margin in some industries than in others.

"It is unnecessary to add after what has been said that the object in establishing a reserve fund is to provide for just such contingencies as the cessation of any particular industry.

"Reference has already been made above (at page 16) to the sentimental objection that the industries of the future will be required to pay claims in respect of accidents which occur at the present time, and it has been pointed out that this objection is fully met by the consideration that the present is now paying indirectly for the accidents of the past and that it would be unfair to load the present community with the burdens of both the past and the future.

"A final and conclusive argument in favour of the current cost plan is that no other is practically possible. This brings me to deal with Mr. Wolfe's contention in its positive form, namely that the rates should be based on the capitalized plan.

"I would like to interject in analyzing Mr. Wolfe's brief that I fail to find any really definite conclusion which it was intended to develop. There were a great many criticisms at large on the German system and on state insurance, but he wound up by recommending a state insurance system, and a system more bureaucratic than the German system. If there are any conclusions to be drawn from the general tenor of the brief, and his verbal remarks in connection with it, they would be these; first, state insurance should be avoided as far as possible; secondly, the current cost method of computing premium rates is unsound and undesirable. I think that is all the brief amounts to. In their positive form the conclusions should be put this way: first, that a sphere of activity in workmen's compensation insurance should be preserved for private liability companies, and second, that premium insurance rates should be computed on the capitalized plan. I remark in passing that these questions are much more difficult to support in the positive form than in the negative form.

"This brings me to deal with Mr. Wolfe's contention in its positive form, namely, that the rates should be based on the capitalized plan. As Mr. Wolfe has given no reason for this positive contention except the purely sentimental reason above referred to, it is perhaps unnecessary to anticipate any argument. I have already in my brief at pages 63-65, and in the interim report page 107-109 referred to the great difficulties in the way of an accurate capitalization calculation. In the absence of positive experience any attempt to capitalize must be purely speculative and empirical. All the general experience in the world will assist very little where there is a

substantial variation in the scheme of benefits or in any other one of the many factors affecting the rate. No serious effort has been made to reduce these factors to a scientific basis. A graduation essay by an actuarial student in Scotland, published in Volume 36 of the Journal of the Institute of Actuaries, serves to show the tremendous and in fact insurmountable difficulties in the way of actuarial calculation in this branch of insurance.\*

THE COMMISSIONER: Is that not rather with regard to temporary disability?

MR. WEGENAST: No, I would have thought it was the other way around.

THE COMMISSIONER: I cannot see that at all. There is no difficulty in ascertaining over a number of lives what is necessary for reserves where there is a pension payable. You do not dispute that?

MR. WEGENAST: Absolutely, yes.

THE COMMISSIONER: You go counter to everybody then?

MR. WEGENAST: No, I think not; I am supported absolutely by all the evidence that can be got from the liability companies. Just to-day I got an article covering two pages of the Journal of Commerce, an article by a prominent actuary, showing it is absolutely impossible to capitalize correctly.

THE COMMISSIONER: Do you seriously argue that it is not possible to arrive over a number of lives at what is necessary to set aside to meet annuities?

MR. WEGENAST: Putting it broadly or baldly that way I will admit there is a possibility, but there are so many factors that come in.

THE COMMISSIONER: How do you mean?

MR. WEGENAST: So many factors come into it.

THE COMMISSIONER: Take a simple case; there is, of course, this widow business.

MR. WEGENAST: That is one.

THE COMMISSIONER: A jury has to do that under the present law.

MR. WEGENAST: In an empirical way.

THE COMMISSIONER: There is not any science about that.

MR. WEGENAST: On page 59 of my brief—I cannot say off-hand what page—it is in the interim report—I say, "In life insurance there is always a firm basis in the mortality tables which though subject to some fluctuation, do not substantially vary in different localities or at different times. Employers' liability on the other hand is subject to a variety of factors and conditions, many of which are not susceptible of anything like accurate calculation."

I say, of course, "in the absence of statistics": it is admitted in Germany where statistics are most complete.

THE COMMISSIONER: I cannot understand that as applying to a man or a woman who is permanently disabled, totally or partially, and entitled to a pension

for life; it seems to me that you can with perfect accuracy arrive at the present value of that payment.

MR. WEGENAST: Surely not with perfect accuracy?

THE COMMISSIONER: Why not? If he is totally impaired and he was entitled to a full pension for life, is there any difficulty in ascertaining that pension, if you are given the age?

MR. WEGENAST: That is where the difficulty is; that life is impaired and it will drop out sooner than you expect.

THE COMMISSIONER: That might be.

MR. WEGENAST: If there is a 10 per cent. impairment, you don't know what time that man may come back and get a readjustment, get 50 per cent.; you don't know when he will go back to work and go out altogether.

THE COMMISSIONER: It is very easy for you if it is made on a lower basis; that is, easing the man who has to pay.

MR. WEGENAST: Yes, but I am addressing myself to the possibility of obtaining accurate statistics.

THE COMMISSIONER: If you cannot get accuracy you can be as accurate as possible.

MR. WEGENAST: "First and foremost is the question of the operation of the laws under which the liability is imposed; whether and to what extent the liability rests upon fault on the part of the employer; whether and to what extent it is affected by fault on the part of the employee; what defences are available to the employer in an action by the workman; whether the remedy of the workman is a single one or whether he has a choice of two or more remedies; to what extent the method of adjustment involves expense in litigation or otherwise; whether the method of adjudication permits of punitive or exemplary damages. Another factor is of course the hazard or probability of the occurrence of an injury. This depends primarily upon the nature of the occupation and is subject also to other influences such as the degree of care exercised in guarding machinery, etc."

THE COMMISSIONER: You are talking about insurance; I am not talking about that at all, I am talking about where the claims are established, what difficulty there is in determining what is a proper reserve to set aside to meet the claims.

MR. WEGENAST: There is the difficulty to which I referred, the question of the permanency and the extent of the injury; in the case of the widow the question of re-marriage; in the case of children the duration of their lives; and the question of the probability of the workman being married.

THE COMMISSIONER: I do not understand that.

MR. WEGENAST: The probability of his having children.

THE COMMISSIONER: What workmen?

MR. WEGENAST: I understand you have in mind the Washington Act under which when an accident occurs the capitalization is made up. That is under a

system of assessment which I suppose, from your former remarks, would not be adopted in this province; that is a system of individual capitalization.

THE COMMISSIONER: I do not see that makes the slightest difference. If you have a pension of \$20 a month, or whatever your sum is, I think you can arrive, approximately at all events, at what sum it would be necessary to put aside to secure that payment.

MR. WEGENAST: I am assuming, of course, a different system from that. I thought you had expressed yourself in favour of an assessment system of a different type from the Washington system.

THE COMMISSIONER: No, the Washington system is practically an assessment for certain cases; for temporary disabilities, it is an assessment on the current cost.

MR. WEGENAST: In advance.

THE COMMISSIONER: That does not touch the thing really. It is really an assessment for the awards, as Mr. Hinsdale calls them, in each year as the awards become payable, but when you come to permanent claims it is on the capitalized plan. Is that not the way it is, Mr. Hinsdale?

MR. HINSDALE: On the capitalized plan so far as the cases which are definite are concerned. Where a man has died and his widow is entitled to a pension it is undoubtedly on the capitalized plan; for running or temporary disabilities it is not. A man may be in the hospital, you do not know how long, possibly ten years, but until it is represented to us that it is permanent we pay in what might be called practically a current cost way; we do not set aside a reserve. There are cases now where we are paying on the monthly basis plan, as we may on our current monthly award list; as time goes on we may have to transfer them over to the permanent disability.

THE COMMISSIONER: Then a capitalized sum has to be assigned and set aside?

MR. HINSDALE: Yes, but meantime we are paying items which next year may have to stand, so that in that regard we say it is a combination of current cost and capitalization.

THE COMMISSIONER: As long as a man is on your list as temporarily disabled it is current cost?

MR. HINSDALE: Exactly, sir.

THE COMMISSIONER: When it passes from that list it becomes capitalized?

MR. HINSDALE: That is undoubtedly true.

MR. WEGENAST: There is a possibility of reopening the case?

MR. HINSDALE: Yes. There are a great many cases where a man has been injured and may do good work; in the course of a year or two years it may turn out that the injury has led to very serious results, he may have become incapacitated.

THE COMMISSIONER: On the other hand a man whom you thought permanently injured may turn out not to be?

MR. HINSDALE: Yes. We had a case where a physician had reported a man's eyes destroyed; at that time we could have capitalized it, but we were doubtful of the case and waited; gradually the man's eyes got better.

THE COMMISSIONER: Would you credit back the capitalized sum or would you leave it in the reserve?

MR. HINSDALE: Under the Washington act as the Legislature has interpreted it we are supposed to credit it back. The question arose at one time with regard to a widow with children; we set aside a reserve of \$1,000; she remarried. The Commission did not feel disposed to credit back all that money for the reason that the children had to receive a pension until they were 16 years old; we credited back part of it and retained sufficient in reserve to justify the pensions to those children.

MR. WEGENAST: I have been talking of a system in which a preliminary assessment would be made on the classes to raise a preliminary fund, and after that first year the assessments would always be made with reference to the accidents of the previous year.

THE COMMISSIONER: That gave room for attacks upon the Washington system, calling it a premium system; it is really not that at all; it is simply an initial provisional payment to meet the losses for the first year.

MR. WEGENAST: Yes. The liability companies in their publications are assuming that it is a premium rate.

THE COMMISSIONER: Undoubtedly. They did not probably fall into that error designedly; it is what a person cursorily reading the act would think of it.

MR. WEGENAST: But they are not supposed to read it cursorily.

THE COMMISSIONER: Even lawyers read some things cursorily.

MR. WEGENAST: "All the general experience in the world will assist very little where there is a substantial variation in the scheme of benefits or in any other one of the many factors affecting the rate. No serious effort has been made to reduce these factors to a scientific basis. A graduation essay by an actuarial student in Scotland, published in Volume 36 of the Journal of the Institute of Actuaries, serves to show the tremendous and in fact insurmountable difficulties in the way of actuarial calculation on this branch of insurance.

"In the Washington system an attempt has been made to capitalize. Opponents of the system express disparaging doubts as to the sufficiency of the basis. The argument of course recoils, for any system of individual liability must involve much greater complexity in capitalization. But if the basis is insufficient it simply means that the current requirement will gradually raise the rates, so it might have been as well, as appears from the first annual report, to charge an advance of about fifty per cent. on the current requirement. One method of assessing rates would therefore be to start on the basis of the current cost and add a margin for reserve, large or small, according as a temporary running ability was feared or otherwise. In either case the method would be scientifically correct and absolutely sound, while an attempt to capitalize must be at best an approximation, as is

shown by the experience of the building associations in Germany." I hope you have not finally ruled out Mr. Hinsdale's expression of opinion on that observation?

THE COMMISSIONER: I understood Mr. Wolfe to say that it was not a good plan to group according to the industries with sub-classifications, as Washington has done; that the proper plan would be to group according to hazard. I suppose that would be impossible under such a system as you are wedded to.

MR. WEGENAST: That is true; I would like to deal with that. I consider that one of the most important points in the whole subject.

THE COMMISSIONER: I suppose there are several of these groups—entirely independent groups—that have the same rate?

MR. WEGENAST: Oh yes.

THE COMMISSIONER: Mr. Wolfe would put all those in one group; if we had his Massachusetts schedule we could see.

MR. WEGENAST: "This raises a question of the greatest possible importance in connection with compensation insurance, namely of the choice of two avenues of approach to the actuarial phase. One method is to attempt to appraise each separate individual risk or employer and to assign to it or him a proper insurance rate representing the hazard assumed. Another method is to pool all the accidents of a group of industries and to assess the cost of compensation *pro rata* over the members of the group?"

THE COMMISSIONER: There is a third one he advocated. Supposing that for painters a proper rate would be fifty cents, and for some other industry, say blacksmithing, the same rate, and for some other industry the same rate; I understood him to say that the proper system would be to put all these into one class.

MR. WEGENAST: Will you bear with me if I read a few sentences more and then make the application? "The first method is represented by the Ohio system:"

In my opinion the Ohio system has been run to the ground because of the adoption, contrary to the anticipation that Mr. Boyd has expressed, this Commission of the individual rating system, and the Massachusetts system has miscarried by adopting the method which Mr. Wolfe recommended

"The second by the Washington system. The first treats each employer as a segregated unit; the second merges the individual employer in the group. The first appraises the employers' risk as it is found, the second assumes that the risk is the same, or ought to be throughout the group. It is unhesitatingly submitted that the second is the proper method and standpoint, and the one most conducive to the prevention of accidents. The reasons for this submission are illustrated by a conversation which I overheard while this memorandum was under preparation. I chanced to be riding in the smoking compartment of a railway coach with the managers of the two largest tanning industries in Canada. One of them remarked to the other: "I see you had another accident on that fleshing machine of yours last week. Isn't there some way of guarding that machine?" Then

apparently realizing that he might be thought officious he added apologetically, " You know under this new compensation scheme we will all be grouped together and we will have to pay for your accidents. This indicates precisely what would be the inevitable result of a pooling of the different industries in respect of accidents and their cost. The only argument against such a system of pooling is the injustice to the more progressive employers. But such an injustice need not continue. Either the weaker members of the group would have to measure up to the stronger or sub-classification would be necessary to penalize the less careful employer. The point I desire to make here is that *any differentials in the rate should be left to spontaneous action on the part of the groups.* This would bring home, as would otherwise be impossible, the exact relation of accident prevention to the insurance rate. In other words it should be assumed, until disproven by experience, that the hazard of each employer in the same industry is the same."

Instead of segregating them you put them into the same group; they fight it out amongst themselves if there is any real difference in the hazard.

THE COMMISSIONER: What difficulty would there be, supposing the tanner and brewer have the same hazard? There would be a larger exposure.

MR. WEGENAST: The problems of accidents in the brewing industry are entirely different from those in the tanning industry; it would simply mean that the two sections would have to be organized separately. It would not have the same influence over the rate, and employers would be to that extent discouraged from activity in preventing accidents; in other words, the smaller the group the greater incentive to accident prevention: the larger the groups, perhaps the greater the safety.

THE COMMISSIONER: Somebody gave this illustration, probably apt; how many men there are who go into the contracting business just for one or two jobs; what are you going to do with that class of people?

MR. WEGENAST: Assess a premium rate necessarily, a fully capitalized premium rate. I have a submission on that point.

THE COMMISSIONER: It seems to me the manufacturers are abandoning their weaker brothers to the tender mercies of the wolves.

MR. WEGENAST: No, we say leave it to the Commission, but arrange the system in such a way that it will be open to them to adopt the current cost plan.

THE COMMISSIONER: Why should it not be adopted right away in that class of business?

MR. WEGENAST: I am quite satisfied.

THE COMMISSIONER: If it is good in that class why is it not good in all the classes?

MR. WEGENAST: Because of that radical difference which you have pointed out.

" An epitome of the practice and experience under the German system of rating is given in the following extract from the article by Dr. Zacher, the head of the Imperial Insurance office, in a German encyclopædia, the Handwörterbuch der Staatswissenschaften, Vol. VIII., Jena, 1911: Com-

pension payments are advanced by the post office on the order of the directors of the trade associations and are liquidated by the latter at the end of their fiscal year. The amount of these payments, together with the cost of administration, and the amount required to be set aside towards the reserve fund, are assessed upon the members of the trade associations, so that not the capital value of the pensions but merely the actual requirements of the previous year are met. This method has the advantage over the capitalization method that the burden of accidents rises only gradually and a large amount of capital remains at the disposal of the industries, until (after about fifty years) the rate reaches its maximum where the liabilities written off constantly balance those incurred. Since, however, under the assessment method the average annual rate after it has reached its maximum would be considerably higher than under the capitalization (premium) method, the amendment law, for the purpose, on the one hand, of obviating such an increase in the future, and on the other hand of enabling the transition, later, to the capitalized premium basis, in itself correct, has provided for a further increase of the reserve fund already accumulated, the interest of which is to be employed (after the year 1922) for the purpose of avoiding further increase of the assessment rate; thus to secure a permanent uniform rate representing an approximate mean between the capitalization (premium) rate and the maximum current cost rate."

THE COMMISSIONER: Apparently Dr. Zacher says that the capitalized system is the proper system, that the other is a concession to weakness.

MR. WEGENAST: I hardly think that is a fair interpretation. He does not say it is the proper system, he says: "proper enough."

THE COMMISSIONER: No, I do not understand it that way.

MR. WEGENAST: That is the German expression. I do not know whether I have properly conveyed it, "in itself correct."

THE COMMISSIONER: It does not say "correct enough." I think I understand what he means; he says that is the proper thing and ought to be adopted but for the withdrawal of too much money from the industry.

MR. WEGENAST: That is not the inference from the original; I have forgotten the German expression, but I am perfectly certain as to the inference.

THE COMMISSIONER: The context shows what he means. He says to adopt the capitalized system would be to withdraw too much money from the industries, and therefore while it is in itself a proper thing, it ought not on that account to be adopted at present, on account of the cost.

MR. WEGENAST: I am willing to leave it to you, sir. The words are *an sich richtig*.

THE COMMISSIONER: That is "in itself right." He certainly does approve of the current cost, because to adopt the other which in itself is the right thing would withdraw too much money from the industry.

MR. WEGENAST: It makes very little difference to us in the result what argument is adopted for the system as long as we get it.

THE COMMISSIONER: That is the only reason he suggests it as I understand. I have the permission of Dr. Zacher to communicate with him directly and he will give me any information that he possesses on the point; possibly, if there is time, I may avail myself of that privilege.

MR. WEGENAST: Then there are a number of things in Mr. Wolfe's brief which I will touch on in a moment. I will hand in my whole answer. There is this to be said in answer to the contention advanced both by the Canadian Pacific Railway and by Mr. Wolfe and by Mr. Sherman for them:

"That a system based on the principles of the German system must be the result of peculiar pre-existing conditions and of gradual growth and development. It may be true that the solution devised in Germany was suggested to some extent by the existence of the *Berufsgenossenschaften*, but it is also true that the number of these was comparatively limited."

THE COMMISSIONER: That was not all he said; he said that it was necessary that the German system should have a great many things that the people of America would not stand.

MR. WEGENAST: I am dealing with that.

"And that in many, if not the majority, of the industries it was necessary to create associations *de novo*. The establishment of a workmen's compensation system based on employers' associations, was undertaken only after many years of academic discussion, and then upon well formulated plans laid before Chancellor Bismarck on behalf of the employers of the Empire. Indeed the form of the English act cannot be attributed solely to the lack of associations of a similar character, and it is to be remembered that the English act contemplated, and in fact expressly provided for the organization of, such associations. This was an expectation based on a misconception of the principles underlying the German system."

THE COMMISSIONER: It is an important factor, though, that a very large part of the cost of the German system does not appear as part of the cost.

MR. WEGENAST: I would say not a very large part.

THE COMMISSIONER: They primarily fix all compensation themselves.

MR. WEGENAST: But that is included in the cost.

THE COMMISSIONER: I know, but that would all have to be done by this Board under a system such as is proposed. There would be no voluntary association or no association that would undertake that gratis.

MR. WEGENAST: Precisely, and to that extent the two propositions are not operated similarly. We propose that the Government should pay part of the cost of administration as it does in Germany and in Washington: it is not necessary that compensation should be made through the associations.

THE COMMISSIONER: If you make it any other way it adds to the cost of administration.

MR. WEGENAST: Well, it would increase the cost of administration if it were to be done by sixty-six or more associations.

THE COMMISSIONER: I do not see that, if they get nothing for it.

MR. WEGENAST: There must be expense and there must be officials.

THE COMMISSIONER: When you take a table and say the German system has cost so much to administer, that is not a fair test of the cost of administration, as one of these gentlemen pointed out.

MR. WEGENAST: If there is any unfairness in the comparison it works the other way, I think.

THE COMMISSIONER: Supposing somebody figured out by reference to the German system that it would cost this Province \$150,000 to administer the fund, would it not at once be a proper answer to assume that there are certain factors that ought to be brought in when you are dealing with a system such as is proposed here—that is, when comparing the cost of settling these claims, which is not done in Germany at the expense of the fund?

MR. WEGENAST: And for that reason a larger proportion should be allowed.

THE COMMISSIONER: A larger proportion of expense should be credited to the German system if you want to compare the working of such a scheme as is proposed here. We do not find anybody here willing to work for nothing, nor even for \$6 a day as Mr. Hinsdale speaks about.

MR. WEGENAST: The idea that was in my mind was that the Washington system is not open to that reflection, and that it shows much better results because, as I think, it may fairly be assumed that the centralization of control and the minimizing of the number of officials lowers the expense.

"The incontrovertible superiority of the collective liability systems as demonstrated by logic and experience cannot be summarily disposed of by the assertion that the Province of Ontario lacks the necessary facilities and the ability to supply them. The Government of this province has successfully dealt with other undertakings requiring ingenuity and courage. It would be disparaging to the people and the Government of the province to assume an incapacity to apply any principle regarded as desirable whether its success had been conclusively demonstrated in other jurisdictions or not. Fortunately, though it may detract from the credit of originality, there is at least one example of the successful application of the collective liability principle in a jurisdiction having no more facilities, and much less experience than the Province of Ontario. I refer to the State of Washington. It may be sufficient at this point, without discussing the system on its merits, to say that the experience of that state points to most successful application of the collective liability principle yet achieved in any jurisdiction in the world."

THE COMMISSIONER: I do not think it does; it is largely on the current cost.

MR. WEGENAST: I am speaking of the grouping principle.

THE COMMISSIONER: Oh yes.

MR. WEGENAST: If I had time I would like to refer to what Mr. Sherman and Mr. Wolfe adduced in regard to the workmen's compensation scheme and

the State ownership of railways. I may say, however, that the success of the Hydro-Electric system in this province has been no small factor in encouraging the Manufacturers Association in taking the stand it has in favour of a State system.

Then Mr. Wolfe gave voice to a criticism respecting the scale of benefits under the German system and pointed out that it was based on the diminution of earning capacity, and that when the earning capacity was restored the benefit ceased. He speaks of that as a fundamental difference between the German idea and the American idea.

"It is not quite apparent in what respect this difference is fundamental but two inferences are perhaps intended to be drawn—first, that in the United States and Canada workmen would desire a more generous scale of benefits, and second, that workmen in this country would object to the supervision necessary in administering a periodical payment compensation system. The latter is perhaps more than an inference, for it is stated that 'the supervision and paternalistic watchfulness which the German Government, acting through the mutual associations, exercises over the injured workmen would be repugnant to our workmen and would not be tolerated; such, for instance, is the provision that if the association provides proper employment for the workman, and he refuse to accept it his compensation stops at once.'"

I may remind you that this is simply an elaboration on what my learned friend Mr. MacMurchy has chosen to say in his brief.

"This is one of the characteristically vague ideas advanced by opponents of the German system. The answer to it can be best expressed in the interrogative form. What would Mr. Wolfe suggest instead?"

THE COMMISSIONER: I think the better answer to all this is that in England that is done under their compensation act.

MR. MACMURCHY: I pointed that out.

MR. WEGENAST: "Would he pay compensation in a lump sum? If not would he go on paying compensation after the workman had recovered? Would he take no notice of the fact that a workman had been offered remunerative employment? Should the workman receive a compensation pension in addition to his earnings after he has recovered? The only logical answer that can be given is that the payment should be in a lump sum, but this has been negatived by Mr. Wolfe in his verbal remarks. It would be pure speculation to select any one of the horns of the dilemma for Mr. Wolfe as an alternative to the supervision which he deprecates."

THE COMMISSIONER: That might be changed a little, "if he could get suitable employment and would not take it" that would be a reason for stopping or decreasing it. That is so in England, I understand; a man is not entitled to say "I am hurt, I have got so much, I won't work"; nobody would advocate a system of that kind.

MR. WEGENAST: But the implication from Mr. Wolfe's criticisms is that the man should be paid and settled with.

THE COMMISSIONER: If there is anything I am settled upon it is that there shall be no lump payment except in exceptional cases and where ground is made

for departing from the general rule. I think it would be entirely opposed to the whole principle of the legislation to allow lump payments to be made.

MR. WEGENAST: If you will allow me I would like to make the suggestion that even in the Washington act it would be better if the lump sum payments which are paid in cases of permanent partial disability were spread over a period of years as Mr. Hinsdale has suggested.

THE COMMISSIONER: At present I like the British system; it does not matter whether it is temporary disability or permanent disability: all are periodical, not lump sum payments, unless the judge of the County Court makes an order to the contrary.

MR. WEGENAST: Would it not be well to have the payments in cases of total disability and death *prima facie* periodical, with permission to the Commission to convert that into a lump sum under proper restrictions, and then have the payments for permanent partial disability *prima facie* in lump sums with permission to the Commission to change it?

THE COMMISSIONER: No, I would not favour that; I would put it the other way. Is not that one of the things to be guarded against, as everybody has said, the prevention of a workman becoming a charge upon the community, injuring his self-respect, and burdening the community with his support?

MR. WEGENAST: Precisely, but I think you have not in mind what I have. Take a man who loses a couple of fingers, would you pay him a pension of ten cents a day or twenty cents a day, or whatever might be the mathematical diminution in his earning capacity?

THE COMMISSIONER: That would be a matter, as I think at present, I would leave to the Commission to determine. If it were a small sum they might pay it. Who was it gave the instance of the man who got rid of his \$1,500 in a week?

MR. WEGENAST: Yes, in the case of the loss of an arm it would be different, but I am speaking of very minor injuries.

THE COMMISSIONER: Of course common sense would have to deal with that.

MR. WEGENAST: Time will not permit me to refer in detail to many other grave errors in the statements of fact and otherwise of both Mr. Wolfe and of Mr. Sherman, but they should not remain uncorrected on the record of this Commission. Whether these statements were due to carelessness or to disingenuousness, they vitiate the whole of the testimony offered by these gentlemen; I say that advisedly. Mr. Wolfe has based almost his entire presentation of facts, or supposed facts, upon the 24th Annual Report of the United States Bureau of Labour, and he is apparently not unwilling to have us believe that he got this material from original sources. As an example of that I would like to read another page or two.

"On pages 13 and 14 Mr. Wolfe cites some 'German rates from the Amtliche Nachrichten des Reichs-Versicherungsamts, 1908 for the Kingdom of Hanover,' taken apparently from the translation of the 24th Annual Report of the United States Commissioner of Labour (page 1063). The tariffs of five of the German Agricultural Associations for the years

1909 and 1911 are given in the report, and Mr. Wolfe has selected one of them and compared some of the rates with some of the proposed rates for the Massachusetts state system. I have not had access to the Massachusetts rates but I strongly surmise that Mr. Wolfe's rates are taken from a general schedule covering not the building trades but intended to cover all persons in the occupations specified. Thus when Mr. Wolfe speaks of "copper-smiths" his rate no doubt includes copper-smiths working in shops and not necessarily building copper-smiths. When he speaks of "wood-turners" in Massachusetts he doubtless refers to wood-turners working in shops, but he compares these wood-turners selected from a large group including masons, concrete workers, glass grinders, etc., all directly connected with the building trades. The various classes appearing under the head of "occupation" in Mr. Wolfe's list are, in their apposition to the German rates cited by Mr. Wolfe, really sub-classes under the head of building trades, the methods of sub-classification in the German association being much more elaborate and refined than those of liability companies in Canada and the United States. It is absolutely misleading to compare the rates of these sub-classes with rates under the same class-name representing or including different phases of the occupation in America. The most glaring example of this miscomparison is the rate cited by Mr. Wolfe under the head of 'woodworking with the use of circular saws, band saws, planing machines, boring machines and grooving machines (with power)'. The rather misleading rendering of the American translator appears to have led Mr. Wolfe into a curious error. The occupation referred to by Class A L. of the Hanover schedule is that of operating small, portable sawing, planing and boring machines driven by a gasoline motor (*motorenbetrieb*) and employed upon buildings in the course of erection. The operation of these machines combines the hazards of woodworking machinery with the dangers ordinarily attendant upon building operations and the risk of an explosion of gasoline. The rate for persons engaged in operating these machines, 12.50 per cent., is compared by Mr. Wolfe, apparently, with the proposed rate under the Massachusetts system for the ordinary operation of wood-working machinery in factories, namely, \$3.00. Further comment upon the accuracy of the comparison in the Memorandum is unnecessary."

Then on the face of the thing it shows that there is a miscomparison: it shows the German rates are away below the Massachusetts rates, and that for a much heavier scale of benefits.

MR. MACMURCHY: He gives it 10 instead of 20.

MR. WEGENAST: That is an estimated rate.

MR. MACMURCHY: There is nothing to show it is an estimated rate: the German rate is not shown to be approximate.

MR. WEGENAST: No, but it is. I would ask Mr. Hinsdale—

MR. HINSDALE: The tearing down of buildings and the moving of houses and the moving of safes, which we construe to include the moving of heavy machinery, are all grouped together. It is the worst class we have: we do not really get the money we should get for the demolition of buildings.

We take a contractor's pay-roll; he reports he is paying his carpenters so much money, we credit it up in that class 5 for construction work. As a matter of fact many of those carpenters were engaged in tearing down buildings, and class 4 does not receive proper credit. I have taken that up with the Commission and there was an adjustment made transferring a certain amount of money from class 5 to class 4. The demolition of buildings is a very dangerous class.

THE COMMISSIONER: They have a curious name in England, "house-breakers."

MR. WEGENAST: "As a matter of fact the proposed Massachusetts rate is a fair example of a rate under a liability system. The average German rate for a much more generous scale of benefits is given in Bulletin No. 90 of the United States Bureau of Labour under the general head of "Cabinet making (power)" for the year 1908 as 1.93 per cent.; and on page 24 of the Memorandum Mr. Wolfe himself gives the average rate for the wood-working industry as being .61 per cent. in 1886 and 2.03 per cent. in 1908. The rate shown by one year's operation of the Washington system under the head of "Wood-working" is .79 per cent.

"I have not the 'Amtliche Nachrichten des Reichs-Versicherungsamts' for the year 1908, but the volume for 1911 gives at page 608 a tariff of rates of the Hanover Building Association which would apparently correspond to the rates cited by Mr. Wolfe. A full translation of this tariff is given below.

"Mr. Wolfe has carefully selected certain rates—perhaps I should not say carefully, he has selected certain rates from the tariff published in the 24th Annual Report, and compares them with certain rates in his proposed Massachusetts schedule; the schedule shows absolutely the opposite of what Mr. Wolfe intends it to show. Here is a schedule taken from the volume of the next year, and if Mr. Wolfe had the original sources of information he should certainly have taken these; I found this accidentally. It shows there has been a cut in the rate of practically 50 per cent. These building rates have been running along in Germany presumably from the beginning, at approximately the rates quoted by Mr. Wolfe. Apparently it was found necessary in 1911 to cut down those rates. Mr. Wolfe gives the rates from the 24th Annual Report for architects as one and a half per cent. The rate in this new schedule for architects, as you will observe, is thirty cents on \$100; it has been cut to one-fifth of the rate quoted by Mr. Wolfe. The rate for cabinet makers is given as \$1.50 and the rate in the schedule is 70 cents, and so on. It is only in the most hazardous classes the rate is as high.

You will find by reference to the schedule that the rates have been cut by 50 per cent. or cut in two.

"Showing incidentally the difficulty after twenty-five years' experience, in capitalizing correctly, and confirming the passage from Schwedtman and Emery quoted below. Incidentally also this situation reveals an injustice as glaring in the capitalization plan as any Mr. Wolfe can possibly find in the current cost plan. The employers of the past have evidently been obliged to pay a rate which has been too high and which has piled up reserves for the advantage of the present employers. But even under the older rates cited by Mr. Wolfe, in every case where the com-

parison is fair the German rate is lower than the proposed Massachusetts rates. The new rates of the Hanover Association are less than half the proposed Massachusetts rates."

That is only an example. When it comes to Mr. Wolfe's brief the errors in statements of fact are still more numerous. I do not like to pose as an expert, but it does not take an expert to contradict these gentlemen; it is really deplorable that the statements made should be left uncontradicted. It is very late, or I would point out some errors in Mr. Sherman's brief.

THE COMMISSIONER: You might spend an hour or two to-morrow in writing them down.

MR. MACMURCHY: Has a copy of Mr. Wegenast's brief been sent to Mr. Wolfe?

THE COMMISSIONER: If he wants it he can probably get it.

MR. WEGENAST: I sent a copy to Mr. MacMurchy and I think I mentioned that a copy would be sent to Mr. Wolfe. I would be most happy if Mr. Wolfe were here, and if Mr. Sherman were here, I would have been most happy to have taken Mr. Sherman's brief to pieces right on the spot while he was here, but it was too late. I have noted on a piece of paper here the errors in statements of fact in the first five pages in Mr. Sherman's brief, and this is the way it looks. (Shows Commissioner). These are important errors in statements of fact. Here is one that just catches my eye, "the European systems are all on a flat payment basis;" that is absolutely untrue. There is not a single one on the flat payment basis; they are all on the wage basis. If he meant that they were all on a lump sum basis it is still untrue because there are only four on a lump sum basis, and those four provide for a change from the lump sum to periodical payments.

THE COMMISSIONER: I do not think that is what he meant. Did he not mean that each member of a group paid the same rate?

MR. WEGENAST: If he meant that he was equally and just as absolutely wrong.

THE COMMISSIONER: I think in the main that is so. In the Washington system there are some cases where there are sub-classifications, but in the main it is otherwise.

MR. WEGENAST: But he is speaking of the European systems. I hesitate to suggest that I should have a little more time to outline the position of the Association along the different lines.

THE COMMISSIONER: I think you had better put it in writing. We will have a talk around the table, as I have said, after all the evidence, if we may call it evidence, has been put in.

MR. WEGENAST: I should have referred to the remarks made by Mr. Ritchie as to my not representing the Manufacturers Association.

THE COMMISSIONER: I do not understand what you mean.

MR. WEGENAST: In fact my learned friend adopted the very desperate expedient, which I suppose he would not have adopted except in a very desperate case.

of going behind my retainer and suggesting I did not represent the parties that I purported to represent.

THE COMMISSIONER: I shall take it that you represent the Canadian Manufacturers Association until somebody comes here and says the contrary.

MR. WEGENAST: I should like to make that abundantly clear. I am quite willing to enter into the merits of the question, whether I do actually represent the opinions of the manufacturers.

MR. BALLANTYNE: I do not think Mr. Ritchie meant to suggest that you did not represent the Manufacturers Association.

MR. WEGENAST: I had the pleasure of reading Mr. Ritchie's remarks to-night for the first time. His suggestion is that I am representing my own personal opinions, and that somehow or other I have got the endorsement of some members of the Committee to these personal opinions of mine.

THE COMMISSIONER: You need not waste time on that. I will take it for granted until somebody comes here to state the contrary, that you represent the Manufacturers Association.

MR. WEGENAST: I would have thought it was sufficiently obvious that the Manufacturers Association, whose status is well known, would not have allowed me to come here and make unauthorized the statements I have made. As a matter of fact the statements I have made have been three times endorsed unanimously by the executive council, and once by the annual meeting after receiving a three hundred word telegram from a liability company setting forth their views and asking for a reconsideration. At the last meeting of the Manufacturers Association again a resolution was passed deplored the fact that these misleading circulars had been sent out and stating that the manufacturers were absolutely behind the position which had been taken here by the committee and by myself. A great many things of that kind I would have liked to have gone into, but I suppose I will have to stop some time.

To sum up: what the Manufacturers Association desire is a collective system conducted on the current cost plan, recognizing the principle of contribution from the workmen in some form.

MR. BALLANTYNE: I do not know that this is material, but Mr. Ritchie did not say that Mr. Wegenast does not represent the Manufacturers' Association. What Mr. Ritchie intended to say or to suggest was that the insurance companies believed that the Manufacturers did not understand the nature of the proposition which had been made. Letters were sent out to manufacturers asking not whether Mr. Wegenast represented them but asking their opinion as to State insurance. The replies received indicated that these men did not understand the position. It was not suggested that Mr. Wegenast had not the right to make suggestions, but it was asserted that the ideas put forth were his own ideas, and that the manufacturers had not given the matter any consideration whatever. It is not suggested that there was anything improper on the part of Mr. Wegenast, but it is important that these facts should be laid before the Association so that

it may not be supposed that the manufacturers as a body have given consideration to the details.

MR. WEGENAST: As representing the Manufacturers Association I should not have been subjected to an attack of this kind.

THE COMMISSIONER: I am hardly concerned in this.

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## TWENTY-FOURTH SITTING.

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THE LEGISLATIVE BUILDING, TORONTO.

*Thursday, 16th January, 1913, 8 p.m.*

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner.*

MR. F. N. KENNIN, *Secretary.*

MR. W. B. WILKINSON, *Law Clerk.*

THE COMMISSIONER: Mr. Wolfe has written to Mr. Kennin saying that in about ten days he will be prepared with an answer to Mr. Wegenast's brief. I suppose it is to be an endless chain.

MR. WEGENAST: I am finished as far as Mr. Wolfe is concerned.

THE COMMISSIONER: The Secretary reports that he can find no statistics to enable him to determine what the average length of these temporary disabilities is in Germany.

MR. WEGENAST: I have the original German reports from which something could be compiled, but it would be a laborious piece of work. There is something by Mr. Schwedtman.

THE COMMISSIONER: Does it cover the total number of accidents?

MR. WEGENAST: I think so.

THE COMMISSIONER: Apparently 21½ per cent. lasted more than thirteen weeks, and 78½ per cent. less than thirteen weeks.

MR. WEGENAST: I do not know that there could be any figures got from any country except Germany, and possibly from Austria.

THE COMMISSIONER: And from England.

MR. WEGENAST: I do not see how you could obtain these statistics from England. There are arbitration proceedings, of course.

THE COMMISSIONER: There are elaborate statistics; that information may be in what I have got.

MR. WEGENAST: I have always understood that the great lack in England was statistics. Schwedtman and Emery say that there is an absolute lack of statistics.

THE COMMISSIONER: Well, Mr. Bancroft, have you anything to say?

MR. BANCROFT: Yes, I have my brief prepared.

Do we understand that the manufacturers have closed their case?

THE COMMISSIONER: Nothing is closed until the business is done. I am ready to hear anybody at any time before I have decided.

MR. WEGENAST: I have finished.

MR. BANCROFT: We have shortened our brief very much on the assumption that this is the last of the evidence, but if the manufacturers put in any more particulars we will want the same opportunity in order to reply.

THE COMMISSIONER: I think the more you put in the less likely it is to get consideration.

MR. BANCROFT: That is what we believe, but we want to be safe on the matter.

THE COMMISSIONER: I think if I read all that I have got on the subject it would take me about three years.

MR. BANCROFT: It is a very short brief; we have stripped it of everything except what we think essential.

#### TRADES AND LABOUR CONGRESS OF CANADA.

##### SUPPLEMENTARY BRIEF.

Since the first session of the Commission held on Monday, the 23rd October, 1911, and the Session held on December 27th, 1911, when the case was presented for the Trades and Labour Congress of Canada, which was the first official presentation to the Commission, a multitude of witnesses have given evidence and presented briefs before the Commission; and we are of the opinion if evidence is to be gauged, that invariably they have strengthened our contentions and shown the position that labour has taken on this big question to be correct in the light of recent developments the world over in workmen's compensation legislation.

Since the case was presented for labour the Trades and Labour Congress has held its annual convention at Guelph last September, the greatest convention of labour in the history of Canada as a legislative mouthpiece of the workers. There were 251 delegates representing 70,000 members paying direct into the Congress with a chain of 26 Central Councils represented from coast to coast which is at a conservative estimate a total representation directly and indirectly of over 150,000 workers. For instance, the Toronto Trades and Labour Council in itself represents about 20,000 to 25,000, and their representation in the Congress was by three delegates. There were 123 delegates from Ontario alone and 12 Central Councils from Ontario represented on the floor, almost half the delegates were from Ontario. The executive council's reference to the case as presented here which included

MR. BANCROFT.

congratulatory references to the representatives handling the case for the Congress was submitted to a special committee on officers' reports, and they recommended the adoption of the report, which was carried unanimously. The Labour Educational Association of Ontario met in Peterborough last May, and was attended by some 90 delegates representing organizations affiliated in Ontario. They endorsed unanimously the case as presented by the Congress, and were emphatic in their condemnation of the proposal of the representatives of the manufacturers that workmen should contribute to a workmen's compensation fund.

In the sessions that the Commission has held in other parts of Ontario, the records show that whether among the miners in Cobalt or the workers in the manufacturing centres, wherever labour has appointed its representatives to come before the Commission the result has been unanimity on the question and endorsement of the case presented. From further investigation among our brothers to the south of us it is evident that the legislation that we ask for is what they desire, were it not for the great barriers of State and Federal constitutions.

This is to show that the representation of the Trade and Labour Congress of Canada is speaking for a great constituency of the workers. There are many men in using figures take the number of organized workers in any country and say that the percentage of that number to the population is what organized labour represents; nothing could be further from the real fact.

Mr. J. Harrington Boyd, Chairman of the Employers' Liability Commission of Ohio in his brief before the Federal Commission of the United States Government on workmen's compensation, states in his German statistics: "The 19,000,000 workingmen who earn on an averages less than \$500 per annum with their families represent a population of 60,000,000 people."

That is more of a correct statement than is generally made by statisticians in this regard. On the same basis the figures of organized labour in relation to the whole community should be multiplied by four at least, to get the number of the population represented by the workmen and their families. On the same ground the 150,000 here stated of the Congress is nearer 600,000 when it comes to the population in the community. Therefore added to the fact that the representatives of the locomotive firemen and enginemen state that 99 per cent. of the men in these occupations on the C.P.R. are represented, and coincide with the case as presented by the Congress, it seems clear at least what the workers desire.

In further dealing with the question the representatives of labour have been guided by the desire to strip the question of all hazy technicalities, ornamental superfluities, and to deal with the question in a plain manner as they did at first.

In the interim report to the Ontario Government you state, sir, after pointing out that the manufacturers' representatives and labour representatives, favour a plan of mutual insurance under the administration of a Board appointed by the Crown, as follows: "Those representing the employers who have appeared before me favour what is practically a plan of mutual insurance, under the management of a Board appointed by the

Crown, that the industries should be divided into groups or classes and that an annual assessment should be made by the Board to meet the claims for the preceding year, each group or class being assessed only for the compensation for injuries happening in establishments within it, with a special additional assessment in all cases to provide a reserve fund." Then, further, "There being practically unanimity on the part of the employers and the employed as to these two main principles, it would seem to follow that it is reasonable that they should form the basis for provincial legislation, and as at present advised I shall be prepared to recommend a plan such as is proposed, if, after careful and thorough inquiry and examination I am satisfied that it is economically sound and workable."

Before this, however, mention is made of the opposite positions of labour and the manufacturers upon the question of workmen contributing, and while little has been said of late about it before the Commission, except by witnesses who have appeared, and while we hope that the suggestion of the representatives of the manufacturers has died a natural death from want of nourishment such as the corroborative evidence from the experts who have appeared here, still we do not feel like taking chances on this most important part of the question to us, which we feel if imposed in this fashion upon the workers would raise a storm because of its injustice. Therefore we will deal with that phase first before going further with the interim report and the principle we placed in our case was: "ENTIRE COMPENSATION TO REST UPON EMPLOYER."

In compensation for injuries arising out of and in the course of employment, we submit that not only the evidence of other countries, but generally the evidence of all the witnesses who are classed as experts with the exception of Mr. Boyd is against it, from the analysis of who really pays for compensation in the end.

We understand that the legislation which will result from your recommendations will cover compensation arising out of and in the course of employment, this being so, sickness and non-occupational accidents except what may be termed occupational diseases are not under consideration at all. We submit that comparisons showing contributions of workmen to the sickness, invalidity, and old age insurance of Continental Europe, or long waiting periods due to the interweaving of several parts of insurance legislation, have no actual bearing upon the question under consideration.

The only method of dealing with the question of contribution is: Is the principle underlying compensation for accidents to workers while following their employment or arising out of their employment, one of a contribution from the workmen. And the answer from all over the world is, No, and the workers of Ontario are emphatic in their opposition to any such injustice being foisted upon them by an attempt to twist into the legislation, something that has no right to be there. It will, we believe, be the most unpopular move in legislation that has ever been placed on the statute books in Ontario if the proposal in this direction of the manufacturers should be considered. The labour men, however, feel that no such proposal will be allowed to creep into the scheme either by yourself or the legislature, but, as intimated, labour does not want to take any chances on something that may make a great deal of trouble.

It is generally recognized that the cost in the last analysis rests upon the consumer, the general public. The employer is the medium through which the tax is paid. The great mass of the consumers is the working class, those whom it is commonly understood as wage-workers, in factory, foundry, workshop, store and office. Isn't it a curious suggestion of the manufacturers' representatives, to first make the workers pay for it by deducting their wages, and then assess them again for it in the price of the product as consumers. If the manufacturers are looking for the abolition of the bad feeling that they say is engendered by the fact that under the present liability law the workers have to start damage suits for injuries, which produces a feeling of resentment towards the employer, it is a funny way to start by proposing a reduction of wages upon employees, the one thing perhaps that has started more trouble in the industrial world outside of a demand for an increase of wages than anything else.

The workers will contribute heavily anyway, by suffering and the loss of wages, if the compensation is 70 per cent. of their wages they will contribute 30 per cent. in loss of wages to the scheme, plus the suffering incurred as a result of the accident. That is the only basis upon which the workers can be asked to contribute.

It is hardly possible to find any justification for the proposal of the manufacturers, surely it is not found to the south of us, for, take the workmen's compensation legislation passed in the year 1911, in the United States, most of which only came into operation in 1912, and what do we find?

California—Approved April 8th, 1911, in effect September 1st, 1911. Workmen do not contribute.

Illinois—Approved June 10th, 1911, in effect May 1st, 1912. Workmen do not contribute.

Kansas—Approved May 11th, 1911, in effect January 1st, 1912. Workmen do not contribute.

New Hampshire—Approved April 15th, 1911, in effect January 1st, 1912. Workmen do not contribute.

New Jersey—Approved April 4th, 1911, in effect January 1st, 1912. Workmen do not contribute.

Wisconsin—Approved May 3rd, 1911, in effect September 1st, 1911. Workmen do not contribute.

Nevada—Approved March 24th, 1911, in effect July 1st, 1911. Workmen do not contribute.

Massachusetts—Approved July 28th, 1911, in effect July 1st, 1911. Workmen do not contribute.

Ohio—Approved June 15th, 1911, in effect July 1st, 1912. Employers pay 90 per cent. workmen pay 10 per cent.

But examine the benefits whereby the compromise was said to be made by Mr. Boyd. In case of death \$150 funeral expenses and 66 2-3 per cent. of wages for six years, \$1,500 minimum, and \$3,100 maximum. For total disability, 66 2-3 per cent. of wages until death. Partial disability, 66 2-3 per cent. of wage decrease for six years. Medical and surgical aid up to \$200.

Even at that, contributions from workmen from wages is a direct

violation of the underlying principle of workmen's compensation for accidents arising out of employment.

Washington—Approved June 15th, 1911, in effect January 1st, 1912.  
Workmen do not contribute.

In no Province in Canada do the workers contribute to workmen's compensation.

In the State of New York a proposal was being made for a compensation act in which it was suggested that the workers contribute to a fund. A conference of labour representatives of the State of New York was held in Albany two or three weeks ago, and in a communication to us here, one of the representatives from New York states that the conference entirely repudiate the proposal that workmen should contribute to any such scheme of workmen's compensation.

In Great Britain the workers do not contribute to accident compensation, and as in Great Britain, workmen's compensation in Ontario should be kept entirely separate from sickness legislation, invalidity and other social insurance and not confused as many seem to confuse it. If there is a proposal of the Government to legislate to cover sickness, non-occupational accidents, etc., then the question of contribution from the workers is a different matter altogether and will have to be considered differently, but accident compensation is before us, and we must stick to the question, whether others do or not.

Take Australia:

Queensland—Workmen do not contribute.

South Australia—Workmen do not contribute.

Western Australia—Workmen do not contribute.

New Zealand—Workmen do not contribute.

Transvaal—Workmen do not contribute.

Russia—Workmen do not contribute.

Spain—Workmen do not contribute.

In Germany and the adjacent countries whose legislation has been largely influenced by Germanic social legislation, the whole system of insurance is interwoven and accident insurance was passed to supplement the sickness legislation, but the underlying principle of accident insurance in those countries is non-contribution from the workers for accidents arising out of and in the course of employment. The associations of employers that manage the accident insurance funds have no representatives of the workers on the Boards, and in all cases where the workers pay anything they have representation on the Boards. It is claimed they pay indirectly through the sickness fund which takes care of accidents during the first thirteen weeks. But it should be made clear that this fund provides for sickness and non-occupational accidents, which workmen's compensation such as we are discussing does not contemplate covering at all, except occupational diseases which are generally regarded as accidents arising out of employment.

The General President of the Federated Trades of Germany, Karl Legien, who is a member of the Reichstag, and who belongs to the political party of the workers which polled 4,500,000 votes in the last German election, assured us when on a visit to Canada last year that the principle

of non-contribution of the workers to accident insurance such as we are discussing is correct, and it is the principle in that respect followed in Germany.

So we submit that the proposal of the manufacturers in this respect has no justification whatever, and cannot be sustained either upon analogy with the legislation of other countries, nor the evidence of the experts that have appeared such as Mr. Miles Dawson, Mr. Hinsdale, and even Mr. Tecumseh Sherman points out that the loss of the workman in wages is his share of contribution. The Federal Commission of the United States never proposed contributions from workmen. Mr. Cease, a member of the Federal Commission who gave evidence here pronounced emphatically against it, so we submit the proposal is against the world wide evidence, is not just, as it taxes the worker, both as producer and consumer, and thirdly, it is not common sense as the very thing the employers wish to cultivate, a better feeling in this regard of compensating their employees without troublesome litigation is the very thing that this proposal is likely to defeat. The cost of living in Ontario is so pressing upon the workers now that any one can foresee the reception that a reduction of wages would get.

We had to go to this trouble in reply because we have never had the assurance that the proposal was dead; we hope it soon will be however.

The waiting period for compensation does not arise from a desire to make workmen contribute that way, is our opinion, and must be considered separate altogether from the question of contribution.

Now, sir, to go back to that part of the interim report from which we quoted, and which you say is a probable basic principle to be followed; we asked in our original statement for:

7. State insurance in connection with Compensation Act.

8. The creation of a Provincial Department of Insurance with three Commissioners, for the purpose of administration of the act.

9. Compulsory insurance of employers in the State Department by a yearly tax levied upon the industry or occupation, covering the risk of the particular industry or occupation.

A plan of mutual insurance whereby the employers grouped into classes pay an assessment to meet the claims for injuries as outlined in the legislation, the assessment naturally to be based upon the hazard of the industry. A Board appointed by the Crown to have the administration of the legislation under their control, so that all the workers will have to do is to prove an injury to gain compensation as outlined under the act, or the dependants to receive compensation in case of fatal accident. This reduces the proposition so far to a simple method of compensation for injuries without litigation, or any of the irritating features of damage suits under our present liability laws.

With the insurance made compulsory to those covered by the act it seems that the basis from which you start covers the three principles that are quoted. It has been said by many interested, that this is not State insurance, but as to what is State insurance in this respect is perhaps difficult to define. Anyway a Board of the Crown, an Industrial Insurance Commission administering the act, with the power of legislation, to collect

the assessment and make insurance compulsory, is near enough perhaps at the present time to the common interpretation of State insurance in connection with a Workmen's Compensation Act. So we believe that your interpretation of our desires in this respect is correct, and as you also interpret the views of the manufacturers to mean the same thing, we stand together on the ground floor to build. This is, of course, assuming that in the meantime the Commissioner has not changed his views.

Three questions are asked in the first question in the interim report, as follows:

1. To what industries or employments the law should extend and whether:—

(a) As in most countries it should be limited to dangerous occupations.

(b) It should extend, as it does under the British act, to the farming industry and to domestic servants.

(c) It should extend to establishments in which less than a stated number of workmen are employed.

We ask No. (1). That all employments, the employees of the Province, municipality, county, or other administrative bodies in the Province to be covered the same as employees in industries.

It is self-evident that if the present liability law is bad, inefficient, places the worker under a serious disadvantage in case of injury and his family worse still in case of death, and this is admitted on all sides, no person has attempted to defend the present law, then all the workers are entitled to an improvement in this condition.

Any left out must still labour under something that is admitted to be a grave injustice upon them, and to leave such a thing in existence in any section of the community when the Parliament of the people is attempting a remedy seems as defenceless as the present law. We certainly believe that as in the British Act all employments should be covered, however, as the change from the liability law in Ontario has been delayed so long, and since the present law in Great Britain has reached the present stage in steps extending its application, we are aware that at one jump to place an act on the statute book in Ontario covering all workers would be a great feat to accomplish and can readily see the difficulties of your position in recommending such.

The legislation should cover all industries we firmly believe, irrespective of the number of employed there. A man working for an employer with three men, has just as much right to come under the legislation suggested as the man who works where there are a thousand employed.

If the employer is to pay a tax upon his yearly wage-roll according to the hazard of the group he is in, then the small employer should also pay his tax so that any workman employed by him is protected. The great mass of workmen's compensation legislation in different countries does not except the small employer at all.

Only the State of Ohio in the legislation passed in 1911 in the United States makes the provision that "all employing more than five workmen come under the act." It is a bad provision and the State of Washington did well to steer clear of it. We are entirely opposed to the principle of

the small employer not coming under the act. There is no reason for it under the scheme suggested, as the small employer would not suffer by a fatal accident when he is paying his tax in a group of employers to a fund to take care of the injured, maimed, and dependants of those killed in industry.

We cannot on principle ask that any workers in the community shall be excepted from the provisions of the act, since the present law is admittedly so unfair to the workers, not even on the grounds of expediency, and should it be impossible for the Commission to recommend such that will coincide with our view, then we submit that a scheme that has not the very widest application to cover the industrial sphere of Ontario, will be unsatisfactory to the workers.

No. 2 in the interim report: "Whether there should be any and, if so, what waiting period, that is a period for which no compensation can be claimed if the disability resulting from the injury does not last beyond it."

The English act says: "The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed."

This, according to the testimony of Mr. Hinsdale, is about the same as the State of Washington legislation which is defined as five per cent. loss of earning power.

If the injury to a workman under the British act results in more than two weeks' loss of work he is paid compensation from the first day. The waiting period as under the British act is the one that we claim as the model for Ontario, and even that might be cut down lower without injury to any one. We are absolutely opposed to a waiting period any longer than the one in the British act.

And here let us say that the waiting period in the workmen's compensation legislation was never intended in our opinion to be regarded or argued for, as a contribution from the workman, its primary object is to cover the suspicions of those who claimed that there would be malingerer under the legislation by the workers. It surely cannot be anything more than humorous to find that Mr. Wegenast refers in his brief to a waiting period of thirteen weeks under the German legislation of accident insurance, when as a matter of fact the worker who met with an accident there had already been getting compensation from the commencement of his incapacitation. True it was from another fund in existence before the accident insurance, but nevertheless the worker does not wait thirteen weeks for compensation; he does not wait at all. The other illustrations accompanying the German illustration are just as humorous without saying anything more in criticism. It is a twist given to facts to argue for a waiting period, that only a legal contortionist could accomplish, in our opinion.

No. 3 in the interim report: "Whether in any, and if so, what cases the employee should not be entitled to compensation, e.g., where the injury is the result of a serious and wilful misconduct on his part, or drunkenness, or the violation of law, or of a rule of the establishment?"

The English Act says: "If it is proved that the injury to a workman

is attributed to the serious and wilful misconduct of that workman any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed."

The Washington act says, sec. 6: "If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman, the widow, widower, child or dependant of the workman shall receive any payment whatsoever out of the accident fund. If injury or death results to a workman from the deliberate intention of the employer to produce such injury or death, the workman, widow, widower, child, or dependant of the workman shall have the privilege to take under this act and also have cause of action against the employer, as if this act had not been enacted, for any excess of damage over the amount received or receivable under this act.

With various ways of wording this penalty some acts contain the same idea, while with others it seems to be a negligible quantity. For instance, in the work "Workmen's Insurance in Europe," by Messrs. Frankel and Dawson, page 44 "Great Britain" it is stated: "If the injury is caused by the wilful act of the workman, he is not entitled to compensation unless the accident results in death or permanent disability. If caused by the wilful act or negligence of the employer, the latter is still liable to suit under the Employers' Liability Act of 1880, and or under the common law or the Fatal Accidents Act of 1846, and thus much heavier damages may be obtained than under the Workmen's Compensation Act. *Yet such actions are brought in less than one per cent. of the cases of injury.* No doubt the fact that the statute and the court fix the attorney's fee has much to do with this."

The penalty in the British act works both ways and we would point out that considerable difference will exist here if the scheme is as indicated. For in the English act the worker is left the option of a suit under the Employers' Liability Law against the employer while under a system such as is proposed in Ontario one of its objects is to do away with the damage suit under the Employers' Liability Act. The Washington act says: "intentional act" and it would seem as if the framers had in mind suicide or some such act on the part of a workman, but no penalty should deprive the dependants of the workman of compensation, neither should it deprive him of compensation if permanently injured.

We are opposed completely to a penalty that would deprive the worker of compensation if permanently incapacitated, or deprive the dependants of compensation if the wage earner is killed. If the penalty is to be placed in outside of these considerations to apply to the workman temporarily injured by his intentional act, then a penalty of the same nature should be imposed upon the employer in the same manner for his intentional act.

No. 4 interim report: "Whether the compensation provided should be in lieu of the common law or other statutory right of the employee against his employer?"

The workers will not consider the surrender of their rights at common law, or statutory rights, unless the compensation guaranteed through State administration of the fund is generous. In brief they have no intention

of surrendering more than they would get, that would be making an admittedly bad condition at present into a worse one in the future.

No. 5 interim report: "How the Board should be constituted."

In our case as presented No. 8 says, "The creation of a Provincial Insurance Department with three Commissioners, for the purpose of administration of the Act."

There is no doubt that an Insurance Commission of three would be sufficient to administer the act.

No. 6, in the interim report, "Whether the decisions of the Board should be final or subject to appeal, and if appealable to what tribunal the appeal shall lie?"

This can be better answered when the suggested terms of the legislation are made known for much depends upon the general arrangement of the act as to whether an appeal from the decision of the Board should be made.

Under the scheme as indicated in the Interim Report, we are opposed absolutely to any contracting-out schemes such as is suggested by the representatives of the railway company. Why should there be any difference in dealing with the railway companies any more than such firms as the International Harvester Company or the Massey-Harris Company. If it is right to group the agricultural implement makers of this Province into a class and compel them to insure in a fund managed by the State, for the purpose of compensating all injuries regardless of fault, it is certainly right that the railway companies should do the same thing. The question in this respect is not as to what the companies desire from the standpoint of a powerful financial corporation, but what is in the interest of the mass of employees on the railroads in this Province. Take the men in the shops, machinists, boiler-makers, carmen, carpenters, moulders, labourers, etc., or the maintenance of way employees, the locomotive enginemen and firemen, and so on, have these men not the same right to come under a State managed scheme, and be paid automatic compensation the same, as the same class of employee at the John Inglis Company, machinist, boiler-maker, etc.? We believe absolutely, yes. It is all very well for the representative of the C. P. R. to say that they will allow the Board of Insurance Commissioners to make the award, and bill them for it and the company will pay.

An injured workman of the railway system would have to make out his statement of claim corroborated by a doctor perhaps as to the extent of the injury and this would go to the Board. The bill for the award will be met if it is claimed by the C. P. R., for instance, if it is on their system. What is to stop the C. P. R. from opposing the man's claim before the Commission, on any loophole that could be found? Worse than that is the fact that if the C. P. R. did once or twice oppose a man's claim, it would make a man hesitate to claim compensation, particularly if they had one or two examples of where men had been found inefficient servants after claiming compensation and getting it.

It is a well-known fact, claim some of the men, that the cost of an accident is placed on the department of the system where it occurred, and as naturally the heads of department are out to make their jurisdiction efficient at the least possible cost, it is from this source that the men expect

the opposition. We know full well that the highly paid section of the conductors may be better able to deal with the C. P. R. than the comparatively, with them, low paid mechanic on the railway system, and as the men in the shops comprise a tremendous proportion of the employees of the railways, from the standpoint of the effect on the whole community the railways should come under the act like any one else in industry. The employees on the railways have as much right to automatic compensation as anyone else in the community. Contracting out is an insurance scheme managed by the State and compulsory, is the very thing that should be eliminated. It is a most dangerous precedent to consider, with so many industries of a big nature in our Province.

The benefits to be paid under the act should, we believe, have a minimum, and then the rest should be according to the earning capacity of the injured or killed workman. To state comparative amounts in sums with Great Britain or most countries would be misleading on account of the difference in the cost of living. But we do submit that a minimum scale of compensation should be set, and then it should rise where it ceases to be less than two-thirds of the earning capacity of the wage-earner, and based upon the earning capacity of the worker.

There is abundant evidence that the compensation should be based upon the earning capacity of the wage-earner, and we refer you to the tables on compensation in the Bulletin of the Bureau of Labour, No. 97, page 907, of the United States Department of Commerce and Labour. On the summary of Workmen's Insurance in Europe, "Accident Insurance," contained in Frankel and Dawson's "Workingmen's Insurance in Europe"; page 422. Scales of compensation in different countries of the world contained in the interim report, and the schedules of the English act.

The dependants of a workman are clearly defined in the English act with which we agree, but of course the English act provides for lump sum payments in case of death. The Washington legislation provides for pensions for the dependants and capitalizes the pension, which should be done. This provision of pensions for dependants has resulted in the dependants being outlined in the Washington act in a different way, but perhaps substantially the same as the British act.

In summing up, we desire an act commencing with the basic principle of a State managed compensation fund, by an insurance commission, as we have pointed out, compulsory insurance of the widest possible application in Ontario, *with no contribution from workmen*, except that which they lose in wages as a result of not being paid full wages when incapacitated. For instance if compensation is 70 per cent. of wages then the workers contribute in loss of wages 30 per cent. plus the suffering. A minimum scale of compensation set, and then from that upwards to be based upon the earning capacity of the workman. We have tried to be brief, and not laborious, plain as possible; our claims are based upon a study of the question all over the world, wherever we could procure information, and on the evidence submitted here. There is a tremendous amount of information on the subject in all countries and we are aware that you have obtained this knowledge at first hand in Europe, so we do, without again going over much that has already been said before this Commission, feel that it will accomplish nothing, except take up time. Much has been said

by such men as Mr. Tecumseh Sherman and several others that we might very well contradict, but we are anxious that you should be able to place your recommendations before the Government at the earliest possible date for action, at this session of the House.

THE COMMISSIONER: What do you mean by a minimum compensation? Do you mean if a man is only earning \$2 a week he is to get \$5, or on the percentage of \$5?

MR. GIBBONS: I would say if any employer was only paying a man \$2 he should have to pay him \$10.

THE COMMISSIONER: Do not trifle with it, Mr. Gibbons.

MR. BANCROFT: What we mean is this: Take for instance as an illustration a civic employee of the City of Toronto. The scavengers get \$2.25 a day. Labourers in many industries get much less. The freight handlers down in the C. P. R. I think get 17½ cents an hour, and there are other industries where they get much less wages. Now, to base the compensation on the earning capacity of those men is not fair. The compensation as far as the lowest paid mechanic is concerned should be struck as a minimum. The Washington Act says \$20 a month.

THE COMMISSIONER: Surely you do not mean if a man is a lazy man and not willing to work that he should have a minimum sum based on the wage of the industrious man who is willing to work all the time. It must be in proportion to what the individual man earns; I cannot think of fixing it upon any such basis as that.

MR. BANCROFT: Perhaps you have not fully grasped my idea in the reading of the brief. We have made it very short so that you may have time to go over it. The compensation legislation all over the world is largely based on the earning capacity of the workers. Supposing you take a man who was getting seventeen cents an hour. All men who have a job are industrious or they would not be there. The labour market is too much overstocked for that as a rule, but suppose it is based upon his earning capacity it would mean very little in the case of injury to him.

THE COMMISSIONER: I do not think that earning capacity is a test at all: it is the earnings.

MR. BANCROFT: Supposing a flat rate was struck like the Washington act?

THE COMMISSIONER: I am not suggesting that; understand what I mean. John Smith is injured and the question would be what was that man earning at the time he was injured: that would be the basis of the compensation. It would not be fair perhaps to take just what he earned the week before, but what upon the average he has been earning; you must deal with it as an individual case. You cannot deal in an act like this with classes and put a man capable of earning \$10 and is only earning \$2 because he will not work in the same position as a man who did work and earned \$10: that would never do.

MR. BANCROFT: There may be in your mind some particular case, but speaking

generally in the industrial arena, as we may term it, there is very little of that kind of thing; a very small proportion of workmen who will not work.

THE COMMISSIONER: Then they would not be hurt by any such provision; if they do work they will not be hurt.

MR. BANCROFT: The cases you are thinking of we say are very exceptional. We say the work feature of society to-day is to have a man who wants a job and cannot get it. What we mean is that if a man is industrious and working ten hours a day gets only sixteen or seventeen cents an hour, we claim the compensation is not adequate and they will be objects of charity just as they were before. We say that a minimum should be struck for the lowest pay a labourer gets; it should be based upon his earning capacity.

THE COMMISSIONER: That would be most unjust, as I understand it now, and would discredit any such law. It is just an amplification of the idea that every man, good or bad, should get the same wage: that there should be a minimum wage for a man whether he is worth it or not.

MR. BANCROFT: Oh no, that is entirely a misapprehension.

THE COMMISSIONER: It is the same principle.

MR. BANCROFT: I am sorry to disagree with you on that, but I do not think so. Take it this way: A conductor on a railway getting \$200 a month. The Washington act, for instance, says the compensation shall not exceed \$35 a month in case of injury; \$35 a month is nothing to a family that has been used to the earnings of that man getting \$200 a month; we think it should be based on earning capacity. There is the other extreme, where a man is getting very low pay, and a proportion of his earning capacity would mean nothing; he is not getting a living wage now. We claim that an average should be struck which would be a just compensation for the employment.

THE COMMISSIONER: You must jack up the wages if you want to do that.

MR. BANCROFT: This might be a good way.

THE COMMISSIONER: No, it would not be a good way.

I would like to know what you mean by saying that you would not be under certain conditions content that the compensation under the act should be in lieu of all other claims of the workmen?

MR. BANCROFT: We mean that if the compensation under the act should be considered by labour men starvation compensation, we would not feel like relinquishing our rights under the employers' liability to take a chance at the employer; it would rob the man who gets high wages and can afford a suit and might get what he wanted.

THE COMMISSIONER: If that is the position you take you strike a fatal blow to any such scheme.

MR. BANCROFT: Oh no.

THE COMMISSIONER: If that were the case, every manufacturer would have to insure as well as pay his compensation.

MR. BANCROFT: The alternative is that the compensation should be generous enough to convince the workers that they should relinquish their rights. That is what we mean.

THE COMMISSIONER: I do not agree with that at all. Compensation should be on such a scale and the law should be so framed that it would commend itself to the just men of the community, not to the particular views either of the manufacturers or of the workmen.

MR. BANCROFT: That is what we also claim.

THE COMMISSIONER: I venture to say that on both sides the claims would be extravagant if it were thought that the claiming would be effective.

From what you have read to me I think you entirely misapprehend what is suggested on the part of the Canadian Pacific Railway, and the other railways represented here; you misapprehend the position that an injured employee would be in under such a law as is proposed. There would be nothing under such a law to prevent any one in the group showing to the Board that a claim was dishonest or exaggerated. That would be completely open; any other system that a man had simply to file his claim with his proof and then it must be allowed as a matter of course, would be absurd. It must be open to the man who is paying to show to the Board that the claim is not a just one, or that the claim ought not to be allowed at the amount demanded. Surely you do not dispute that proposition?

MR. BANCROFT: Let me state this information that has not perhaps been given by the railway companies.

THE COMMISSIONER: Leave the railways out; take a group under the act. Do you not understand that under this system it would be open to any one in the group to object to a claim?

MR. BANCROFT: Certainly.

THE COMMISSIONER: Let us follow that up with regard to the Canadian Pacific. Supposing the C. P. R. Company were declared to be subject to all the provisions of the act except that it did not have to pay an assessment in advance; what possible difference would there be to the workers?

MR. BANCROFT: A most vital difference. We have gone into it carefully, and have tried to find out whether we could change our opinions on that matter; we cannot because we know the inside of the whole thing.

THE COMMISSIONER: What is your point?

MR. BANCROFT: My point is this: in a group of manufacturers which pays its assessment into an insurance fund there will be the tendency to say to the injured employee, "Yes, you will get your compensation; we pay our tax into the fund for that purpose." On the other hand the C. P. R. holding its own fund would be more apt to object to paying it out than an insurance commission which has no objection whatever.

THE COMMISSIONER: What you say might be so if it were in heaven that these groups were operating, but I do not know of any human group that would be any the less inclined to resist payment merely because it paid its benefit as a group.

MR. BANCROFT: Take this illustration given to me by an employee of the railway in explanation of a question I had asked. "You see it is this way," he said, "the heads of the departments in the C. P. R. have these accidents in their departments assessed against them as part of the cost of running their department." That is a natural thing in any organization.

THE COMMISSIONER: So it would be if they were in a group.

MR. BANCROFT: Exactly. He said: "When a man in a department is injured the head of that department knows it is going to be assessed against his department and it is his object to stop that man from getting compensation and he does."

THE COMMISSIONER: There are three steam railways in this country, would it be any the less in the Canadian Northern or in the C. P. R. or in the Grand Trunk? What difference does it make?

MR. BANCROFT: It does not make any difference which railway you take.

THE COMMISSIONER: Would they not all do the same thing?

MR. BANCROFT: Exactly.

THE COMMISSIONER: Then by bundling them together you do not alter the position of the workmen at all.

MR. BANCROFT: We say it is easier and freer and better for the employee to register his claim with an insurance commission knowing that they have got to do the paying.

THE COMMISSIONER: Nobody suggests he should register it anywhere else.

MR. BANCROFT: That is true, but the insurance commission has to bill the C. P. R. for it.

THE COMMISSIONER: What difference does that make?

MR. BANCROFT: If the C. P. R. were compelled like anybody else to pay the tax into the fund they will say, "Yes, we pay the tax, go and get your compensation." The other way is different.

THE COMMISSIONER: I think it is purely fanciful.

MR. BANCROFT: Not to the workers, Mr. Commissioner.

THE COMMISSIONER: Purely fanciful.

MR. BANCROFT: Well, the workers on the railways have some curious ideas. I may tell you from some experiences that we have had with reference to some differences that they are no better than anybody else.

THE COMMISSIONER: Undoubtedly not.

MR. BANCROFT: They do not want to pay out any more than anybody else does, and if they can find any loophole will avoid payment to the workmen.

THE COMMISSIONER: I do not think that is quite fair; it is not, I think, what the body of the railwaymen would say. As a rule the railways act fairly and liberally; as a rule they do not dispute claims.

MR. BANCROFT: Not more than anybody else.

THE COMMISSIONER: I do not think they do as much.

MR. BANCROFT: If they are not any better or not any worse they have no right to be treated differently from anybody else.

THE COMMISSIONER: Some of the men who know about the work of the railways, who speak for them do not take your view at all. They want the railways to be altogether out of the act.

MR. BANCROFT: If you wish we will take up their views and tell you exactly what they mean. We did not want to do it before this Commission but if we have to we will do it.

THE COMMISSIONER: If you have anything to say this is the place to say it.

MR. LAWRENCE: I have followed railroading for over thirty-three years, and for the greater part of that time I have been a go-between between the employees and the company; I think I am acquainted with more railway men than any other person in the room. I have discussed this proposition with railway men ever since it was proposed, especially since it was proposed to group the employers; I have yet to find the first railway employee who is in favour of grouping the railway companies.

MR. GIBBONS: You could not have been here at the last session. There were two leaders representing the men here; they asked that they be grouped with the others. Mr. Best was here representing the firemen and thirty per cent. of the engineers, and Mr. Maloney representing the trainmen. Mr. Hall, who represents about fifty-five per cent. of the conductors, was the only man who seemed not to be in favour of it.

THE COMMISSIONER: I do not think either Mr. Best or Mr. Maloney made a point of that at all; they did not treat it as a very important point. However, their evidence is in.

MR. BANCROFT: We take the position that the railway companies have no more right to any exception under the act than anybody else. We know the railway companies can be as fair as anybody else but they are no better than anybody else, and should come under the act.

THE COMMISSIONER: You do not speak directly for the railway employees; you can only speak as members of the community. What is your position in connection with the railway men, Mr. Lawrence?

MR. LAWRENCE: I am for the locomotive engineers.

THE COMMISSIONER: Are you now in the service?

MR. LAWRENCE: I hold my seniority. I have not run a locomotive for over two years: I look after the legislation for the Brotherhood of Locomotive Engineers. I have discussed it with the employees whom Mr. Best represents, with the firemen as well as with others, and I say again that I have not yet found an employee who was in favour of grouping the railway companies.

THE COMMISSIONER: It would be a great pity if either the manufacturers or the  
31 L.

workmen on any sentimental grounds put difficulties in the way of framing a measure; it is difficult enough as it is. Unless it is a real substantial practical question it is, I think, very unwise on their side to raise it.

MR. BANCROFT: You dropped a remark there, Mr. Commissioner, which seems to imply that representations can only come from those engaged on the trains. The Trades and Labour Congress of Canada is affiliated with the machinists, the boiler-makers, and practically with all the men in the shops.

THE COMMISSIONER: What proportion of the men in the shops are members of your organization? It is nothing to me to say that you have got an organization that represents the painters unless I know what proportion of the painters are in that organization. I would not recognize the right of a body simply because it was labour union so-and-so of the painters, or labour union so-and-so of the carpenters to speak for the whole body unless I knew what proportion of the members were in it.

MR. BANCROFT: The actual figures of the number of employees on the railways and the number organized might perhaps be hard to get, but all organized practically, engaged in those shops, are affiliated with the Trades and Labour Congress for whom we speak.

THE COMMISSIONER: But you would have the figures of the numbers of such employees who are members of your union?

MR. BANCROFT: We did not analyze them.

THE COMMISSIONER: But you can say just how many railway men are in any of your organizations?

MR. BANCROFT: Not unless we go over them and make an estimate.

MR. GIBBONS: It would be necessary to have the records of those organizations; of course we haven't them with us just now.

THE COMMISSIONER: I do not mean at this minute. Is that not reasonable? You have a labour union representing the carpenters, if I want to know to what extent that voices the opinion of all in that industry I ought to know how many of the whole body are in this organization.

MR. BANCROFT: I do not catch the pertinency of that question?

THE COMMISSIONER: You come here and say that you represent, for example, 50,000 workers; I want to know what proportion that is of the whole body in order to see whether you represent the majority or the minority of them.

MR. BANCROFT: That is right in one way and not right in another way. There was a gentleman here the other day who claimed to speak for the conductors: we are told he only represents 45 per cent.

THE COMMISSIONER: So we are told, and that is all I take him as representing, if it becomes important to consider it.

MR. BANCROFT: Is it not the case all over the world where the men in any industry are organized that their position on any question is a reflection of the workers' position generally?

THE COMMISSIONER: That would depend on what number of the workmen were in the organization. Supposing you have a million workmen and that it could be demonstrated that you have in the labour organizations only 150,000 do you think any sensible man would take the opinion of the labour the opinion of the labour organization as representing the whole opinion?

MR. BANCROFT: I think that the labour legislation of this country has been due to the efforts and representations of organized labour.

THE COMMISSIONER: That is another point; I am not at all minimizing the benefit that these labour organizations have been to the workmen. I am simply pointing out that where there is a difference of opinion, and it applies specially in the case of the railways, that no labour organization has a right to say that it represents the whole body of the workmen or the majority of the workmen unless it in fact does so.

MR. BANCROFT: We have stated clearly in our brief whom we claim to represent; it is there.

THE COMMISSIONER: It would be a great deal better if your brief rests, as perhaps it does, upon the fairness of its arguments; that is the true test.

MR. BANCROFT: That is what we believe it does. You must remember, sir, that it is not possible, never has been possible in any part of the world, for men brought up in the environments of the working class to effect an improvement in legislation in the same way as can the railway companies or the manufacturers. The manufacturers have taken in this case, I am bound to say, a somewhat advanced position; how much of that is due to the advanced ideas of Mr. Wegenast I am not prepared to say; we have to recognize that. On the other hand we feel that it is a very vital point to treat the railways the same as anybody else; why should they not come under the act? That is the question we ask.

THE COMMISSIONER: Mr. Wegenast and you take common ground.

MR. BANCROFT: Surely.

THE COMMISSIONER: I think it is nothing but sentiment as far as Mr. Wegenast representing the manufacturers is concerned, whether or not the railways are included; it is altogether sentimental as far as you are concerned except in so far as you represent the railwaymen who are against it.

MR. GIBBONS: At the start it was pointed out that this legislation was for the prevention of accidents; it was pointed out by the manufacturers that if they were grouped and there were more accidents occurring in one industry or in one shop than in another, that the others would look after that industry or that shop and see that they put in safety devices. The same thing pertains to the railways. We have a Dominion Commission that has power to order safety devices. If the railways are grouped, and the Grand Trunk or the C. P. R. or the C. N. R., whichever it may be, has more accidents, then you will find that the other roads will have the Commission after it to keep it up to the standard of accident prevention.

THE COMMISSIONER: I do not believe it at all.

MR. LAWRENCE: Take the Michigan Central that runs from Detroit to Buffalo; alongside of it is the Wabash which is leased by the Grand Trunk; the Wabash runs in the same territory. The Michigan Central has double tracks; it has spent a lot of money in putting the road in good shape. I do not think that there is any power in this country that can make a road equip its lines as the Michigan Central is equipped. It is impossible for the M. C. R. to have a head on collision. The Wabash inside of a month has had two; two employes have been killed, and I see by to-night's paper that another is injured so badly that there is no hope for his recovery. I do not know when there has been a railroad man killed on the Michigan Central, not in years. It would take millions of dollars for the Wabash to double track its road and to equip it with block signals and safety devices as the Michigan Central is equipped. Is it not in the interests of the employees to have that done? It is the employees that I represent and for whom I am speaking. We claim that it is in our interests to have the roads not grouped, for the simple reason that we want to build up the other roads if we can. If each road has to pay for its own accidents will it not be an incentive to them to equip their roads properly? It is in the interests of the employees to have the railways properly equipped, to have things done that no railway Commission in the country can force a railway company to do. They can order safety appliances on locomotives and on cars, and they do. The Wabash lives up to the law just as strictly as does the Michigan Central. On the Michigan Central there are, I believe, three employes to one on the Wabash, and I can safely say that there are a dozen employees killed on the Wabash to one on the Michigan Central.

THE COMMISSIONER: As I understand, advantages claimed for the grouping principle are two: first, that it provides better security to the workman for the payment of his compensation; and, secondly, that it induces more certainly accident prevention; that if the liability be personal, the workman is without security for the payment of his compensation, and the bankruptcy of his employer makes him a certain loser. By grouping, the workman has the security of the class, and the accident loss being distributed, the small employer is saved from ruin. In the case of large establishments or corporations that are absolutely solvent, that will always be able to answer for claims, the reasons for grouping are neither so apparent nor so cogent. As to whether the grouping system does actually induce accident prevention, opinion seems to be divided.

MR. LAWRENCE: The Workmen's Compensation Act that passed the United States Senate applies to railways engaged in interstate commerce. There is a provision in it that the compensation shall be a first lien after taxes and wages. There is no railway company that cannot afford to pay these, and the workman is protected if there is a clause of that kind provided.

THE COMMISSIONER: Although they have not said so, I think there would probably be no difficulty in getting these railways to agree to legislation at Ottawa that would at all events make these claims a charge along with the working expenses.

MR. LAWRENCE: We are asking the Dominion Government to appoint a Commission the same as has been appointed in the United States to recommend some

Workmen's Compensation Act applicable to those employed in inter-state commerce. We had a ruling from the late Government that it was within their jurisdiction to pass a law applicable to railways and canals.

THE COMMISSIONER: Who said that?

MR. LAWRENCE: The late Government. We had a ruling that it was within their jurisdiction to pass a Workmen's Compensation law applicable to those employed in the service of railways and canals. We are now asking to have a commission appointed to recommend a law along that line.

MR. BANCROFT: We asked for a commission two or three years ago to investigate the tremendous number of accidents that occur on the railways of this country. This is a matter on which there is to be legislation in Ontario, and it may be a model for dominion legislation; everybody seems to think that.

THE COMMISSIONER: There are altogether too many railway accidents in America; largely due to conditions, I suppose; they compare unfavourably with English statistics. I was going to ask you whether it makes much difference in the number of accidents if the lines are double-tracked?

MR. LAWRENCE: Yes; where double-tracked and properly equipped with block signals the number of accidents is lessened considerably. If the records could be had for the Michigan Central, the old Canada Southern as was its charter name, it could be shown that since the railway has been double-tracked there has been a material reduction in accidents.

THE COMMISSIONER: It seems to me, speaking subject to correction, that one of the most fruitful causes of accidents is the piece system adopted in factories; in a man hurrying to do his work. I do not know whether it is possible to eliminate that; I am quite sure it is a very serious factor in increasing the number of accidents.

MR. LAWRENCE: It is thought so by a good many people, Mr. Commissioner.

THE COMMISSIONER: So many men are put on machines, such as stamping machines and instead of getting so much an hour they are paid by the piece. The man is keen to get as many through as he can; if one sticks, instead of taking time to do it as he should, his hand goes in and his finger goes off, often.

MR. LAWRENCE: I believe the piece system is a detriment to the workingmen, and tends to increase accidents.

THE COMMISSIONER: What do you say about that, Mr. Bancroft?

MR. BANCROFT: I think that there you are correct; undoubtedly the piecework system has more to do with causing accidents than anything else in industry.

THE COMMISSIONER: What is your individual opinion, Mr. Wegenast, not speaking for the class you represent.

MR. WEGENAST: I think possibly it may have some influences; I am not competent to speak off-hand.

THE COMMISSIONER: What would be your judgment as an intelligent observer?

MR. WEGENAST: That rather indicates the way you would have me answer.

MR. BANCROFT: Mr. Wegenast gave us an illustration of how he was hurt when a boy; was that under the piece system?

MR. WEGENAST: I would not for a moment agree that it was due to my slowness.

THE COMMISSIONER: What is the object of putting a man on piecework; is it not to get more work out of him in a given time?

MR. WEGENAST: That may be one object; another is that he may have a chance to earn more.

THE COMMISSIONER: You don't mean that seriously.

MR. BANCROFT: That's the limit.

THE COMMISSIONER: I did not agree with Mr. Bancroft in calling some of your statements humorous, but I think that one is.

MR. KINGSTON: You may get some help from the fact that none of the liability companies has ever made any difference in the rates where piecework is done.

THE COMMISSIONER: I think they intend to get out of as many claims as they can.

MR. KINGSTON: In all my years of experience as an attorney for a liability company I have never heard that suggested.

THE COMMISSIONER: I fancy one reason is that they would not get much business from the manufacturers if they did.

MR. KINGSTON: That is hardly so.

MR. BANCROFT: There are a number of other points we would like to mention; we thought this was our night. If you do not mind, we will mention some of them.

THE COMMISSIONER: I thought you were through.

MR. BANCROFT: They do not seem to want labour to have its full say.

MR. H. T. MEREDITH: I also would like to say a word on behalf of the railway men.

MR. BANCROFT: I would like to call your attention to the second volume of Workmen's Insurance in Europe. That seems to deal fully with the contracting-out clause in the British legislation, and seems to show a remarkable decrease in the number of employers who have contracted out.

THE COMMISSIONER: You need not discuss contracting-out; I am not going to report in favour of it.

MR. BANCROFT: If you would say as much on contribution, we would feel happy. I have here the report of the Inspector of Factories in Ontario for 1911; it deals only with factories, yet shows 985 accidents—a great number. We would like to know if it is possible to get anywhere in Ontario figures showing the compensation that has been paid to these people.

THE COMMISSIONER: I suppose some member of the House could move for a return and get that. I do not know whether it would be very accurate.

MR. BANCROFT: We wanted to point out, for instance, the serious condition in regard to accidents in the Algoma Steel Company. There are 171 cases of accidents reported in those works in 1911, 6 fatal. I have not reckoned up the cases in the International Harvester or in the Canada Foundry or in the Massey-Harris, but they are all tabulated. We understand the International Harvester Company pay premiums to their employees for the invention of accident prevention devices; that is, an employe who works out a device for the prevention of accidents on a machine is paid a premium. That's not a bad idea; I commend it to Mr. Wegenast for the general consideration of the manufacturers. The prevention of accidents after all is the primary consideration; taking care of the injured comes after as a social requirement.

MR. KINGSTON: There is no provision that I know of for getting a return of the compensation that has been paid. A great many accident claims are settled by the insurance company direct with the injured man or with his solicitor, possibly in many cases without the knowledge of the employer. There is no machinery for making such returns.

THE COMMISSIONER: I suppose we could get from the accident companies doing business in the province a return of the number of claims that have been made and the amount they have paid on each.

MR. KINGSTON: That is the only way, I think.

MR. BANCROFT: Mr. Boyd in his figures before the Federal Commission shows the average compensation for fatal accidents during one year to the dependants of those killed in Ohio, or in Massachusetts; it is only \$500.

THE COMMISSIONER: Is that for fatal accidents?

MR. BANCROFT: Yes; he was speaking of Ohio. Take the most favourable case: in the Ohio table No. 3 the average compensation received by the family of the worker in fatal cases is \$949; deducting twenty-five per cent for attorney's fees, and in addition funeral expenses and the expense caused by delay in settlement you have a net compensation of \$500.

THE COMMISSIONER: I would like to see how much was for funeral expenses.

MR. BANCROFT: \$212 for funeral expenses. We do not get in Ontario any figures that would give us anything like a basis.

THE COMMISSIONER: Where did he get that?

MR. BANCROFT: From the statistics. They must have to make returns to the Government, or he could not make such statements. It would be as well if we started in Ontario to get similar returns.

Here is another thing referring to the schedules of payments in Great Britain; it is Frankel and Dawson's book. It says \$4.87 per week must be paid, that is almost \$5; that is \$20 a month; and \$20 a month in cases of disability is about what they pay in Washington.

MR. HINSDALE: For six months it would be \$30.

MR. BANCROFT: According to the average wage the compensation for disability is bigger in England. The '97 Bulletin of the Bureau of Labour to which

we have referred gives the percentages that are paid on the earning capacity all over the world; they run from fifty per cent. to as high as 80 per cent.

THE COMMISSIONER: I do not know where it is 80.

MR. BANCROFT: The full table of accident insurance in Europe is here. In Germany it is up to 66 2-3 per cent.

THE COMMISSIONER: I thought California was the highest.

MR. BANCROFT: California is 65; Switzerland, I think, is 80. It varies in the different countries; 60 per cent. in Norway, 60 per cent. in Denmark, 70 per cent. in Holland.

THE COMMISSIONER: Holland is not a manufacturing country.

MR. BANCROFT: That is true, sir.

THE COMMISSIONER: Wages are very low there.

MR. BANCROFT: Yes. I think that we ought to say that much as we would have liked to have answered Mr. Sherman and Mr. Wolfe on the question of accident insurance in private companies and insurance in a State managed fund, we feel you probably recognize the fact that those gentlemen were representing interests that have everything to gain by the perpetuation of employers' liability, and that it is very generally admitted that a State managed fund is the best and most economical. The manufacturers say they want it on the current cost plan. In Washington, as we understand Mr. Hinsdale, temporary injuries are all on the current cost plan; that seems absolutely fair and not too big a drain upon the employers. The manufacturers want the pensions also to be paid for on what is called the current cost plan. In Washington they capitalize the pension; in England they pay a lump sum. If the manufacturer in England, with great competition, can pay a lump sum to guarantee the dependants exactly what they are entitled to under the act, surely the manufacturer in Ontario can afford to pay rates that would capitalize the pensions as is done under the Washington Act. It seems to us to be loading up the future with something that the future ought not to bear. Mr. Dawson points out, and I think some others as well, that in Germany it takes almost fifty years to reach the equilibrium. That rather astonished me in this way, that when the legislation first started the charges for the first year would perhaps make the equilibrium between thirty and fifty years. That is the point where the lapsing through death of the claims on the fund will become equal to the injuries for that year, and that would be an absolute stop to the change of rates. So you see it means going a long way into the future unless the pensions are capitalized at the present time. I know full well that the question of financing the matter is the employers' principally. The workers are concerned in getting compensation, generous compensation, and not contributing. There is no doubt there will have to be a change in the law here, and it will be a big change, and it will be the duty of the employers to do the financing, and naturally they want to do it with the least possible cost, but surely the least possible cost should not mean the non-guaranteeing of pensions to the dependants. We do not want to press the manufacturers too hard in that direction, and we have left out most of the reference to it for that simple reason, but we do want the

compensation to the dependants of killed workmen absolutely guaranteed without loading up the future, or any possibility of that not materializing in the years to come. As we have stated, we thought at first we would reply to Mr. Sherman and to Mr. Wegenast and to Mr. Wolfe, but we figured out that it would mean a brief that would have to be brought here in a taxicab, and so we decided to take your suggestions in the interim report and see if we could not build upwards. It is not possible for us to agree entirely with the manufacturers and with the railway companies, so we have to state emphatically what we believe to be the views of those people whom we are sent here to represent. We have done that fairly and frankly in our brief, irrespective of what any one might think or do. We believe this is what the workers want and we believe it is a reflection of what will be in the best interests of the workmen, and we hope that this night will close the preliminary labours of the Commission, and the next thing will be the discussion, and the next be the submission to the Ontario House. If the manufacturers continue submitting briefs we have to do the same in the interests of the workers, and there is no telling where it would end. We are perfectly satisfied to rest our case now, believing we have taken a large view of it, and we believe when it is thoroughly considered the legislation will go a long way in the way we have suggested. You may not go all the way, but I do not suppose there will be a great deal of material difference. However, Mr. Commissioner, we will be pleased to give you any more help in the way of figures or information that we can get, or answer any questions as to the position that the workers that we represent are prepared to take.

THE COMMISSIONER: Mr. Hinsdale is here from a long way off, and Mr. Wegenast would like to ask him a few questions. We will take him next.

MR. WEGENAST: One thing I had reference to was the plan of capitalization. You have heard, Mr. Hinsdale, what I have suggested in regard to that?

MR. HINSDALE: I understand that this is taken from an assumed pay-roll upon a gradual capitalized plan to run over a period of years, either a long period or a short period, in proportion to the over-riding charge or the surcharge that was made year by year. If that surcharge is made at a considerable percentage over and above the actual amount required each year, my understanding is that within a few years that surcharge will cease to increase, and that for instance if one should add one-tenth or ten per cent. surcharge, in the course of a few years, ten years, there would be nothing to carry forward from the first year. In short, to my notion, one might say it is a system of gradually capitalizing the value of future pensions or future payments to be made instead of letting each year actually be capitalized year by year. It is a method of spreading the capitalization over a short or a long period of years. This appears to be on a comparatively short period.

THE COMMISSIONER: How many years is that?

MR. HINSDALE: Well, this would reduce it to about six years.

THE COMMISSIONER: Make up the reserve in six years?

MR. HINSDALE: At the end of six years there would be nothing to be carried forward from the preceding sixth year, and after that it would be each year

as the addition for the sixth year previously, but you would take on the addition of the coming year.

MR. WEGENAST: And it would gradually be wiped out?

MR. HINSDALE: It would be altogether wiped out. It is a gradual method of arriving at the same result which we in Washington arrived at year by year, and it is feasible; it can be done. It is accomplishing the result, but it accomplishes it in a slower way than our way.

THE COMMISSIONER: Until you have got your reserve made up by these percentages your reserve is not complete?

MR. HINSDALE: It is not complete until that time. My understanding of this is really at any year if one desired it one could charge enough surcharge to make it complete.

THE COMMISSIONER: But taking any one of those years, if an actuary were put upon it he would say that the company had not paid in sufficient.

MR. HINSDALE: That they had not collected enough, but all they would have to do would be to make the assessment. In some industries it would in a way capitalize before it was necessary to capitalize; for example, we have a lot of classes where there are no deaths whatever.

THE COMMISSIONER: What is that percentage?

MR. HINSDALE: It is figured at ten per cent. It is assumed on a pay-roll of \$1,000,-000; one per cent. of that is \$10,000; that is the amount that is actually paid up, but there is an assumed liability over and above that on account of future pensions of \$15,000.

THE COMMISSIONER: \$15,000 in addition or \$5,000 in addition?

MR. HINSDALE: \$15,000 in addition. Supposing they had to pay certain claims for temporary disabilities, and also that certain people were hurt, lost their arms, and you determine to pay it in future payments, gradual payments, instead of as in our method. Adding up these payments that they give to the temporarily hurt people, and adding the year's partial payments, the total amounts to \$10,000—this they have to pay. That is the assumption. The future payments on those they assume will amount to \$15,000.

THE COMMISSIONER: They would raise that for a reserve?

MR. HINSDALE: They have to raise that \$15,000 for a reserve, and instead of raising it all at once they raise it gradually.

THE COMMISSIONER: What would they pay in the first year in addition?

MR. HINSDALE: According to this the first year they would simply add \$1,000 as a surcharge, they would collect \$11,000; the next year they would collect more.

THE COMMISSIONER: Having these two points in view, first, the certainty that the fund would be available, which system would you prefer, your system or that? Having regard to insuring the certainty of the State not being in a position of not having enough funds to meet the claims—guarding against that contingency which system would you prefer?

MR. HINSDALE: Our act in Washington—

THE COMMISSIONER: Leave the act out. If you are framing a law now, or recommending a law, would you adopt the Washington system, or would you prefer that?

MR. HINSDALE: In answering that question I have to say that I am more familiar with our system. I know what our system is; I do not know that it is absolutely correct, I do not say that it is. We have to make a guess under our system: you have to make a guess under this system. We think we know that \$1,000 reserve is sufficient; we assume that. Under this system there is an assumption that one has to raise \$15,000; it is an assumption just the same as our \$1,000 is an assumption. Under this system you can do it, and you can do it absolutely correctly during a term of years. As to which system I would prefer it would depend on whether it was open to ask for a large sum of money or a smaller one.

THE COMMISSIONER: Leave that out of consideration altogether and consider the economic soundness of the scheme.

MR. HINSDALE: From the point of economic soundness I believe that the current cost plan is economically sound: as a matter of preference for the auditing department I would prefer a yearly capitalized plan.

THE COMMISSIONER: I judge from what you have said that you think that in order not to make too great a demand at once upon the industries that it might be expedient to adopt that.

MR. HINSDALE: If that is to be a consideration, if the manufacturers are for any reason undesignous of collecting that whole reserve the first year, I would say say this is a way in which it can be done, and be done accurately. Our manufacturers in Washington have never raised the question at all. It has never been offered to them: the law provided that it shall be yearly capitalization and they pay it.

THE COMMISSIONER: Did anybody ever suggest that it was unreasonable to have a law of that kind?

MR. HINSDALE: I do not think it has been suggested. Under our method of treating each case as a unit, for example, not charging the printers anything unless there is a death in the printing class, our method is most applicable; and this method does not lend itself to the terms of our law absolutely.

THE COMMISSIONER: Supposing you had the industries of a country stationary how long would it take to wipe out the claims of the first year? Can you give any fair guess of how long it would take?

MR. HINSDALE: Under a method of gradual capitalization?

THE COMMISSIONER: No, when would it disappear?

MR. HINSDALE: It would be less than the expectancy considerably. One would have to figure the average expectancy of the average people who are entitled to pensions: I have not figured it out: I suppose it would be less than thirty years, or about thirty years, it would not be much in excess of that.

THE COMMISSIONER: The number of claims during that time would be always increasing?

MR. HINSDALE: Except as they are reduced.

THE COMMISSIONER: They would not run out for thirty years.

MR. HINSDALE: No, I do not think they would.

MR. WEGENAST: You are assuming, Mr. Commissioner, that there would not be a margin added as a surcharge.

THE COMMISSIONER: I am taking it without anything.

MR. HINSDALE: I think it would be a good deal less than the expectancy on account of the impairment. What is the average and what the number of years would be, I find it difficult to say; I would have to know the average age of the claimants; it is considerably less than the life expectancy according to the table of mortality.

MR. WEGENAST: Then in certain classes, for instance the printing class, the current cost plan would cost the employer more?

MR. HINSDALE: Yes, it would be creating a fund in advance for an accident.

THE COMMISSIONER: That is surely an objection to it?

MR. HINSDALE: We do not do it because we assure our people that they are not to pay anything unless there is an accident.

MR. WEGENAST: In other words it spreads the cost into the future.

THE COMMISSIONER: It robs Peter to pay Paul in this system.

MR. HINSDALE: This system creates a sum which is capitalized gradually on account of an accident that has happened, or else it gradually creates a capital sum to protect an accident that may happen.

THE COMMISSIONER: And that is contributed to by men who under your system might not contribute at all?

MR. HINSDALE: That is true.

MR. WEGENAST: But it is all insurance.

MR. HINSDALE: It all depends upon its feasibility, its practical working; a good deal upon the treatment of the reserve fund, whether the law contemplates an individual treatment of each reserve and keeping the separate reserve for that separate class, or whether it contemplates simply creating a general reserve.

THE COMMISSIONER: Yours is what?

MR. HINSDALE: It is individual. If under the act you prepare, you regard that reserve fund as a general reserve to insure the safety and solvency, you can add a certain surcharge year by year, and gradually build up any reserve you have a mind to build up according to the size of your surcharge. It accomplishes just the same result as we accomplish but in a different way, and gradually results in a rise of the rates year by year.

THE COMMISSIONER: I intended to have asked you but did not; is there delay caused by the circumlocutory way you deal with your claims? The Commission has no power to pay at all; you draw upon your State Treasurer; does it cause delay?

MR. HINSDALE: It does cause delay; we have tried hard to stop all delays; one difficulty is that we have not been able to devise a draft upon our State Treasurer which the Attorney-General will approve.

THE COMMISSIONER: If you had a Board to administer its fund and that had not to deal with the State Treasurer at all, would it imply a lessened expense and a more speedy settlement of claims?

MR. HINSDALE: It would save two weeks. I said at a previous hearing that I believed we were practically always two months behind the accidents inasmuch as we do not pay a month's lost time until it is lost—that accounts for one month; the various delays in corresponding in sending out papers and in securing signatures accounts for another month. Two weeks of that two months might be saved, if we were not hampered by other regulations, which you can avoid.

THE COMMISSIONER: Have you a system there of the State Department issuing an accountable warrant?

MR. HINSDALE: In our system we issue what we term a voucher. We send that voucher to the man; it is a receipt; we send it to him to sign. When that comes back to us we send it to the State Auditor in that Department; a warrant is drawn and sent to the State Treasurer to be recorded.

THE COMMISSIONER: Under our system a Department may get an accountable warrant for \$10,000 or \$20,000 that is subject to accounting to the Auditing Department for the money expended. You have no such system?

MR. HINSDALE: No; it would save time if we had. I would heartily recommend, if feasible, that part of the claim file should be practically a warrant which when all the signatures are complete upon that claim with the claimant's own signature and the medical man's signature, that it might be cashed.

THE COMMISSIONER: Have you had any cases where a claim has been sent in and has been opposed by members of the group liable for it?

MR. HINSDALE: We have had very few enquiries in regard to why we pay claims. We have had some investigation; men have come down to see why we paid certain claims and made a charge against their class, but it has never led to a reversal of the Commission's decision.

THE COMMISSIONER: If a claim is sent in you recognize the right of any member of the class to make representations?

MR. HINSDALE: Absolutely.

THE COMMISSIONER: And you would investigate them?

MR. HINSDALE: We do, indeed.

MR. WEGENAST: I went over considerable ground with Mr. Hinsdale to-day asking whether there would be any suggestions he would make. It is too long a list to go over to-night; I think two or three points may be interesting.

Which would you rather do, group the industries by the hazard, or by the character of the industry?

MR. HINSDALE: In Washington we found it was practically impossible to estimate the hazard in advance.

MR. WEGENAST: Notwithstanding the tables of the liability companies?

THE COMMISSIONER: When you have had fifteen months' experience, and when you have that information, what would you say?

MR. HINSDALE: When we have the information we would be far better able to group by hazard.

THE COMMISSIONER: Would you prefer that?

MR. HINSDALE: I would prefer for many reasons that the industries should be grouped according to the general similarity of the work, with a differential against the more hazardous industry. For instance, I think flour milling ought to be with grain handling; the machine shop should be with the allied workings of iron and steel.

MR. WEGENAST: Would that not be essential to any system that had as its counterpart or complement an association of the members of the group?

MR. HINSDALE: That is the great reason for it. I certainly think it promotes organization of associations for the prevention of accidents.

THE COMMISSIONER: Mr. Wolfe thought that by doing it the other way you would get a greater exposure and therefore make it more economically sound.

MR. HINSDALE: To illustrate the difficulty of anticipating the hazard; we rated paper mills at 2 per cent. the basic rate; we would charge as much of the 2 per cent. as was necessary. We rated laundries also at 2 per cent., on the assumption that the hazard was the same. We did not put them in the same class, of course. The paper mills we have had to call every month; they have paid the whole 2 per cent. throughout the year, fifteen months; the laundries we have charged for three months out of the fifteen, it has been one-fifth.

THE COMMISSIONER: You cannot make a call beyond the rate mentioned in your Statute.

MR. HINSDALE: We can at the close of the year. I made the remark simply to show the difficulty of classifying by hazard, and why I believe it to be a preferable method to classify by similarity of industry.

THE COMMISSIONER: I gather from what you have said that you make your assessments quarterly; why do you not make them yearly?

MR. HINSDALE: We sometimes call every two months. I think it is too much and useless work to call every month. Some industries we call every six months.

THE COMMISSIONER: You started with three months?

MR. HINSDALE: Yes.

THE COMMISSIONER: Supposing you started with a year, what would be the necessity of making another call, unless some contingency arose that made the fund fall below what was needed?

MR. HINSDALE: The law should have regard to the poor contributor, the man who is doing business with small capital; it should be made particularly favourable as to him. It would be rather a hardship on men not financially strong to wait until the end of the year and then send the bill for the full amount due on a full year. I know to many of our shingle mills and small operators if the bill were rendered to them at the end of the year it might be a severe blow.

THE COMMISSIONER: They are not far-sighted men.

MR. HINSDALE: If they can pay it gradually—every three months—it is much more satisfactory to them.

THE COMMISSIONER: It makes a great deal of labour.

MR. HINSDALE: It does make work.

MR. WEGENAST: What exceptions would you make to the principle of grouping by industries?

MR. HINSDALE: Of course there would be odd employments where one could not very well find their employers and they would have to be assigned properly. In that case it puts them naturally with the allied hazard.

MR. WEGENAST: What about the small exposures where there are only two or three industries in a group?

MR. HINSDALE: Our experience has led me to disfavour any small class. I think such classes are very dangerous under our act, because if at the end there is a deficiency we have to charge those few contributors enough to make good.

MR. WEGENAST: Except for the danger of the small classes and the difficulty of assigning some industries you would group all the industries?

MR. HINSDALE: I think so.

MR. WEGENAST: With probably sub-classifications or differentials?

MR. HINSDALE: I like that method; for example, longshoring is one class, and wharf operation is an entirely separate class, but we class them together because they are allied; we charge 2 per cent. in one case and 3 per cent. in the other. We have differentials, of course.

THE COMMISSIONER: Is it by rule of thumb that you get at the different hazards, or have you any working rule?

MR. HINSDALE: There are different departments and different kinds of work.

THE COMMISSIONER: You have explained that to some extent.

MR. HINSDALE: As far as possible we like to enforce what we call a unit rule; for example, in a saw-mill if they should have a machine shop operated in connection with it we classify that as one mill. A man may make a piece of iron and go into the saw-mill to fit it in; he is subject to the hazard of the mill. On the other hand, manufacturing jewellers, for instance, might have a very heavy press for pressing metals, and, say, two employees who might be in our class 26. We do not regard it that way; we apply the unit rule and cover all their employees both those in great and those in slight hazards; we put them in one class.

THE COMMISSIONER: And regulate it by averaging the hazard?

MR. HINSDALE: That has reference to the rate they pay, and we regard the very heavy hazard in the case of a few employees as more than counter-balanced by the light hazards in the other.

THE COMMISSIONER: In shaping an act where you are dealing with two or three kinds of business carried on together they say it is to be put in the class to which the major part of the business belongs.

MR. HINSDALE: As nearly as possible. We treat the waggon making works in this way: the Commission has found it advisable to put part of them in class 34 and part in class 29, the part working in wood, and the other the part working in iron. We examined into their pay-roll carefully for a couple of months and charged a percentage, 40 per cent. to the wood-workers and 60 per cent. to the iron-workers.

THE COMMISSIONER: You deal with each case separately?

MR. HINSDALE: Yes.

THE COMMISSIONER: Take the case of a machine shop: in connection with it you would have a saw-mill used occasionally, how would you classify that?

MR. HINSDALE: Just a small saw-mill in connection with a big machine shop I would treat as a machine shop.

THE COMMISSIONER: Would you raise the rate at all because of the extra hazard?

MR. HINSDALE: If it is a very small portion of the operation we do not.

THE COMMISSIONER: Where do you get in your act the authority to do that?

MR. HINSDALE: I doubt very much if an act could be so particularized in its terms that discretion would not have to be used; we find it necessary to use discretion in hundreds of cases.

THE COMMISSIONER: Even if the act does not say you may?

MR. HINSDALE: Yes.

THE COMMISSIONER: Should an act not be a little more elastic than yours giving the Board power to re-classify and differentiate, so as to do justice all round?

MR. HINSDALE: It would be fine for the work of the Commission if such were the case.

THE COMMISSIONER: You would have to have a pretty sound body of men on the Commission if you gave such large powers.

MR. HINSDALE: And yet we like to have it well specified too, because if it is not it gives the employers an opportunity to come around and ask to be put in a different class. It works both ways.

THE COMMISSIONER: And politicians?

MR. HINSDALE: Yes.

MR. WEGENAST: I have noted a good many things with regard to rates and classes.

THE COMMISSIONER: Has Mr. Hinsdale seen that document you have in your hand?

MR. WEGENAST: No, he has not seen this.

THE COMMISSIONER: Let Mr. Hinsdale take it and check it over on his way; it will relieve the monotony of the trip. He can send it back with any additions he may wish to make, if he will take that trouble in addition to all the other things he has done for you.

MR. HINSDALE: I will be glad indeed to do it.

MR. WEGENAST: What would you consider, Mr. Hinsdale, a fair sized class; what would you say is the smallest class that ought to be allowed with reference to the number of employees?

MR. HINSDALE: We have a great many classes that are considered prosperous classes, classes of only six hundred employees and even less than that. I should think on the average if a class had a thousand employees it might be considered a fair class. For that reason if one institution has a great many employees there is no inherent impropriety in letting them be in a class by themselves.

MR. WEGENAST: How many?

MR. HINSDALE: If they had a substantial number, say a thousand.

MR. WEGENAST: Let one manufacturer be in one group?

MR. HINSDALE: If it were necessary.

MR. WEGENAST: If there were no well defined class to put them into?

MR. HINSDALE: Yes.

THE COMMISSIONER: Supposing there was?

MR. HINSDALE: I favour having as large classes as you can.

THE COMMISSIONER: Supposing you have an industry with 25,000 employees, would you put them in a class by themselves?

MR. HINSDALE: If there were other establishments somewhat similar I would prefer from an administrative point of view to have all those establishments in one class. From the point of view of safety and feasibility if

there were two or three establishments, each one of which had a great many thousand employees, it is simply individual liability: you could have each one of them in a class if you wished, there would be no impropriety.

THE COMMISSIONER: What do you mean by an administrative point of view?

MR. HINSDALE: I mean this, that there might be several groups in each group; there might be quite a number of manufacturers. If one of those groups should come to us and say: Each one of us wants to be counted separately, it would make a bad precedent; the other groups might also want to be separated, and if you extended that you would simply have individual liability.

THE COMMISSIONER: Supposing it was such a large group that there was no danger of having any other like it?

MR. HINSDALE: It is quite evident that the reference is to railways. If there were three railways in the community and each one wanted to be treated on its own merits, each one of them to be regarded as a class by itself, there would be no difficulty in handling it from an administrative point of view. On the other hand there might be some other industry—there might be three furniture factories, and each one of these might want to be separate. If that were to be extended generally there would be individual liability, which you do not want.

MR. WEGENAST: When you speak of the railway in that respect you do not speak of the car shops, I presume; you speak of the railways simply in respect of their operations?

MR. HINSDALE: Yes. We do not really have any railways in operation except the logging railways.

MR. WEGENAST: Do you include the car shops and locomotive works?

MR. HINSDALE: We do. If there is a little car shop in connection with the logging industry, we count that in connection with that industry.

MR. WEGENAST: You do include railroad construction?

MR. HINSDALE: We count railway construction; it is a very different thing from operation.

THE COMMISSIONER: Supposing a State road is building a branch, do you include that road while it is being constructed?

MR. HINSDALE: We do. We count railway construction, and I might say that there are a very great many people constructing railways, railway contractors; they ought to be separate.

THE COMMISSIONER: Supposing the railway is doing it itself, an interstate road?

MR. HINSDALE: Under our act in our State?

THE COMMISSIONER: Yes.

MR. HINSDALE: In several cases we are accepting money. There is a great difference of opinion as to whether we are justified. We have agreed,

however, to accept the money and pay for the accidents. We cannot guarantee protection.

MR. WEGENAST: Have you any case of a railway building a track, and not another contractor?

MR. HINSDALE: Yes, we have the Great Northern. They insisted upon us having a fund and paying the men; we are doing that; they are quite keen on being under the law.

MR. WEGENAST: What do you do when you cannot separate the different departments of an industry?

MR. HINSDALE: Get a percentage as nearly accurate as possible of the respective kinds of work.

MR. WEGENAST: You simply say such and such a percentage of the pay-roll covers such a class, and such and such another class.

MR. HINSDALE: Yes, as illustrated in the street railway system in Seattle; they operate a portion of the lighting system in the city. There are certain men undoubtedly engaged in the lighting work, and a good many employees engaged in the street railway work, and there are certain pay-rolls like the power houses that are indissoluble. The only way we can tell is by careful inspection and then we say a certain percentage would be applicable.

MR. WEGENAST: What suggestion do you make in regard to heavy teaming and the moving of safes?

MR. HINSDALE: We have had very great difficulty. The construction put upon it is that the hauling of heavy articles, machinery, boilers, and so on, is leviable; for instance, moving dry goods boxes we regard as incidental to the dry goods business. The law should state very definitely what occupations are covered and what are not covered: if it is desired to cover the occupations of teaming, it should be so stated.

THE COMMISSIONER: How long was it after your law was approved before it came into operation?

MR. HINSDALE: It was approved on the 9th of March, and went into operation on the 1st of October. The Commission was empowered to act on the 9th of June; we had less than four months to do everything that was done to get ready.

THE COMMISSIONER: It did not become operative as far as claims arising or rates being collected until the 1st of October.

MR. HINSDALE: The 1st of October. We ought to have had more time.

THE COMMISSIONER: Starting an act here would it not be better, or what would you think, to get the Commission to work and give them a year within which to frame their tariffs: would that be too long?

MR. HINSDALE: If the law were prepared in the bill and the Commission empowered to act, I think there should be seven or eight months before it

went into effect, time enough for the Commission to get all the information they require.

MR. WEGENAST: What do you say as to whether the classes should be fixed by the act, or fixed by the administering Commission?

MR. HINSDALE: Fixing them by the commission would necessitate a large number of hearings, the Commission's time would be so taken up with hearings that it would interfere with their other work. If the classifications could be fixed by the act with large discretion given to the Commission, it might be better.

THE COMMISSIONER: You would still be as much bothered by people coming in wanting to be taken out of a class or for you to re-arrange them.

MR. HINSDALE: There may perhaps be a distinction between a discretion to change and the duty of arranging. If you impose the duty to arrange the classifications it is quite an undertaking, but otherwise if the classifications are set out in the act and the Commission is simply given the power to make changes.

MR. WEGENAST: What do you say as to the fixing of a minimum number of employees? What do you say as to fixing a limit on the application of the Act with respect to the number of persons employed?

MR. HINSDALE: My own personal feeling about it is that an employer should not be regarded as an employer under the act unless he has three men at work. A reason for that opinion is this: the man who is simply employing to-day, a day's work fixes the conditions of the employment; if a man is hired to shingle a roof, he puts up his ladder himself and is in absolute control of what he is doing; that is one situation. If, on the other hand, half a dozen men are employed, their conditions are fixed for them to a certain extent. There is a difference, I think. Another thing, if there is only one employee or two employees, the Commission perhaps would not get the contribution to the accident fund on account of that work; it is humanly impossible to get the contribution on account of the incidental day's labour of one man.

THE COMMISSIONER: Are there not two difficulties in the way of that? Would not a law that gave compensation to John Smith who is in a place where there are four workmen, and refused compensation to James Jones who is one of three—would that not be an obnoxious law?

MR. HINSDALE: It would in a way appear to be inequitable, but the man who does a day's work who is hired to do merely a day's work that is very incidental; the man might be considered as a contractor. Under our law we distinguish between a contractor and an individual.

THE COMMISSIONER: Would there not be this difficulty too: a man may have three to-day, five to-morrow, and one the next day?

MR. HINSDALE: It would be the average number of his employees. We have many such cases to deal with. I remember one case where a banker hired a man to do a little bit of carpentering in his summer house: the man

was reaching up driving a nail, it slipped and put out his eye. We paid. I presume there were a thousand men in the State doing that day identically the same kind of work; we did not get a cent of contribution from the 999, and we would not have got it from this thousandth man if the accident had not occurred.

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## TWENTY-FIFTH SITTING

THE LEGISLATIVE BUILDING, TORONTO.

*Tuesday, 28th January, 1913, 8 p.m.*

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner.*  
MR. F. N. KENNIN, *Secretary.*  
MR. W. B. WILKINSON, *Law Clerk.*

THE COMMISSIONER: I have received a memorandum from Mr. Ballantyne, which sets forth the views of the Casualty Insurance Companies. (Marked as an exhibit.)

I have also received from Mr. Wolfe a document which he calls a reply to Mr. Wegenast's brief. (Marked as an exhibit.)

I have also a statement compiled by Mr. Burke, the Factory Inspector. (Marked as an exhibit.)

THE COMMISSIONER: You are the Factory Inspector, Mr. Burke?

MR. BURKE: Yes, Chief Factory Inspector for Ontario.

THE COMMISSIONER: This table you have prepared is compiled in part from the census returns for 1911, and the other part from reports received in your Department of accidents in 1912.

MR. BURKE: Yes, sir.

THE COMMISSIONER: Column 1 is for the industry, column 2 the number of establishments, column 3 the number of employees. and column 4 the wages paid?

MR. BURKE: Yes, sir.

THE COMMISSIONER: In some of these cases you do not show any accidents at all?

MR. BURKE: Not in some of them, no.

THE COMMISSIONER: Why is that?

MR. BURKE: None were reported.

THE COMMISSIONER: And some of these establishments that you report accidents in do not appear under the same heading in the census return?

MR. BURKE: Exactly

THE COMMISSIONER: For instance one of these is "tar and chemicals."

MR. BURKE: Yes, one accident reported to us.

THE COMMISSIONER: But there is no such sub-division in the census?

MR. BURKE: No, not in the census.

THE COMMISSIONER: Have you marked the ones that do not appear in the census?

MR. BURKE: That is column 5.

THE COMMISSIONER: That only shows the number of accidents in each class?

MR. BURKE: In each class that does not appear in the census.

THE COMMISSIONER: What is the first class?

MR. BURKE: Take agricultural implements, it shows how many industries, the number of accidents reported, and the number of fatal accidents.

THE COMMISSIONER: Are the four fatal accidents included in the 167?

MR. BURKE: Yes, sir.

THE COMMISSIONER: Where you put in the first of these columns five accidents that means it does not appear under that heading in the census?

MR. BURKE: Exactly; that is it.

THE COMMISSIONER: There are a great many that way; the bulk of them, I should say, perhaps not numerically?

MR. BURKE: I have no doubt they appear somewhere in the census but we did not understand their method.

THE COMMISSIONER: You have made this statement yourself, and it is accurate?

MR. BURKE: Yes. I thought it would be a good idea to get the number of establishments, employees, and the wages paid.

THE COMMISSIONER: Then I understand, Mr. Hellmuth, the position of the railway companies to be that they are willing to come in under any law that may be enacted, but ask that they be not grouped, and that each one be left to stand on its own bottom; is that correct?

MR. HELLMUTH: Yes, so far as I am instructed.

THE COMMISSIONER: Do you differ from that at all, Mr. McCarthy?

MR. McCARTHY: I was discussing the matter yesterday in Montreal with Mr. Biggar, Mr. Lafleur, and also with Judge Kretzinger of Chicago, and they were pointing out certain difficulties which would exist in the case of the Grand Trunk. Mr. Lafleur, of course, has strong opinions on the subject, and I asked him if he would send you a copy of an address which he gave before the Canadian Club at Ottawa.

THE COMMISSIONER: Which Mr. Lafleur?

MR. McCARTHY: Mr. Eugène Lafleur, the lawyer. He is strongly in favour of having one law governing all Canada. The point came up yesterday. The discussion arose in this way: I happened to be giving evidence in a case

where a man was injured in the Province of Quebec and was bringing an action in the Province of Ontario, and he was deplored the fact that there was a separate law for compensation in that Province, and possibly a different one in Ontario. He advocated very strongly, if it could be arranged through the Dominion Parliament, that one law should govern compensation throughout Canada; he looked upon that as ideal, if it could be accomplished.

THE COMMISSIONER: I think some of them look that the Ontario law may be a pattern for the Dominion.

MR. McCARTHY: That may be. For instance a great many of our employees live in Sarnia, and their run takes them through the States of Michigan and Illinois. Here are two separate laws; a law in the State of Michigan, and also one in the State of Illinois. Then the employees have the option of electing to sue under the Federal law.

THE COMMISSIONER: The interstate commerce?

MR. McCARTHY: Yes. If the railroad company gives notice that they are working under the interstate commerce and it gives rise to a fresh difficulty, which is the question of whether the workman can take advantage of the interstate commerce if he thinks it is to his benefit to do so. They all appreciate the necessity of having some new Compensation Act for the workmen, but the difficulty they saw was in working it out. There was one other question which I might mention, and that was this: there is the old Insurance and Provident Society which they have in the Grand Trunk at the present time. Now, anything in the way of insuring the workmen would practically mean the winding up of that society. There are a great many men who have been insured in that for a great many years who wish it to go on. I mean a man who has been paying for sixteen or seventeen years wants to continue. He feels he has got a sufficient investment in that at the present time. I was speaking to some of the older men, and they are desirous of continuing in that. A new man coming in might say, "Why, there is no benefit to me in joining that if I get ample insurance under the Ontario law;" naturally he would not want to join the Insurance and Provident Society. So you would have one class of men who would want to stay in it for the benefit of the amount of money they have paid in already, and another class who would say there is no benefit in joining it.

THE COMMISSIONER: That is not perhaps so, because under no law that has been suggested would the workmen get full compensation. It would be only a percentage of his wages, and therefore it would be in his interest if he could cheaply insure in a benevolent institution?

MR. McCARTHY: We recognize the inadequacy of that benefit. It was started a great many years ago when wages were on an entirely different scale, and we recognize that the cost of living is greater to-day: but that is the difficulty. We want to pay. We realize the compensation that the workman gets in that is not entirely adequate, but a man who has been in it sixteen or seventeen years does not want to lose his investment in it. That was one of the difficulties that was suggested by Mr. Biggar and by Mr. Lafleur in discussing the matter, in trying to come in under this new act,

However, they want me to assure you they are anxious to come in and provide adequate compensation. At the same time they agree with Mr. Hellmuth and with Mr. MacMurchy that it would not be advantageous for the railways to be grouped at the present time, and their own employees are of the same opinion, as has been voiced by the different representatives of the different classes of labour here. Apart from that we of course would be willing to come in if the matter can be worked out from a practical standpoint.

THE COMMISSIONER: Am I to understand that the railways would not object if they were left each by itself in a group to pay their contributions into the fund just the same as any manufacturer would?

MR. McCARTHY: Well, I did not understand that was the proposition. I understood that the suggestion was that instead of paying any sum into the fund, that the amount of compensation should be decided by a Board and that the railways would be notified of the amount they had to pay, and the railways would simply pay that amount themselves from time to time as occasion might arise.

THE COMMISSIONER: You see it is urged, and perhaps with some force, if you leave each company to itself a man might feel less inclined to make his claim than if the fund was there and he had simply to go and prove his claim against it; that he would bring himself in direct contact every time with his employer. That is urged by those who speak for the workmen as a somewhat serious objection to what is proposed.

MR. McCARTHY: Well, Mr. Commissioner, what we had in mind was this: that we would probably have to enlarge our insurance fund as it is at present. At the present time we have paid in about \$250,000 a year—that is the Company pays that into the Provident Society, and we thought that probably this matter could be worked out by paying a larger sum into that society, and keep that same machinery still in use. They do not want to disband it as it would mean the throwing out of employment a great many men who are at present engaged in that work. They thought by paying a still more substantial amount into that insurance society and by disbursing everything from that, that they would keep their machinery in use—very much as they have in Germany perhaps. That machinery would be left intact and all disbursements would be made by that.

THE COMMISSIONER: I suppose the bulk of the employees of the Grand Trunk are resident out of Ontario?

MR. McCARTHY: I would not say the bulk of them; a great many on the border prefer to live in Ontario rather than on the other side, for instance, those operating in the Niagara Peninsula, the majority of them will be in Ontario, although their runs may be outside. The same applies to the district around Sarnia, I think, where they run into Michigan and Illinois. The majority prefer to live on the Canadian side because living is less expensive and it is a greater benefit to them. At the same time, of course, down at Island Point where they run into Vermont, and into Massachusetts as well where the railway operates, a large number live in Quebec. I do not know at all what the proportion is, but my information is that probably the majority are in Ontario and Quebec.

THE COMMISSIONER: This is a little outside the question, but has Mr. Lafleur considered whether there are any constitutional difficulties in the way of the Dominion passing such a law?

MR. McCARTHY: He did mention that, but he could see no reason why the Province should not agree to a reasonable law, and what he suggested in his paper, (and he had this particular thing in mind as well as the other subjects he mentioned), was that perhaps a committee might be appointed as I think they have in the States, a Federal Committee, to confer with all the Provinces, with the idea of getting the consent of all the Provinces to have one act governing the workmen throughout Canada.

THE COMMISSIONER: I suppose the same thing could be brought about by uniform legislation.

MR. McCARTHY: That was the idea, that a committee representing all the Provinces, in the nature of a Federal Committee, should try and frame an act to meet the requirements of the workmen throughout Canada.

THE COMMISSIONER: Each Province might pass the law for itself?

MR. McCARTHY: Exactly.

THE COMMISSIONER: Would there be any objection on the part of the railway companies to legislation by the Parliament of Canada declaring that whatever compensation is payable should have the same privileges as the working expenses of the road?

MR. HELLMUTH: I would say on behalf of the Canadian Pacific, and in fact I thought I had suggested that, in order that there should be certainty of the amount coming to the workman it should be a first charge, a preferential claim.

THE COMMISSIONER: After the working expenses, or as part of the working expenses?

MR. HELLMUTH: Well, as part of the working expenses. I do not think there would be any objection to that.

MR. McCARTHY: There was just one other subject I might mention, and that was the question of the Père Marquette. I represent that road also, and they are at the present time in the hands of a receiver. They operate a small portion of their line in Canada and they are in financial difficulties. I have been in communication with the receivers to know what they could do, and they say they are in the hands of the Exchequer Court, and any scheme they would agree to they assume would have to be presented to the Exchequer Court for its approval.

THE COMMISSIONER: That perhaps suggests a difficulty by leaving the railways each as a separate group. Somebody ought to take care of the lame duck, because if the Grand Trunk, the Canadian Northern, the Canadian Pacific, and the Père Marquette were grouped separately, what safety would there be for the workmen of the Père Marquette?

MR. McCARTHY: I see the receiver has power to pay compensation for all claims for injuries, with the sanction of the court, which simply means submit-

ting the matter to the court and I presume getting their approval before it is done.

THE COMMISSIONER: There is no power to contribute to a fund though.

MR. McCARTHY: No, no power to do that.

THE COMMISSIONER: I suppose there would not be very much harm in making the other three railways come in, if the Père Marquette was short, as the price of being left in separate groups?

MR. McCARTHY: I suppose that is really the objection to the grouping.

MR. HELLMUTH: I was only going to say, sir, so far as the railways are concerned, I understood the main idea was the safety of the men getting compensation, and with regard to that if it were made a charge upon the railway similar to the working expenses there could be no question then that the workman would be entitled to his compensation without any danger, but in regard to what you have said about a fund, I did not understand that the moneys would be paid into a general fund. I thought the difficulty of the workmen, if there was any, making any claim against the railway would be obviated by the fact that he would make his claim to the Commission Board, and it would award to each man what he was entitled to, and then a draft would be made upon the railway at once to pay that amount out of its funds, or out of such a fund as Mr. McCarthy has mentioned. I did not mean that the railway companies should necessarily shirk any share of the expense; I do not think perhaps that should be asked. I mean for the expenses of the Board in its administration a fair levy might be made upon the railways to meet that, but I think it would obviate the danger of the workman making a claim against the railway company, because he would send in his claim to the Board of Commissioners, and the Board would say whether he was entitled, and a draft would be made upon the railway.

THE COMMISSIONER: Sometimes a railway, even if it has lots of money, is slow to pay.

MR. HELLMUTH: Well, I said for the Canadian Pacific I would undertake to pay the day before anybody else was ordered to pay.

THE COMMISSIONER: In Washington I understand they do not make them pay the whole year's amount; they assess quarterly, so that it would not come so heavy. However, that is the attitude of the railway companies?

MR. HELLMUTH: Yes. It is not that they should not be subject to exactly the same law as anybody else is subject to. They should be obliged to pay the instant a call is made. The workman should establish his claim, not before the railway, but before the Board appointed, and then the railway would pay.

THE COMMISSIONER: I understand you gentlemen speak only for the steam railways?

MR. HELLMUTH: I speak also for the Michigan Central.

THE COMMISSIONER: That is a steam railway.

MR. McCARTHY: There was another matter discussed which I may state, Mr. Commissioner, although it may not be agreeable to the gentlemen on the other side of the table—the question of a contribution by the workmen. I think as that was discussed it is only fair I should tell about it. The Grand Trunk did not think it was a question of the workmen making any substantial contribution, but they thought that in the end, as a result of their investigations, it might tend to prevent accidents, or lessen accidents, even the smallest contribution. As an instance it was mentioned that there were four rear end collisions, and in each case a fellow-workman was injured; in each case the circumstances were identical, they all neglected to send out a flagman to the rear of the train, each one was relying on the men at the station to put up the semaphore.

THE COMMISSIONER: How long had they been working: it is not a question of overworking them, is it?

MR. McCARTHY: Oh no. They came into a station and had orders to stop there, and the man at the station, the operator, had neglected to put up his semaphore, and the men on the train had neglected to send a flagman back. In each case the other men were the sufferers. It was discussed yesterday whether it would perhaps make them a little more careful and think a little bit more about themselves, and possibly more about the public. It might be that another workman would say, "Now look here, don't you sit in the caboose here instead of going back with a flag just because you think the operator may put up a semaphore." It was not a question of trying to shirk the responsibility of putting up sufficient funds ourselves, but whether it would not be a small reminder to the men to preserve themselves sometimes, because often men will sit together in the caboose and may be careless, whereas one thoughtful man might say to the others, "Now, look here, we are all in this and isn't it better that you go back, or so-and-so go back, and protect us at the rear?"

THE COMMISSIONER: It is argued, Mr. Hellmuth, that there is a very substantial contribution by the workmen in that he bears all the loss except the percentage, whatever it may be, that his employer pays by way of compensation.

MR. McCARTHY: That is true. It is only with the idea of preventing accident or loss. It is not with the idea of shirking the contribution, but the idea that if even the smallest consideration, the smallest contribution, would prevent the loss of a life or the loss of a leg or an arm, that it would be worth while trying. Whether in your investigations abroad, Mr. Commissioner, you heard any comments on that subject or not I do not know, but I know some of the English railways, the London and Northwestern for instance, that I have had communication with, take that view of it, that it had a beneficial effect in saving life and limb.

THE COMMISSIONER: Supposing that a man only got fifty per cent. of his wages if he is injured—I am only using that as an illustration—is not the loss of the other fifty per cent a pretty good incentive for him to be careful?

MR. McCARTHY: Yes, that is a point with reference to a man who injures himself; but if he is injured by somebody else? When there are three or four men in the caboose together, or anywhere in the train together, where they

have five train men running a freight, is it not a suggestion perhaps which might be made by a more careful man to a less careful one, that they all join together in seeing that an accident does not happen. No one suggests that any one deliberately wants an accident to occur, but it is a constant reminder, and they will think, we are in this fund as well as the railways.

THE COMMISSIONER: It is argued with some force it would be a constant source of irritation if every fortnight, or whatever time a man went up for his pay, so much was deducted for his compensation. It is making him insure himself, and is like compulsion; it is said it causes a great deal of irritation, and one of the purposes is to try and get rid of irritation.

MR. McCARTHY: That may be. It was only a question of whether it would save lives, and whether it would save the lives of the public as well as the men themselves. If it is an irritation to the men to have the contribution deducted every pay day of course that is an objectionable feature, but it gives the men the idea that they are as much interested in preserving the fund and keeping that fund for the benefit of themselves, no matter how small a contribution it may be.

THE COMMISSIONER: What would you think of making the compensation a certain percentage, and if the workmen choose to contribute they get a larger compensation?

MR. McCARTHY: We would be in favour of that, because he would get the benefit of his own contribution, if he was entitled to the contribution, and of his fellow-workmen. It would mean that every member of the fund would see to the preservation of the fund.

THE COMMISSIONER: It would be a question how far that would be availed of by the men. If only a few took advantage of it it would not be of much use.

MR. McCARTHY: It would have to be taken advantage of by everybody. I realize the practical difficulty of the thing, but the whole object of the act is not so much compensation as to save life and limb. If you can save men it is better than to compensate for the loss of them. That is what we think.

THE COMMISSIONER: Would it be practicable where you have men whose work carries them into different jurisdictions to have them elect under which law they would claim compensation in the event of injury, in advance, I mean, or would that be too cumbrous. There is a provision in the German system in regard to that.

MR. McCARTHY: In the States the companies have to elect.

THE COMMISSIONER: As I understood Mr. Hinsdale it depends on where the accident happens; if it happens outside of the State of Washington they do not pay. It depends on the law of the State where it happens.

MR. WEGENAST: And they separate the pay-roll on the same basis.

MR. McCARTHY: I thought each company that had an interstate business had to elect whether it would come under the State law in the event of an accident happening in that State, or whether they would avail themselves of the Federal act. I understand Judge Kretzinger to say that.

THE COMMISSIONER: That is not the way it is according to the State law, as I understood Mr. Hinsdale.

MR. GIBBONS: I just wanted to point out that it seems a very inconsistent argument that the railway is putting up.

THE COMMISSIONER: Quarrel with the thing itself, not with what they are doing.

MR. GIBBONS: They object to be grouped, pointing out if each road has to stand on its own merits it will tend to make it more careful, and they object to pay into a fund. They want to pay their own funds out, and then they suggest that the workingmen be made responsible for each other's accidents because it will make them more careful, while in their own case it will make them careful if they look after their own accidents and not another man's accidents.

THE COMMISSIONER: I did not understand that to deal with their own accidents would make them more careful. The idea was that the careful road might have to pay for the less careful road.

MR. GIBBONS: The same would pertain to a man. One man might be very careful and never have an accident and yet he would be contributing to the accidents that were caused by a careless man, which would be just the same.

THE COMMISSIONER: I thought you had a much more substantial objection to contribution by the men than that. You go much deeper than that.

MR. GIBBONS: There are very few organizations of workmen who have not mutual societies of their own. They pay a certain amount of sick benefits, for instance all the street railway men contribute a certain amount per month, it is very small. We give them free doctor and medicine, and \$3 a week, those who avail themselves of it. It is optional whether they avail themselves of the sick benefit or not. Many of the men are in fraternal societies and they contribute all the time to protect themselves to that extent. I think it would cause friction right along to pay something out in the shape of a contribution if it is deducted from the wages; it is something the men do not like.

MR. DOGGETT: Mr. Commissioner, the men working in the building trades in the City of Toronto are paying into their organization for accident benefits, but the fact of their paying into this organization for accident benefits does not stop them putting up an unsafe scaffold. They are not thinking so much of the funds of the organization being saved as they are of saving the lives of the men working on the scaffold. The workmen is contributing in the shape of pain and suffering; isn't that enough for the workmen to contribute in cases of accident without paying into a fund?

THE COMMISSIONER: It is not all on one side, this scaffold business; very often the whole trouble is caused by a workman's carelessness. You must try and look at both sides. No doubt very often there is carelessness on the part of the contractor, but the workmen are just as careless very often.

I do not think I shall recommend that every employer of labour be brought under this act at present, and I should like to have such help as you can give to select the classes it is most desirable to bring under the act. There are several modes in which it could be done, for instance,

bring in so much of the act as constitutes the Board and give it power to make the rates—that is not quite accurate, but it conveys the idea—and make the classification, or for the act to make certain classifications and give the Board power to bring in other groups as occasion justified it in its opinion. My own idea would be that you would get a more satisfactory grouping if the first plan were adopted—I am not saying I have come to any conclusion upon that—if the Board were constituted and could get information that would enable them to assess, to decide what initial payment should be made, and to determine how to group, and if there are subdivisions in the groups, how these are to be made. If the Legislature undertook to do it probably it would not be as scientific or as accurate a classification as would be made by a Board which could sit down and have actuaries and experts to consult.

Mr. Wegenast, if you have survived that last attack by Mr. Wolfe, what is your view about that?

MR. WEGENAST: I quite agree with that, Mr. Commissioner.

THE COMMISSIONER: Which plan would you prefer?

MR. WEGENAST: I think I would prefer to have the classification in the act to serve as a basis, or at least a suggestion to the Board as to what the intention of the legislation was.

THE COMMISSIONER: It would not make much difference if the Board had power to rearrange and reclassify.

MR. WEGENAST: There is this about it, that the Board may not have the knowledge of the intention of the general plan that we have sitting around this table.

THE COMMISSIONER: I hope they will have a great deal more knowledge than I have.

MR. WEGENAST: Well, I can say the same, Mr. Commissioner, but still you will frame the law, and there must be some backbone to it.

THE COMMISSIONER: Would there not be a backbone in the way I suggest; let them make their groups?

MR. WEGENAST: I think there is no inherent or essential objection to it, but it strikes me a preliminary classification in the act itself would illuminate the act, as it were, and give a suggestion of the intentions.

THE COMMISSIONER: It might darken it.

MR. WEGENAST: It might, of course.

THE COMMISSIONER: If these wide powers of classification and re-classification are given to the Board, should the Executive Government have any voice or control; in other words should any change that is made not come into effect until ratified by the Lieutenant Governor in Council, or should it be operative at the will of the Board?

MR. WEGENAST: I would say if any such extensive power is given to the Board as to bring in new groups under the system it would be almost necessary that the Government should pass upon it, but if it is merely a matter of class-

ifying and rating industries within the scope of the act, it would not be necessary; and in fact it would be undesirable.

THE COMMISSIONER: I do not think it would be desirable to pass an act that didn't enable the Board as occasion arose and as it seemed expedient, to bring in other classes, because logically if one class is in all classes should be in; logically there is no escape from that position.

MR. WEGENAST: I can quite see why the representatives of the agricultural interests would object to that.

THE COMMISSIONER: Do you not think that is a reason why the Executive Government should not have anything to say in it?

MR. WEGENAST: No, because after all the Executive is responsible to the people of the Province.

THE COMMISSIONER: Yes, but if it were one step removed from them they could say "Go to the Board."

MR. WEGENAST: I would not like to suggest anything for the agricultural class that I would not like the manufacturers to be under.

THE COMMISSIONER: What do you say to that, Mr. Bancroft?

MR. BANCROFT: Do I understand, Mr. Commissioner, what you have in mind is that the Board should be appointed and a general outline made in the act, and then they should bring into the scheme the industries they think should come in?

THE COMMISSIONER: There are alternative suggestions; one is it should be left at large for them to do it, and settle the rates and everything, and the other that you should start with certain industries set out in the act, and let them add to them or change the groups as occasion required. If they were set out in the act I would not think it desirable that the Board should have power to take out of the act any branch of industry that the legislature put in.

MR. WEGENAST: Would not the purpose be served pretty well if the Board had power to assign each industry to its proper class? In the well defined industries there would be no difficulty, or probably no difficulty, in classifying them at once. It is only in the case of industries that are not properly placed, as it were, and the Board might be allowed as a question of fact to decide what class those industries should go into.

THE COMMISSIONER: How are you going to designate your classes; how would you go about doing it?

MR. WEGENAST: They have done it very well in the Washington act.

THE COMMISSIONER: That is mere naming kinds of industries.

MR. WEGENAST: They have established some forty-seven classes. It would be simply a matter of looking about in this Province to find whether any group of industries would make a large enough class.

THE COMMISSIONER: But there ought not to be delay; unless you were going to guess it would mean delay in drafting the measure.

MR. WEGENAST: With all respect, Mr. Commissioner, I do not see why.

THE COMMISSIONER: If we were infallible there would not be any necessity for delay, but unfortunately I recognize I am very fallible.

MR. WEGENAST: Perhaps if the representatives of the other employees here would sit around a table for a week they could work out a scheme of classification.

THE COMMISSIONER: I think if they were left together for that time there would be nothing left but rags.

MR. WEGENAST: For my part I think it could not be done with the manufacturers.

THE COMMISSIONER: Probably you have got all that done? Supposing you hand in your suggestion, as amicus curiae perhaps, not binding the manufacturers you represent in any way, and let those who speak for the workingmen see it; they can say whether they think that is a fair beginning.

MR. WEGENAST: I am quite satisfied to do that.

THE COMMISSIONER: Have you got anything such as that practically ready?

MR. WEGENAST: Well, as a matter of fact I have it practically ready, and you have suggested the qualification that I would like to have go with it.

THE COMMISSIONER: I do not want you to commit the manufacturers at all.

MR. WEGENAST: It is simply a working hypothesis.

MR. BANCROFT: Are we on a working hypothesis too?

THE COMMISSIONER: You are such a fluid body. I think that is a sensible thing to do.

MR. BANCROFT: I think that is a good suggestion; Mr. Commissioner. You remember Mr. Hinsdale said that the Industrial Commission of Washington was appointed, I think it was three months before the commencement of the operation of the act; in that three months they engaged, I suppose, actuaries and experts both to classify and to strike a rate for the beginning of the act. I was wondering if you had that in mind?

THE COMMISSIONER: But they had in the act itself the classification.

MR. BANCROFT: Yes. Is that not what you had in mind?

THE COMMISSIONER: Either to leave out the classifications or start with those who we feel certain ought to be in, and give the Board power to add to these groups, and to alter the classification, if they thought it was not scientific or just.

MR. BANCROFT: Is that not leaving it to the Board's own sweet will who they will take in and leave out in the future?

THE COMMISSIONER: Undoubtedly it is.

MR. BANCROFT: That is not right.

THE COMMISSIONER: I suppose the Government of the day is responsible for the Board, and if the Board is not responsive to public opinion there is a way of getting at it.

MR. WEGENAST: I would think a Board would consider such a power very undesirable for it to have.

THE COMMISSIONER: It would never do to have it the subject of legislation every time; you never could get on with that.

MR. BANCROFT: If I understand just what you mean it almost looks as if it could be done; if a generous application could be outlined in the act, and then leave it to the Board; it might be better than to just leave everything to them.

THE COMMISSIONER: Suppose we let that be the understanding. How soon can you let us have copies?

MR. WEGENAST: Any time, to-morrow.

THE COMMISSIONER: Then at our next meeting we can see what is thought about it. Then I think the farmers and those in what we may call clerical shops, and domestic servants, will have to be left out of the act at first; it would be quite impossible to get hold of them. If you are going to bring the farmers in it would be impossible to get the necessary information to work out the act, and my own impression is that you would never get the Legislature to bring them in now, whatever you may do by education. I am speaking of the farmers, domestic servants, and those who are not engaged in what may be called industrial occupations.

MR. WEGENAST: There are large farms like Trethewey's at Weston, or the large greenhouses at Brampton.

THE COMMISSIONER: A greenhouse is not a farm; that would be an industrial enterprise, I should think.

MR. WEGENAST: I think you would find it hard to classify it under anything except horticulture.

THE COMMISSIONER: I do not care how you classify it. I should think that ought to be brought within the act; you cannot differentiate.

MR. WEGENAST: I suppose different branches of the firms would come under different departments?

THE COMMISSIONER: I suppose if Mr. Trethewey, for instance, had a canning factory, that would be under the act as a canning factory.

MR. McCARTHY: Have you considered with regard to the street railways?

THE COMMISSIONER: Put them all in one group.

MR. McCARTHY: You are asking whether those things should be defined in the act or left to the Board. How would it be to group the street railways, power companies, transmission companies, and so on, that are all more or less closely allied financially? I am going to suggest why should they not be in a position to apply to the Board as a group and say we are perfectly willing to make our contribution as a whole, as a financial head, and you can determine the liability and what the contribution shall be for this particular group. For instance, if the street railway here with the electric light company, and the transmission company from Niagara, and the development

company, that are all closely allied, prefer to be grouped rather than be grouped with the Cataract Power Company or the Hydro-Electric?

MR. WEGENAST: I represent a number of industries, for instance the Massey-Harris Company and the International Harvester Company, and we would really prefer the same sort of treatment.

THE COMMISSIONER: Some of these things are short-lived. Take the particular one in the group you are mentioning now. It has only nine or ten years and then it is dead.

MR. McCARTHY: One of them is dead and the rest continue the responsibility. That is one reason if the payments were spread over a number of years that the workman would be sure of his pay, although the street railway might go out of existence.

THE COMMISSIONER: That would mean, of course, they would have to make their contributions to the fund.

MR. McCARTHY: Quite so.

THE COMMISSIONER: They could not be left to manage it themselves.

MR. McCARTHY: I do not object to that, but I do say that one member of that group may go out of existence, and will go out of existence in nine or ten years, and we would still have a financial responsibility in the others. If we were all grouped together and a workman who is injured had his payments spread over five years he would still have some one to look to, and we would still be paying in as a financial body, the rest being still in existence. I mean the Transmission Company and the Development Company and the Electric Company.

MR. BANCROFT: The hazard in the Transmission Company and the Niagara Power Company is much greater than the hazard in the Street Railway Company, and it makes a lot of difference. Under the scheme that is contemplated it does not much matter whether the street railway goes out in 1921 or not, for the corporation that takes it over shall be under the same liability, provided it is carried on on the current cost or pension basis. It makes no difference whatever.

THE COMMISSIONER: That feature of it will be considered. I do not suppose anything will be gained by discussing again this question of current cost. It may be that I might endeavour to solve the difficulty by leaving that to the Board with it appearing on the face of the statute that it would be their duty to see that a sufficient sum was brought into the fund to make the institution financially sound. Now, Mr. Wolfe's answer attacks the reasoning of Mr. Wegenast. I have not read it all, but he quotes from one of the authorities which Mr. Wegenast cited, Messrs. Schwedtman and Emery, showing that they think on the current cost that the cost is going to increase for fifty years, and we have a diagram there showing it practically is increasing all the time with a few what he calls kinks where it goes back a little and then comes back again on the old upward course. It will never do to run any risk whatever, so far as human means can be devised to prevent it, that this scheme will break down because it is not economically sound. It would be a calamity if this thing were put upon the statute book

and in ten years it were found to be financially unsound and ought to go into insolvency if it were a company. If anything like you suggest, what the Germans call a surcharge—if that principle were adopted I should think it ought to be a pretty large surcharge: 10 per cent. is what you spoke of.

MR. WEGENAST: No, I suggested something more than that. I would not object to a surcharge of 25 per cent., or even 50 per cent. for the first year, until the Board got enough experience to make accurate calculations. It is not a matter of amount with us at all.

THE COMMISSIONER: I thought it was.

MR. WEGENAST: Well, when I say not a matter of amount at all that is not correct, but we say it is impossible to strike a rate for the capitalized cost.

THE COMMISSIONER: Of course there will always be these infirmities, but they must do the best they can. They could get rough justice, and that is all you can get in this world anyway. Now, why should the casual employee not be within the protection of the act?

MR. WEGENAST: Because of the practical difficulties of bringing them in.

THE COMMISSIONER: What practical difficulties under the grouping system? There would be under the British system perhaps, although I never could understand why it was left out of the British system where there was individual liability.

MR. BANCROFT: They are being brought in practically all over the world.

THE COMMISSIONER: Not under the British act.

MR. BANCROFT: They are in most of the recent acts in the United States.

MR. WEGENAST: There is the great difficulty in the individual system that the casual employee may be much more able to stand the cost than his employer: for instance, take the case of a poor man employing a doctor or a nurse.

THE COMMISSIONER: How do you mean?

MR. WEGENAST: A poor man engages a nurse, and she falls down and breaks a limb in the discharge of her duties; are her dependants to be pensioners of the poor man?

THE COMMISSIONER: That would not be an industrial occupation: that would be outside.

MR. WEGENAST: Take the case of a domestic servant.

THE COMMISSIONER: That I am suggesting should be left out at first. Take the case of the man who goes out getting a month's work here and a month's work there, upon what principle of justice can he be denied compensation, where you give it to another man?

MR. BANCROFT: On no principle under such a scheme as we are contemplating.

MR. WEGENAST: On this principle suggested, I think, by Mr. Hinsdale, and it is recognized, that he largely fixed the conditions of his own employment: I say largely, not absolutely.

THE COMMISSIONER: I should have thought that he was the one who did not fix it, but that it was fixed for him a great deal.

MR. WEGENAST: I have a man making some repairs on my barn, he is in charge, brings his own ladders, builds his own scaffold, does practically what he likes; why should I be responsible for any accident to that man?

THE COMMISSIONER: You are putting a case that would not come within the class that it is suggested here should at first come in; he would not be engaged in any industrial occupation.

MR. WEGENAST: I am assuming you are expecting to include what are called the hazardous occupations.

THE COMMISSIONER: No, that wasn't the idea. Supposing the Massey-Harris people have a man a month, and he goes to another factory for another month, and somewhere else another month. He is on the pay-roll. Would not justice be done if the wages of that man were made part of their wage-roll, and their contribution based upon that? Why should he not get compensation?

MR. WEGENAST: I do not think there is any suggestion that a man of that kind should not get compensation.

THE COMMISSIONER: I do not see any principle upon which he should be excluded.

MR. BANCROFT: If it is a tax upon the yearly wage-roll it would include everybody employed.

THE COMMISSIONER: There is a suggestion that a provision of the Washington act brings to one's mind. This would more especially apply if the farmers were brought within the act, and perhaps it would be insuperable. There is a provision in the Washington act that an employer may come within the act provided he contributes, but he cannot recover more than on the basis of the wage as it appears in the wage-roll. Would it be unjust to provide that where the employee is a relative, perhaps within certain degrees, of the employer that he should not be entitled to claim on the fund more than a man receiving the wage that he was shown to receive would be entitled to get? For instance, a man has his son in the establishment and pays him perhaps \$200 a year, would it be just to charge the fund with the payment that a man who was not related like that would get, perhaps \$600? Ought not it to be proportionate, where there is that relationship, to the amount which according to the pay-roll he was receiving? Otherwise you might stuff the roll with claims that perhaps would not be very reasonable.

MR. WEGENAST: Would it not depend somewhat on the scheme of compensation, whether it would be all on the wages, or worked out like the Washington act?

THE COMMISSIONER: What do you mean by that?

MR. WEGENAST: There is a minimum fixed by the Washington act of \$20 a month.

THE COMMISSIONER: There is a maximum, too.

MR. WEGENAST: Then it depends on the scheme of maximum and minimum.

THE COMMISSIONER: I do not see why there should be a maximum or minimum after you have said who are entitled to the benefits of the act. It should depend on what the man had capacity to earn, should it not?

MR. WEGENAST: It brings up the question of loading the Board down with questions of average earnings. Our committee came around to the idea that a flat sum would probably work out more satisfactorily, with the qualification that the compensation should not go above a certain percentage of wages.

THE COMMISSIONER: I do not like that. Perhaps what made them change their minds was the maximum.

MR. WEGENAST: No, it would cost more that way.

THE COMMISSIONER: Now, who should come within that act; should there be a limit as to the amount of wage the man receives; a man earning above a certain wage, should he be within the act at all? The theory, as I understand it, the main reason why certain salaries are excluded, is that they can buy their own insurance, and it is reasonable that they should. Supposing a man is receiving \$4,000 or \$5,000 a year, why should he not insure himself?

MR. WEGENAST: Well, his firm is being charged for it on the pay-roll.

THE COMMISSIONER: I should think that would be bad.

MR. WEGENAST: They would have to take his salary off the pay-roll for the purposes of computation?

THE COMMISSIONER: I suppose that would probably follow. What is your idea, Mr. Bancroft?

MR. BANCROFT: You were speaking about a flat rate a moment ago.

THE COMMISSIONER: That is not the point just now. Should the act only apply to men receiving wages below a stated sum?

MR. BANCROFT: I do not think so, Mr. Commissioner, if we assume it is to be a scheme such as has been indicated, that is taking in an industry and assessing it according to the hazard and taking the yearly wage-roll as the basis.

THE COMMISSIONER: As Mr. Wegenast has said, you would exclude from the pay-roll the wages of that man. Take, for instance, the master-mechanic; perhaps some of these men receive \$5,000 or \$6,000 a year: they are not men who are likely to be a charge on the community if trouble comes to them. Why cannot they insure; why should they not protect themselves in that way? I think it ought to be a good liberal sum if a maximum were fixed.

MR. WEGENAST: There is this practical phase. Take a man getting \$4,000 or \$5,000 in an industry and at the rate of two per cent. he would be paying \$80 a year for accident insurance.

THE COMMISSIONER: Then he could buy it outside.

MR. WEGENAST: It would not do to leave him on the pay-roll if he were not insured.

THE COMMISSIONER: No, if he was not going to be reckoned as a charge on the fund his wage ought not to be included.

MR. WEGENAST: If he were put in at a fair average wage, say \$1,000, he might be willing to pay \$20 a year for that type of accident insurance.

THE COMMISSIONER: You are coming around to the idea that there ought to be a maximum; I do not like that.

MR. WEGENAST: He would only be insured, I presume, for the amount he would be on the pay-roll for in that case.

THE COMMISSIONER: Then what would you do with the man over the master-mechanic who occasionally goes into danger in the shop, but ordinarily is not in the shop?

MR. WEGENAST: Well, off-hand my idea is to fix a maximum as is done in the Washington act, and let everyone come under it, appearing on the pay-roll at a reasonable rate.

THE COMMISSIONER: If there is a maximum I suppose there ought to be a minimum. I do not like that.

MR. WEGENAST: It is easier to fix a maximum in that way than to fix a maximum salary, because the salaries will differ so much in different industries.

THE COMMISSIONER: What wage is probably paid to a skilled mechanic; will it go as high as \$5 a day?

MR. WEGENAST: Yes. Mr. Bancroft could answer that.

THE COMMISSIONER: Leave the plumbers out; they get that much an hour.

MR. WEGENAST: There are men getting over \$6.

MR. BANCROFT: Would you mean including railroad conductors and locomotive engineers?

THE COMMISSIONER: I suppose they ought to be included.

MR. HELLMUTH: They have got as high as \$4,000 a year—from \$800 to \$4,000 a year.

THE COMMISSIONER: He has been running too many miles if he is earning that much.

MR. HELLMUTH: Oh no, I am wrong; that is for a three years' wage. They can earn as high as \$200 a month.

MR. BANCROFT: I think they go as high as \$225 a month.

THE COMMISSIONER: I suppose a foreman carpenter would get about \$4.

MR. BANCROFT: The bricklayer gets 52½ cents an hour for a forty-eight hour week now; he will get 55 cents an hour next year. He is fairly well paid.

THE COMMISSIONER: That is \$4.40. He works about nine months in the year.

MR. WEGENAST: A great many men in the printing and engraving trades will get \$4 and \$5 a day.

MR. GANDER: As for the building trades there is no use trying to take them by the day or by the week.

THE COMMISSIONER: You might consider whether it would be desirable, as Mr. Wegenast suggests, that it should be a maximum wage; that nobody should get compensation based on a higher wage than a stated sum, and what that sum should be. Then we can all join together on the question of the minimum, assuming a minimum wage will be fixed.

MR. BANCROFT: We said assuming a minimum compensation, not a wage.

THE COMMISSIONER: Compensation based upon a minimum wage.

MR. WEGENAST: No, I was not saying that. Take the case of a young girl working in a canning factory for 40 or 50 cents a day, you would not give that girl as much as a man working in a factory.

THE COMMISSIONER: I was wondering how you came to be so liberal?

MR. WEGENAST: With the qualification that the compensation should not be over a certain percentage of the wage.

THE COMMISSIONER: I understood Mr. Bancroft to say, supposing again that 50 per cent., taking an easy sum, was the proportion of the wage, or measure of compensation, that he wanted, no matter who the man was or what his wage was, that he should not be rated for compensation as if he was receiving less than a minimum sum. That is the same idea, as somebody said, that a man ought to get a fair living wage.

MR. WEGENAST: I would not accede to that at all. I would say let that man have \$20 a month.

MR. BANCROFT: You mean, Mr. Commissioner, exactly what we said, only we said it did not matter what the wage of a man was, or the wage of a girl was, that a minimum compensation in the case of injury should be struck, and where the minimum ceases to be less than two-thirds of the minimum capacity it should go up.

MR. WEGENAST: My proposition was if a sum were fixed, say \$15 or \$20, as the amount of compensation for a month—

THE COMMISSIONER: As a minimum?

MR. WEGENAST: As a flat rate.

THE COMMISSIONER: I do not like that.

MR. BANCROFT: The trouble is our minimum is Mr. Wegenast's maximum.

MR. WEGENAST: If a flat sum were fixed, say \$20, coupled with this qualification that in case \$20 were more than 50 per cent. of the average earnings of the workman it should be scaled down.

THE COMMISSIONER: It would not do to have a minimum that way. Take the number of young boys and girls earning a small wage: it would never do to jack them up to the amount given to an able-bodied man with a family.

MR. WEGENAST: In my proposition they would not; it is largely a matter of practical working out. The claim would go in to the Board, and in the absence

of any evidence to the contrary the Board would assume that that man was entitled to his \$20 a month, or \$5 a week; but if there were evidence he had only been receiving say 75 cents a day, as in the case of a boy, then it would be scaled down.

THE COMMISSIONER: That would be unreasonable, to put the maximum at only \$20.

MR. BANCROFT: That is what we thought.

MR. WEGENAST: If you go up to that you will have a maximum which the Province of Ontario could never stand. The maximum under the Washington act of \$4,000 is very much higher than anybody expected in this Province. You cannot have \$20 a month for much less than \$4,000.

THE COMMISSIONER: That depends on how long it lasts.

MR. WEGENAST: If you want to scale it down to five or six years that is a different proposition.

THE COMMISSIONER: I think statistics show that the great majority of the cases do not last more than three months.

MR. WEGENAST: But even so it makes the total cost of the compensation reach beyond any figure that may be considered reasonable.

THE COMMISSIONER: What would you do under the British law?

MR. WEGENAST: There is a maximum there. \$20 a month is a very high maximum.

MR. BANCROFT: Oh no, it is not. The British act is pretty near \$20 a month, and look at the cost of living there.

MR. GIBBONS: Mr. Hinsdale's statement was that they capitalized fatal accidents at \$4000. If a widow was thirty years of age they paid her \$20 a month. He also pointed out that this money was invested in bonds at five per cent. and the interest would amount to \$200, so there would practically be only \$40 taken from the principal.

THE COMMISSIONER: I do not think the difficulty would arise in the case of fatal accidents; it would arise in the case of permanent disability, total or partial.

MR. WEGENAST: In Ohio they fixed a maximum of \$3,400.

MR. BANCROFT: It says here in the event of disability exceeding one week in duration they must be paid, the maximum being £1 or \$4.87 per week. The cost of living in the Old Country is not within fifty per cent. of what it is here.

THE COMMISSIONER: My experience would be, after a short stay, that it is.

MR. BANCROFT: Mr. Commissioner did not stay in the right place.

MR. WEGENAST: The maximum in the case of death is three years' earnings. The point is if you get \$20 a month for life, in the case of a widow or a person totally disabled, you have an immense capital sum to reckon with.

THE COMMISSIONER: Unless you are making it lunar months. If you make it lunar months it is \$5 a week.

Why should you not go on paying whatever the sum is as long as the disability lasts? Is that not the theory of the British act?

MR. WEGENAST: Provided you do not run into too large a capital sum. The maximum in the case of death under the British Act is £300, or \$1,500.

THE COMMISSIONER: That is no test at all. I want you to take the one that gives a practical test, total permanent disability. Under the British act would that payment of \$4.87, or whatever it is, continue during the life of that workman?

MR. WEGENAST: I suppose in theory it would.

THE COMMISSIONER: Now, under our law, if you were left to the common law, all the dependants would get would be the pecuniary value to them of the life that had been taken.

MR. WEGENAST: Yes.

THE COMMISSIONER: That does not amount to a very large capital sum.

MR. WEGENAST: Not under the present system.

THE COMMISSIONER: I am speaking now of the common law. If you have a system by which the children, or those to whom the dead man stood in *loco parentis*, until they arrived at whatever age it is, 16 or 17, get a payment, and the widow gets something if she remarries, what great difficulty is there about it?

MR. WEGENAST: It strikes me it is easier to work it out in the way it is in the Washington act. At first I was opposed to it, but looking at it from a practical standpoint it seemed to work out with greater facility.

THE COMMISSIONER: I am against capital payments.

MR. WEGENAST: I do not mean capital payments; I mean periodical payments.

THE COMMISSIONER: I do not see any principle upon which that should stop.

MR. WEGENAST: There is always a limit of possibility.

THE COMMISSIONER: It just means the whole object of the act would be defeated, or at least one of the main objects of the act I should have said. A man is totally permanently disabled: every day he lives he gets less able probably to support himself, he does not get any more able to support himself, and you cut him off just at a time that he would be thrown upon the charity of the world; he could not save anything.

MR. BANCROFT: The first object of workmen's compensation is to prevent accident, and the second is to take care of those who are injured and the dependants of those who are killed.

MR. WEGENAST: I entirely agree with that. There is this about it, that there is not a Province in Canada where the compensation lasts until death, and there are very few States in the Union where it does. They have all or nearly all made a limited period of six or eight years.

THE COMMISSIONER: I think that is all wrong.

MR. WEGENAST: When you come to consider a pension for life then you have got to consider a reasonable capital sum to fix as a maximum and what pension you can get within that maximum. In Quebec they have tried the very strange expedient of getting in a rente, as they call it, of a certain amount within a capital sum, which must be recognized on the face of it as entirely inadequate.

THE COMMISSIONER: What logical justification is there for that if the theory is the proper one that the employer should compensate his workman for a proportion at all events of what he has lost owing to the accident? I would not like to recommend any such thing. One of the ideas is to relieve the public of the charge that these people would be upon them, and it would not do, you would just cut off this totally disabled man's allowance at a time when he most needs it. You just throw him into the workhouse or upon charity.

MR. WEGENAST: That is precisely what I have said on several occasions. I have assumed that the object was to compensate for life, but it must always be subject to this qualification that you would not recommend a measure surely \*that would mean a maximum of \$8,000 or \$10,000?

THE COMMISSIONER: I do not know what it would amount to if a man lived long enough.

MR. WEGENAST: I am not thinking of an exceptional case, but an average case. In Washington they have reckoned a payment of \$20 a month means on the average it is \$4,000.

THE COMMISSIONER: That only means a dead man.

MR. WEGENAST: No, total disability. They reckon that on the table of mortality.

MR. BANCROFT: It says 50 per cent. of benefits for total disability, not more than 60 per cent. in all. The act only deals with total disability as far as the pension is concerned.

MR. WEGENAST: Mr. Hinsdale's evidence fully covers that.

THE COMMISSIONER: I am not clear about it, but my recollection is the other way.

MR. WEGENAST: You remember he criticized the act of their own Board in taking out of the fund that had been set apart the balance left. He said: "Now, you set aside \$4,000 in the case of a widow, and she remarries, and then you take the amount that is left and put it back into the general fund. He says you should not do that because that is needed to make up the average case where the widow lives longer."

THE COMMISSIONER: That deals with death.

MR. WEGENAST: In the case of total disability I think they do the same thing.

THE COMMISSIONER: At present I am firmly against stopping it.

MR. WEGENAST: I would not for a moment suggest that.

THE COMMISSIONER: It is practically the same thing.

MR. WEGENAST: No, I would suggest that the amount must be kept within reasonable bounds.

THE COMMISSIONER: That means you cut down the monthly amount to a sum that would bring the payment capitalized within \$4,000.

MR. WEGENAST: I have not said any amount, but I would say \$4,000 is the outside.

MR. GIBBONS: I think Mr. Hinsdale's statement along that line was to the effect where an accident was capitalized at \$4,000 many times the defendants did not live long enough to work that out.

THE COMMISSIONER: He thought that it was economically sound. But I am talking about the man who is not killed, the man who is permanently totally disabled. Then you must not forget, Mr. Wegenast, under this scheme the workman is expected to give up his common law rights: that is what you are suggesting as basic.

MR. WEGENAST: That is more or less sentimental because his common law rights would be so much less.

THE COMMISSIONER: Sometimes they get it. I think if you make it reasonable compensation, fair compensation, then the workman does not give up but very little, and does not give up anything that he is not more than compensated for by the provisions of the act, by giving up the common law right. Of course it may occasionally be that one man might have done a great deal better under the common law.

MR. BANCROFT: Particularly where you strike a scaled maximum. That flat rate would mean very little to him.

THE COMMISSIONER: We are dealing with the mass, we want to deal with the whole body; individual cases must be sacrificed for the whole.

MR. BANCROFT: It would mean a tremendous matter. The flat rate is hardly sound.

MR. WEGENAST: I am surprised to see Mr. Bancroft taking that stand. I suppose it is because the manufacturers take the other side.

MR. BANCROFT: I would not like, Mr. Commissioner, to suggest that about Mr. Wegenast.

THE COMMISSIONER: I think you have been very polite to him, far more polite to him than he has been to Mr. Wolfe, or than Mr. Wolfe has been to him.

MR. WEGENAST: I have reciprocated. It must be more beneficial to the workmen to have it worked out on that basis.

THE COMMISSIONER: Well, when you prove it is better for him to have less rather than more I would agree with that proposition.

MR. WEGENAST: It is not a matter of less, surely.

THE COMMISSIONER: Surely it must be, or you would not be contending for it.

MR. WEGENAST: That is just what I was afraid Mr. Bancroft thought.

THE COMMISSIONER: You are contending for it in the interests of the manufacturers.

MR. WEGENAST: No, I am contending for it in the interests of the smooth working of the act.

THE COMMISSIONER: I am going to discount all you say, and all that Mr. Bancroft says, as far as it ought to be discounted in my judgment. I am going to allow for the unconscious bias in favour of the respective classes you represent.

MR. BANCROFT: We haven't any bias, Mr. Commissioner.

THE COMMISSIONER: You are all twisted.

MR. WEGENAST: I think it would throw an almost intolerable burden upon the Commission.

THE COMMISSIONER: This Commission will be well paid, no doubt, and I hope it will be able to bear all this burden.

MR. WEGENAST: I have seen somewhat the work of the Washington Commission, and I think it would be a physical impossibility for three men to do the work of adjusting the cases in this Province if it were necessary in every case to decide questions of average earnings, and so on. However, I am going back on the position I originally took.

THE COMMISSIONER: I do not suppose Mr. Bancroft would object if you put the average high enough.

MR. WEGENAST: That is it precisely. If it goes up beyond a certain figure it will not be in Mr. Bancroft's Unions anyway; it will be the managers.

MR. BANCROFT: The lawyers have as good a Union as any of us.

THE COMMISSIONER: Oh, they are starving, you know. What, in the most intelligent countries, is the percentage?

MR. BANCROFT: Switzerland is the most intelligent country; they pay eighty per cent.

MR. WEGENAST: England is about the best.

THE COMMISSIONER: The British is fifty per cent.

MR. BANCROFT: It is mostly 60 or 65 per cent. It is 65 per cent. in California; 60 per cent. in Illinois; 60 per cent. in New Hampshire; 65 per cent. in Wisconsin; 60 per cent. in Nevada; 60 per cent. in Massachusetts; 66 2-3 per cent. in Ohio; 50 per cent. in Great Britain; 60 per cent. in Norway: a stated sum in Sweden; 60 per cent. in Denmark; 70 per cent. in Holland: 50 per cent. in Belgium; 50 per cent. in France: 80 per cent. in Switzerland; 66 2-3 per cent. in Germany; 60 per cent. in Austria.

THE COMMISSIONER: Do those depend on the lower rates of wages?

MR. HELLMUTH: It would in Switzerland.

MR. BANCROFT: It depends on the earning power of a dollar.

MR. WEGENAST: There are a number of factors which must be considered in every case. One is whether the workmen contribute, as they do in Switzerland, and they contribute about 17 per cent. in Germany.

MR. BANCROFT: Not to accident insurance.

THE COMMISSIONER: It is pretty hard to tell how much they contribute there.

MR. WEGENAST: The question arises, what are the other benefits under the Act. In some cases they have more medical benefits, and then the extent. In Ohio it is only eight years, and in Massachusetts it is only six or eight years; it depends on the length of time. Then you will observe, Mr. Commissioner, that in most of the cases where the percentage is low there is a State insurance system, and security afforded by it. Then there is this reflection, that in England when it is put on the basis of State insurance, that is, when a Government annuity is bought, it is scaled down to seventy-five per cent.

MR. BANCROFT: That is not borne out at all, that wherever it is State insurance the compensation is lower.

MR. WEGENAST: There is always some factor. In Norway the first four weeks are cut off.

MR. BANCROFT: They are paid for that four weeks by other legislation.

THE COMMISSIONER: If there is a waiting period of a week would 60 per cent. be an unreasonable percentage? I suppose Mr. Bancroft would like it higher and Mr. Wegenast would like it lower.

MR. WEGENAST: It depends on the question of contribution.

THE COMMISSIONER: I am not going to hear any argument on the question of the workmen contributing; you have fought that out.

Then I do not see that it would be desirable to complicate it by bringing in any contribution for first aid. It is very desirable, probably, but had we not better start it without that, and let that come afterwards?

MR. WEGENAST: I urged that very strongly, but I also am inclined now to drop it, partly on account of the arguments of the labour people here, and because it would bring in a very complicated question.

THE COMMISSIONER: It is really a very troublesome question, and there would be great danger of abuses under any such system. There is the question of whether it might not be desirable to allow the Board to make provision in cases where they thought it was needed for immediate help in addition.

MR. WEGENAST: The employer in nearly every case—I think I am safe in saying this—makes some provision.

THE COMMISSIONER: Will he do so after this act is passed: will he not say they are provided for?

MR. WEGENAST: Oh, I do not think so. The man goes at once to the doctor.

MR. MACMURCHY: In the case of the railways medical aid is summoned immediately.

THE COMMISSIONER: You have your medical doctors.

MR. MACMURCHY: You cannot call them our doctors.

THE COMMISSIONER: I would judge from hearing their evidence that they were the company's doctors.

MR. MACMURCHY: You cannot call them our doctors because they are appointed chief surgeons.

THE COMMISSIONER: I do not refer to all of them, of course. It is human nature; it could not be anything else as long as men are men.

Now, would there be any objection from the manufacturers' standpoint if it happened that any group was wiped out or not able to pay its assessment, that the whole body should be called upon to make good?

MR. WEGENAST: No, assuming it is considered desirable to make the groups interdependent. You will remember that Mr. Preston in his letter stated he would have made the funds interdependent if it had not been for constitutional difficulties.

THE COMMISSIONER: What do you mean by "interdependent?"

MR. WEGENAST: It could be worked out in different ways. One would be to establish a special reserve fund to provide against just such contingencies, and keep that reserve fund up to a certain amount, as the fund protecting bank circulation is kept up.

THE COMMISSIONER: Providing the current cost principle were adopted would it not be desirable to have the whole body of the manufacturers answerable to maintain the fund?

MR. WEGENAST: I do not see any objection to that.

THE COMMISSIONER: What would the railways say to that, because they would be affected by that?

MR. WEGENAST: The objection would be that the railways would not contribute to it, except in the case of such occupations as in the boiler shops.

THE COMMISSIONER: Oh yes, the railways are willing to come under the same obligations as the manufacturers.

MR. WEGENAST: But the fund has not the money.

THE COMMISSIONER: They are good for the money if it is made a first charge.

MR. WEGENAST: Is it proposed to take in the Père Marquette and the Irondale, Bancroft?

THE COMMISSIONER: Is the Irondale, Bancroft, not part of one of these large systems?

MR. WEGENAST: Not legally.

THE COMMISSIONER: If it is part of the system it will be grouped with that railway.

MR. HELLMUTH: The Michigan Central is perfectly liable.

THE COMMISSIONER: Then there is the Wabash.

MR. MACMURCHY: They are part of the Grand Trunk.

MR. WEGENAST: I should think there would be considerable difficulty in working out the legal difficulties. These railways have their separate entities, and if you fasten a liability on the Wabash there is no logical way of fastening that onto the Grand Trunk.

THE COMMISSIONER: If the Grand Trunk and the Wabash were grouped?

MR. WEGENAST: Oh yes, of course.

THE COMMISSIONER: Where they practically control the road, it is part of the system.

MR. WEGENAST: I suppose the Michigan Central and the T. H. & B. would be grouped with the C. P. R.?

MR. HELLMUTH: Oh no, the Michigan Central has its own road, and the T. H. & B. has its own road.

THE COMMISSIONER: Has the C.P.R. not practically the control of the T.H. & B.?

MR. HELLMUTH: Not in reality. I think several of the railways are very much interested in the T. H. & B. but no one road, as I understand it, has control. The C. P. R. has an arrangement, and so has the Michigan Central, by which they can run certain trains over a portion of their road, but the Michigan Central has its own road from Niagara Falls to Detroit, or Welland, a through line, and they have their own entity in every way.

THE COMMISSIONER: If you cut them up you may make it impossible to adopt the plan you suggest of putting the railways into separate groups.

MR. WEGENAST: May I suggest this difficulty: there will be many cases where it is a question of which road is liable; who is to decide that?

THE COMMISSIONER: The Board. That would be my idea, that the Board should decide all these questions; they would be substituted for the court.

MR. HELLMUTH: If they found two roads were interchanging those two roads could very well or very properly be grouped.

THE COMMISSIONER: Would any of the principal Canadian roads be willing to be grouped? For instance, the C. P. R. to be grouped with the T. H. & B. and the Michigan Central? They are pretty close neighbors.

MR. HELLMUTH: I do not think the Michigan Central could very well: that is part really of the New York Central lines.

THE COMMISSIONER: But it is probably the best operated road in Canada.

MR. HELLMUTH: I think so. I do not think the Michigan Central would be willing, with all respect, to be grouped with any other road. Their appliances are very much up to date, and they are perfectly competent.

THE COMMISSIONER: One of the witnesses spoke of that, as to their road-bed and their system being good.

MR. HELLMUTH: I think they would probably have objection.

THE COMMISSIONER: That is a matter that the railways might discuss.

MR. McCARTHY: That would be really my suggestion for the grouping of the power companies with the street railways; I do not know why they should object to take part in the contribution to the fund. The city gets a percentage at the present time, and they should be brought in.

THE COMMISSIONER: We could not do that. I suppose the city would come in in respect of its lines, whatever they are.

MR. WEGENAST: The city would be an employer within the meaning of the act.

MR. McCARTHY: They are certainly a part of the financial responsibility. They keep up the roadbed: we pay them so much per annum to keep up the roadbed.

MR. WEGENAST: The difficulty in making exceptions is that so many will think they ought to be favoured.

THE COMMISSIONER: The only object of grouping would be for the purpose of security and of prompt settlement of the losses.

MR. WEGENAST: And co-operation.

THE COMMISSIONER: I do not count much on that. If that can be secured in the case of the railways without grouping them why should substance be sacrificed to form?

MR. McCARTHY: Mr. Bancroft mentioned there were different hazards in different employments. That is quite true: but if you take a certain gang of men, it probably works in the open air department of the street railway one day and the open air department of the power company the next, and the electric light company the next. There are men working in each part of that system at different times.

THE COMMISSIONER: In Washington, as I understand it, they roughly separate those that are employed in the hazardous parts and rate them accordingly. They cannot do it accurately.

MR. McCARTHY: But these men work in each one of these departments; one day they are with the electric light and another day with the street railway.

THE COMMISSIONER: Well, I suppose it would be right to roughly average the rate over the whole thing. I do not understand how this sub-classification is going to work.

MR. WEGENAST: Well, take in the case of the power lines. If the telephone lines and the telegraph lines were grouped with the power lines it might be

necessary to let them in at say half the rate; if the power lines were assessed at one dollar the telephone lines would be assessed at fifty cents.

THE COMMISSIONER: Would it not be better to put the power lines in one class and the telephone and telegraph lines in another class?

MR. WEGENAST: Provided they are each large enough.

THE COMMISSIONER: Outside of these rural telephone companies there is only one company, the Bell Telephone Company.

MR. WEGENAST: And the G. N. W.

THE COMMISSIONER: Those are both strong corporations.

That is getting away from what I was saying. If that plan were adopted of making the whole body of employers make good if any class went wrong, the railways would have to come within that; there would be no reason for excluding them.

MR. WEGENAST: They would, in other words, have to contribute a margin towards the reserve fund.

THE COMMISSIONER: Either that way, or when occasion arose to pay it. For instance suppose a class were wiped out altogether: it is not very likely, but suppose it did happen and no money to pay the current claims, you would assess that upon the others.

MR. WEGENAST: In the case of the railways the proposition is not to assess them.

THE COMMISSIONER: You would assess them for that; you would call upon them for that.

MR. WEGENAST: They would not be in the habit of paying.

MR. HELLMUTH: It would create the habit.

THE COMMISSIONER: Then what is the view as to whether the decision of the Board should be final in all cases?

MR. WEGENAST: I suggest it should be final on all questions of fact, and that in questions of law there should be an appeal to the Court of Appeal for Ontario, and that the appeal should be in the form of a stated case, either granted by the Board, or on application by the Board.

THE COMMISSIONER: It is pointed out by those who profess to know that under a system such as the British Act, that there would be very few questions of law that can arise: it is only questions of fact that can arise. I think it would be a blot on the act to have a right to appeal unless it can be shown there is danger in making the Board final.

MR. WEGENAST: There would be this danger perhaps—that the Board might exceed its jurisdiction. In any case an act of prohibition would lie.

THE COMMISSIONER: No, I would take care that no court would have power to prohibit; that would be on the forefront of the act.

MR. WEGENAST: It could probably be arranged by making it a court of record.

THE COMMISSIONER: We cannot appoint judges. We could not make it a court of record; that is one of the difficulties in the Railway Board. They do not make it a court of record but they give it power.

MR. WEGENAST: The Dominion Board.

THE COMMISSIONER: If they did then the judges would have to be appointed by the Dominion. What do you say about that, Mr. Bancroft?

MR. BANCROFT: That feature of it is of tremendous importance. You will notice we said in our brief that if we could have seen somewhat the general arrangement of the act we might have gone into it, but we did not feel like answering it. Still I feel myself that you have got the right idea there, that if there is an appeal on questions of law from the Board's decision, as suggested by Mr. Wegenast, that there should be a stated case to the Court of Appeal of Ontario. I can imagine some of the big corporations would be continually doing that on the ground that the Board had exceeded its jurisdiction, and I think that is dangerous.

THE COMMISSIONER: I speak subject to correction, but I think something like ninety per cent. of the cases that have gone to the House of Lords were cases as to whether it arose in the course of employment, and arose out of it. I propose to try and block any difficulty of that kind by making it that in both cases the presumption is to be in favour of the workman until the contrary is shown; the burden will be on the employer. One is shocked by some of the cases where the workmen have failed to recover where there was no manner of doubt in the mind of anybody that the man was injured in the course of employment, but the court said it was a matter of judgment, that he might have fallen overboard or he might have gone to get a drink, or have done this, that, or the other; they have drawn distinctions of that kind. I do not mean to say that technically they are not sound, but there ought not to be those pitfalls. If a man is injured while he is working it ought to be presumed until the contrary is shown that he is injured in the course of his employment; that would be my idea.

MR. BANCROFT: You see, Mr. Commissioner, it brings up a question to us which we have not touched. I did not see any reason to touch on that, but if the Board is to have the powers that you suggest and presuming, for the sake of argument and drawing out information, that they should be able to bring in injustice under the act and that their decision should be final without appeal, then of course the constitution of the Board becomes of great importance.

THE COMMISSIONER: Of course everything depends on the constitution of the Board; if it is a bad Board the whole thing will be a failure.

MR. WEGENAST: It is not because of any objection on our side that I suggest an appeal on questions of law. What was in my mind was the case of a workman not getting compensation by reason of the fact that the Board had not properly construed the law.

THE COMMISSIONER: Give a concrete case where you think that could arise.

MR. WEGENAST: Well, a case of a man being hurt while engaged in operating a threshing machine.

THE COMMISSIONER: If the farmers are out there is not much in that.

MR. WEGENAST: That is the question; would he be a farmer?

THE COMMISSIONER: It would depend. If he were a man taking his threshing machine about he probably would be under the operation of the act. That would depend on the classification. I suppose nine times out of ten it is done by men going about.

MR. HELLMUTH: Not now, Mr. Commissioner.

THE COMMISSIONER: Your experience as a farmer is not long enough, Mr. Hellmuth.

MR. HELLMUTH: The threshing in the eastern provinces is nearly all done by syndicates of farmers who have their own machines.

THE COMMISSIONER: They form companies?

MR. HELLMUTH: No, they avoid forming companies.

MR. BANCROFT: I knew a young man who went out West who bought a number of machines. He was hired by the farmers; he was a contractor and employed a whole lot of men. The case of a man being hurt on his threshing machine would be entirely different from the case of a man working for a farmer.

THE COMMISSIONER: I should think so.

MR. S. HARRIS: Would a pickle manufacturer not come under the act? He takes a cucumber and turns it into a pickle, and the farmer takes the grain and turns it into wheat.

THE COMMISSIONER: We are dealing with this as logically as we can.

MR. HELLMUTH: Mr. Wegenast opened up a very interesting subject there when he said that the right of appeal might be very much to the advantage of the workingmen.

THE COMMISSIONER: Do you not think a Board of three men such as is suggested ought to be as able to determine these things as well as four men sitting because they are called judges? That would be a question of fact.

MR. HELLMUTH: If it is a question of fact, that is so; but supposing they went beyond their jurisdiction. They might make mistakes. Then I think probably the judges of the Appellate Division would be better.

THE COMMISSIONER: I think the question would be a question of fact whether he were a farmer or an employer of labour. The Board would decide that question of fact and that would be an end of it. If it be a question of fact your proposition is to leave it finally to the Board?

MR. HELLMUTH: Yes.

THE COMMISSIONER: One of the justifications for this law is to get rid of the

nuisance of litigation, and I think even if injustice is done in a few cases it is better to have it done and have swift justice meted out to the great body of the men.

MR. WEGENAST: I would suggest there might be an enumeration of what might be classed questions of fact.

THE COMMISSIONER: I would not complicate it in that way at all.

MR. WEGENAST: You have to shut off appeal entirely?

THE COMMISSIONER: Certainly. Then there is another class of cases that I think should be covered; I mentioned it once before. A foreman is engaged about his business, or perhaps he is not a foreman, and while he is engaged in his business another employee takes offence at what he does and knocks him down or breaks his skull. Is that not one of the things that the industries should pay for, although it is not an accident?

MR. WEGENAST: That is never done, the labour men would say.

THE COMMISSIONER: Well, oddly enough two cases of that kind happened, one in Massachusetts and one in England or Scotland. One case was where the foreman was giving some direction properly in the course of his duty, and a workman took offence at it and picked up something and injured him seriously. A similar case happened in Massachusetts, and both courts decided it was not within the act. They put it upon the ground that it did not arise in the course of his employment. I would have thought it better to have put it on the ground that it was not an accident.

Now, Mr. Doggett, I hope you will give us some constructive criticism; a good deal of it has been destructive. What are we going to do about the building trades? How are we going to deal with them? Can they be dealt with in the same way as the other industries which are permanent in a sense in their character? There are so many contractors who are contractors for a year or for a short period. It has been pointed out by some of the gentlemen who have been here that it would be very unsafe with regard to that kind of trade, whatever was done with regard to other industries, to put it on the current cost basis.

MR. WEGENAST: Mr. Gander and Mr. Merrick speak for that kind of business.

MR. GANDER: I think the feeling is at the present time that we want to come under the act. At the present time I suppose here are more accidents occurring in the building line than in any other business. Even this week there have been three or four cases settled, and it has got to such an extent that the building lines have got their faces turned to where they expect to find better justice by being handled under a compensation act than they get at the present time. There is a certain amount of fear, and that is the greatest thing that is bothering them. I am not saying they do not carry a certain amount of liability insurance, but at the back of that is a certain amount of fear that they wish to be rid of.

THE COMMISSIONER: What would you do if you had say fifty building contractors in this town who are permanently here and you have one hundred others that are here to-day and gone to-morrow? How would the fifty permanent

men like to have saddled upon them the burden of accidents happening to the other one hundred?

MR. GANDER: We would not like to have it saddled upon us at all to that extent, because we feel in some cases where a man takes a contract he binds himself to some extent, saying he will pay for all accidents occurring while he is doing that work.

THE COMMISSIONER: To whom does he bind himself?

MR. GANDER: To the architect or to the owner. We contend just as soon as a man enters into that competition with an old time contractor he should come under this act.

THE COMMISSIONER: Take this temporary man, if you can call him that, and supposing a man is killed and his widow with half a dozen children is entitled to a pension which will run over twenty or twenty-five years, how would the members who are there permanently like under the current cost system to bear that burden after the other man had gone out?

MR. GANDER: That is a question we have not gone into.

THE COMMISSIONER: Who was it said it was impracticable to apply the current cost system to the building trades?

MR. WEGENAST: I said so, but Mr. Hinsdale demonstrated it. In Germany they have a premium rate instead of an assessment rate.

THE COMMISSIONER: That would not do, I should think.

MR. GANDER: We feel there should be some way of protecting the larger employer against the smaller employer. There is so much opportunity for the small man to get away from that responsibility, and he takes advantage of it. That is not desirable in the building lines.

MR. DOGGETT: That is a very important point.

THE COMMISSIONER: That brings in the question of having a sufficient exposure. Supposing there are one hundred of these small ones in to-day and out to-morrow, surely any company that undertook to pay upon any rate that is here would be in bankruptcy in five years.

MR. WEGENAST: As a matter of fact the current cost plan has not been applied in any country to the building trades.

THE COMMISSIONER: The difficulty would be that the advantage that the small employer gets in another industry the building man of the same kind would not get; an accident happens and he has got to pay.

MR. WEGENAST: The conditions are rather different. I do not want to invade the building field, but the contractor adds to his contract price a certain amount, two, three, or four per cent. towards insurance: I think I am correct in saying that.

MR. GANDER: He should.

THE COMMISSIONER: The trouble that the solid men have is that these whipper-

jacks of contractors who have no backbone underbid them, and then never complete their work and do not pay their debts.

MR. WEGENAST: You were referring to the hardship of making him pay the full premium at once?

THE COMMISSIONER: I do not think even that would make it safe. I do not think anything will make it safe in the case of permanent disability, except his putting up the money, the full capital sum.

MR. WEGENAST: That is what I am referring to.

THE COMMISSIONER: Then he would be in the same position as he would be under the British act, or an employers' liability act.

MR. WEGENAST: Yes.

THE COMMISSIONER: That is one of the things you want to get these men out of if you can, and distribute it over a larger area. That is an extremely difficult branch of the case.

MR. DOGGETT: I would like to point out the fact that in all our contracts at the present time there are a number of American firms, such as the Norcross people, who are erecting the C. P. R. building, coming here, and more all the time, and the proposition is what are we going to do with those people. They are building one building and it may take six months or twelve months and they are gone. With regard to the small contractors it is quite a proposition: there are a large number of these men who are in business only a short time. In fact every spring there is a fresh crop comes up, and our experience is that fifty per cent. of these people go out of business before the end of the year. Only last December one of our men was killed on a job at the north end; he was the oldest son of a widow. When it came to looking for compensation we found out there was nothing to get, there was nothing behind them. In the result the widow got \$215. They did not have their employees insured in any liability company. These cases are arising every day, not one, but scores happening every week, with practically no compensation coming to them at all. In fact when these people start they get some one to back them at first, and the result is if the job goes back from their standpoint the architect has to finish the work. I could show that these cases are innumerable. I think Mr. Gander will bear me out in what I say. The builders in this city are up against a tough proposition with these little contractors.

THE COMMISSIONER: Would it be practicable with regard to that class of men to allow the Board to insure against their accidents in a company or out of the fund?

MR. GANDER: I believe myself that if some proposition was made to the smaller contractors whereby they could take out insurance in perhaps an easier manner than with the present companies they would take advantage of it.

THE COMMISSIONER: Supposing the principle of the law was to bring in all the men regardless of the number of men they employ, and instead of them

paying the full capital amount, to take out of the general fund enough to insure them against that loss, to insure that class of people, how would that strike you?

MR. WEGENAST: That is the principle of the French law. There would be nothing inherently unsound about it.

THE COMMISSIONER: If the insurance companies got what they might call a black eye would they do that?

MR. MERRICK: You are giving the opportunity to that small class by relieving them of responsibility.

THE COMMISSIONER: You must provide for their unfortunate workmen.

MR. MERRICK: They would escape the payment of any assessment.

MR. GANDER: I understand in California they try to get over the difficulty by making a man who undertakes to put up a building put up a bond to the value of the building he is putting up. Let the owner and the contractor be responsible for the same amount. That practically puts the small contractor out of business, but actually it gives the workman a better chance to get compensation if injured.

THE COMMISSIONER: If the small employer who was not able to satisfy the Board of his ability to meet the claims were required to be insured, and the Board at his expense insures the employees, would he not contribute pretty well to the fund? Upon the theory we are going on he would contribute more than the others relatively because the other insurance is said to be cheaper.

MR. A. E. BRITNELL: They have nothing to contribute whatever. They can jump from the Unions and start with no assets whatever, and may have nothing to the good. The supply men in the city here have considerable trouble.

THE COMMISSIONER: They would have to go out of business if they could not provide it.

MR. WEGENAST: The auditor of the Insurance Board would be there at once.

THE COMMISSIONER: He cannot be all over the Province.

MR. KINGSTON: Would it be possible to have some sort of legislation to enforce a greater penalty upon these people? They might leave the common law or the old compensation act in force against them if they do not come in and contribute and submit to all the conditions of the new act.

THE COMMISSIONER: They are willing to come in, but their coming in does not do any good to the solid men who are in, because when they go out their obligations would rest upon the solid men.

MR. WEGENAST: If they paid the full assessment?

MR. BRITNELL: They have nothing.

THE COMMISSIONER: Nothing should be done to stop a man from advancing from journeyman to being a master-mechanic.

MR. BANCROFT: That is the point. If the act was so framed to make it im-

possible for a journeyman to have the ambition to become a contractor it would be a very bad thing, but there is no reason as the gentleman here suggests why any man who stays in the Union cannot earn his daily pay. You might say against that that has all the earmarks of working for a monopoly.

MR. BRITNELL: Not at all.

THE COMMISSIONER: But a great many people, Mr. Bancroft, shoulder upon the public and upon others their own sins. If the supply men would be more careful about the men they give credit to it would be better. They are not bound to give credit to anybody. They would not meet with the losses they do if they would be more careful, but they are ready to send out their goods and take chances, and then, when the trouble comes they feel it is all wrong.

MR. BRITNELL: They start off paying all right for a month or two, and then they get a couple of weeks' credit, and then the owner says he has no money, and the contractor puts him off, and in that way it is carried along.

THE COMMISSIONER: If a man was not too anxious to do business would he not be sure in dealing with a man of that kind. He is too anxious to get business. There are too many competitors.

MR. BANCROFT: If the assessment could be collected from these small employers for the time they are in business.

THE COMMISSIONER: But the trouble is these assessments would continue over a period of years. You see you would be between the devil and the deep sea. If you make him pay the capital sum he cannot do it. Mr. Gander would have to help him pay that. If he only pays the assessment then the assessments in the future Mr. Gander would have to pay.

MR. BANCROFT: If the assessment for one year covers the current cost of the compensation in that year, and he was to pay for the year he was in business, would that not cover it?

THE COMMISSIONER: No, he should stay in to pay the future payments.

MR. BANCROFT: You mean fatal accidents?

THE COMMISSIONER: Or a permanent disability, or a disability lasting two or three years.

MR. WEGENAST: For instance, in the case of construction work the rate would not be more than three per cent. If the contractor were allowed to pay that in instalments, two months or three months at a time, it would not be very high.

THE COMMISSIONER: I doubt if that would be on a sound basis.

MR. WEGENAST: I am assuming a capitalized basis.

THE COMMISSIONER: But you are talking about three per cent. on his pay-roll for one year. That would not go any distance.

MR. WEGENAST: That would be the full capitalized rate.

THE COMMISSIONER: Supposing a man had five employees and his wage-bill was \$5,000 a year, 3 per cent. would be \$150?

MR. WEGENAST: That would be the capitalized rate in the carpenter class, I think. That would be enough.

THE COMMISSIONER: But you would have to make them all pay that.

MR. WEGENAST: Yes.

THE COMMISSIONER: That would be unfair to men like Mr. Gander. Why should he not be in as good a position as a furniture manufacturer?

MR. KINGSTON: Make two classes.

THE COMMISSIONER: You would have one strong class and one weak class.

MR. WEGENAST: I do not want to foist the capitalized plan upon the builders, but I do not think the builders would object very much to it.

THE COMMISSIONER: Take a man like Scott. What would the wage-roll be?

MR. GANDER: I would not say for sure but I would think some years it would run from \$125,000 to \$150,000, or more.

THE COMMISSIONER: You see what 3 per cent. upon that would amount to, \$4,500 a year.

MR. WEGENAST: They pay that now to the liability companies.

MR. GANDER: No, I would hardly think so.

MR. WEGENAST: In sewer construction they pay 4 to 4½ per cent. The rate in Washington is 4 per cent.

MR. KINGSTON: The inside rate might be 75 cents and the outside rate probably \$1.50.

THE COMMISSIONER: Have you any idea, Mr. Kingston, what the rate would be with the increased obligations?

MR. KINGSTON: It would all depend on the extent of the obligation.

THE COMMISSIONER: Supposing something on the lines we are discussing. How much is the limit in the case of an individual?

MR. KINGSTON: \$1,500 individual limit, or \$10,000 in the event of more than one person being in one accident.

THE COMMISSIONER: That is something like automobile insurance, on the same principle; \$10,000 if a number are hurt. That is the most cast iron kind of insurance I have heard about. I am told they will not take any fire insurance upon your automobile unless you take the accident insurance as well.

MR. KINGSTON: They won't take the bitter without the sweet.

THE COMMISSIONER: Mr. Gander, I hope you will think this over and talk it over with some of the people and see if you have any suggestions to help us.

MR. KINGSTON: I do not see any difficulty at all in the suggestion to make the

builders pay the capitalized rate. I doubt if the builders would feel it any very great hardship. It simply means the owner for whom he is working will have to pay it.

THE COMMISSIONER: I do not know. I will venture to say that a very large percentage of these men take contracts without putting anything like that in, and contracts for less than the work can be done. I do not know but that happens as much with municipal corporations as with any other body.

MR. GANDER: There has to be an extreme lesson. Of course the point that Mr. Doggett speaks of, the American firm coming in and the small contractor, the two would have to be put on the same basis. There is no reason why an American firm should not come under the act when they come here.

THE COMMISSIONER: I think a man who comes in here should put up all the money that is required to meet the losses.

MR. WEGENAST: Take a pay-roll of \$5,000, say at 4 per cent. That would be \$200. If he was assessed quarterly it would mean \$50.

THE COMMISSIONER: That would probably take the whole profit of his job.

MR. WEGENAST: He would have to add it to his cost.

THE COMMISSIONER: He would not do it. Is there anything done like that by the larger contractors?

MR. GANDER: Yes, in some cases a contract calls for it, and if a man does not put it on he is very foolish.

MR. BANCROFT: They add that to the contract under the British act right along.

THE COMMISSIONER: I do not understand how you mean.

MR. BANCROFT: Because of the insurance in the liability companies.

THE COMMISSIONER: Is that under the last liability act?

MR. BANCROFT: Yes.

MR. WEGENAST: The building trades have to compensate, and they buy insurance from the insurance companies.

MR. BANCROFT: They add that cost to the contract.

THE COMMISSIONER: I suppose any prudent business man would do that? The trouble is a lot of these men are not prudent sometimes.

MR. BANCROFT: Would that not be the general tendency that it would have to be added?

THE COMMISSIONER: Undoubtedly.

MR. BANCROFT: And the small man would have to do the same.

THE COMMISSIONER: Or get out.

What would you think Mr. Gander, about a tax upon each pay-roll of three or four per cent?

MR. GANDER: Well, at the present time quite a few are paying that much into the liability companies.

MR. WEGENAST: A new act will make less difference in the building trades than with the manufacturers. In Quebec it was found that the textiles rose 400 or 600 per cent., or even 1,000 per cent., the insurance rates, while the rates in the building trades were only about double, or increased by one half. That is because the risk is already so high in the building trade.

MR. BRITNELL: What about the teamsters?

THE COMMISSIONER: They are not brought under the Washington act except when they are in connection with some other industry. You are a dealer in supplies?

MR. BRITNELL: Yes.

MR. GANDER: There is a clause marked for construction in the Washington act. Do you not think in that there would be several classes?

THE COMMISSIONER: Undoubtedly. If you took in only the manufacturers they would not come within that.

MR. GANDER: But supposing their teaming was in connection with construction, it would come in that line?

THE COMMISSIONER: I do not see why coal yards and such things as yours, Mr. Britnell, should not come under the act. That would bring your teamsters under it. Would there be any objection to them being brought under the act?

MR. BRITNELL: Would they pay anything towards it?

THE COMMISSIONER: No. That is the proposition.

MR. BRITNELL: Supposing they stop on the way and get a few bowls into them, and drive up on the sidewalk and with the jar they fall off?

THE COMMISSIONER: Do not keep a man like that.

MR. BRITNELL: If you can suggest any remedy?

THE COMMISSIONER: I have seen several of your men and I do not think there is much danger of that.

MR. BRITNELL: We try to eliminate it as much as possible, but we are liable to strike that class.

THE COMMISSIONER: If you are in with a lot of coal yards and it is divided up it would not amount to very much.

MR. BRITNELL: The coal men do not stay very long with one man.

MR. BANCROFT: That is because he is fired; it is not his fault.

MR. BRITNELL: I beg leave to differ with that, Mr. Commissioner.

THE COMMISSIONER: Some fellows like to travel. They do not like to stay long in one employment.

MR. BANCROFT: There is one point that Mr. McCarthy mentioned that I want to refer to. I intended to speak while he was here, but I did not want to

interrupt your sequence of thought. He mentioned the fact that in the railways in England, in the legislation there was a contribution from the workmen. That is the contracting-out clauses. The only time that the workmen need contribute is in these contracting-out clauses, and it is rapidly diminishing.

THE COMMISSIONER: Unless I change my mind with reference to those three things, the waiting period, the percentage of wages, and the point that you have referred to, I think it would be far better not to run the risk of irritation which would undoubtedly result in making the workmen pay; I would not be for making any contribution by the workmen in that way. Anything they contribute ought, I think, to be contributed in the way of a waiting period, or in making the amount of the percentage they get more reasonable. I think that would be much more satisfactory.

MR. BANCROFT: With the railways in the Old Country it diminishes every year. In 1897 there were 40,000 odd under these contracting-out schemes, and in 1908 only 28,000. The employers are coming under the act.

THE COMMISSIONER: I do not like that contracting out; it would not do under the system proposed here. If this grouping is to go on it would destroy the scheme.

MR. KINGSTON: Have you considered, Mr. Commissioner, the method of getting at the enormous number of small employers by what I suggested a moment ago, some sort of negative legislation leaving the present legislation against them, if they did not come in?

THE COMMISSIONER: There would be if the system is adopted of bringing only certain of the industries in. In my judgment there ought to be a provision extending the obligation of the employer, putting him on the same basis as if he were in the group, but leaving him as long as he is out of the group to bear the individual liability.

MR. BANCROFT: Wipe away the defences?

THE COMMISSIONER: Make it the same as if he were in the group, except he would not pay as one of the group, but pay individually. I do not know whether it would be desirable to make it compulsory to insure against this law.

MR. BANCROFT: That would be desirable if you were to guarantee compensation to those who did not come under the act.

THE COMMISSIONER: I do not mean to guarantee.

MR. BANCROFT: If he was a small employer and all his defences were wiped away, and he came under the same law practically as the Workmen's Compensation, and it was not compulsory and he did not insure, then the workmen would be in a bad position.

THE COMMISSIONER: Undoubtedly. There will always be that anomaly that the workman in one shop would be sure of his pay, and the other man might not be.

MR. KINGSTON: You do not mean by that to leave it optional for any individual employer to take that position?

THE COMMISSIONER: No, but not bringing in every employer at present, but selecting certain groups having regard to the hazard of the business, it would be necessary to have some provision.

MR. BANCROFT: I believe what you have in mind is what we have had in mind, that if there were any one who did not come under the act as outlined at first, they should have the same rights under the compensation law as the other workers who were covered, but the employer not coming under the act would face his own liability.

THE COMMISSIONER: That is it.

MR. GIBBONS: That would have a tendency to induce them to come in?

THE COMMISSIONER: My idea also would be that these claims would be settled by the Board just as if he were in the group.

MR. BANCROFT: Then it would be necessary to compel him to insure for the workmen to get his compensation.

THE COMMISSIONER: Perhaps it would be difficult to work that out; supposing he did not? You may take a horse to water but you cannot make him drink. Supposing you said he must insure, what position would you be in?

MR. BANCROFT: How would the workman get his compensation?

THE COMMISSIONER: He could not get his compensation any more than he could now.

MR. BANCROFT: Then it reduces itself, as we figure it out, to the proposition of taking in the small employer for the sake of the workmen, and if he is part of the group it will not fall heavily upon that group.

THE COMMISSIONER: It would be utterly unworkable to cover the whole of this Province at once; it could not be done. I do not know whether the legislature would go that far, by putting them in the same position as an employer of that class is under the British act, make him liable regardless of negligence. I do not know how that would be; that responsibility must rest with the legislature. My idea was to frame an act that would create this Board, settle what compensation was to be paid, or what every employee that was injured was entitled to receive, and then either with or without compulsory insurance everybody should be under that act until he came into the group. The moment he came into the group then he would be out of it and be under the provisions applicable to the group; he would get rid of the individual liability as soon as he got into the group. That might be, as Mr. Gibbons said, an incentive to the man to try and get into the group. You see in this country, extending from away up almost to Fort Churchill down to the Ottawa River, and taking in all that back country, to get hold of all the employers of labour in that space would be an extremely difficult thing and would take a lot of time. Under our system of assessment, improved perhaps, a great deal of information could be got as to the employers of labour and how many men were employed, and all that kind of thing; and there would be no reason why there should not be another

column, if it is not there now, requiring the assessor to report every man who had any employees, and the number of employees.

MR. GIBBONS: The matter could be got at by taxing those employers the same as the other employers through the assessor.

THE COMMISSIONER: There would be men who would skulk out of the group and perhaps not be got; there ought to be penalties for that. A man ought to be put in such a position that his interest is not to skulk but to get in as soon as possible, and not stay out. If a man was in default in paying his premium, or whatever the assessment was, he ought to be penalized in some way, not for the sake of penalizing him but of compelling him to come in and pay his fair share.

I think the best plan will be to prepare that document of classification, and meet early next week again, and then probably we can finish all the round table talk, and leave the rest to me. Then after that it will go to another place.

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## TWENTY-SIXTH SITTING.

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THE LEGISLATIVE BUILDING, TORONTO.

Monday, March 17th, 1913, 11 a.m.

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner*.

MR. F. N. KENNIN, *Secretary*.

MR. W. B. WILKINSON, *Law Clerk*.

THE COMMISSIONER: I have received a memorandum from the Bell Telephone Company in which they say that they think it is unfair to group that company with the local companies, these rural telephone companies and the lines operated by municipalities, and they suggest first that they should be put in a group by themselves, or if this is not thought proper that there should be two groups, one of those which are operated for profit, which would comprise all systems having two hundred or more subscribers, and that the other group should be the non-profit-making group comprising the municipal systems and all other systems which have less than two hundred subscribers. (Bell Telephone memorandum marked as an exhibit).

I called this meeting for the purpose of discussing the draft bill that I have prepared, not necessarily as indicating except in the main principles, what may ultimately be the bill—that I shall report as what I think proper to be passed. I may say with regard to the general principles that are embodied in this bill the first is that every workman, no matter in what employment he is engaged, should be entitled to compensation for injuries sustained in the course of his employment and arising out of it, and for certain tabulated industrial diseases incident to the occupation. I propose to divide the employers into two classes, one of which will be scheduled, and the schedule will contain groups of classes on the lines that have been adopted in the State of Washington. I do not mean with regard to details,

but the principle is the same, and with regard to the industries comprised in these groups and the employers in them that contributions shall be made to the accident fund in the way indicated by the bill, but with regard to the others they are to be under the same liability, but it is to be individual. I have not in the Bill made any exception in favour of any class or excluded any class of workmen. What I propose to do is to say in my report that if there is any class of industries, possibly the farmer and possibly domestic servants, if they may be called workmen, that if the legislature is of opinion that they should not be made liable to the extent that this Bill makes liable employers generally, that as to them the common law should be changed and that the rule of the common law as to common employments, and as to the undertaking of the risks of the employment should be eliminated altogether, and that the doctrine of contributory negligence should be very largely modified—modified to the extent that the mere fact of the injured workman by his own conduct contributed to the accident will not be sufficient wholly to disentitle him to recover, and have something like the principle adopted in the civil law and under the Admiralty jurisdiction that there should be an apportionment of the loss. In other words that the compensation should be graded having regard to the extent to which the negligence of the workman contributed to the happening of the accident. These general principles I have decided upon.

With regard to industrial diseases, there were originally six of them scheduled in the British act, such as accidents arising from the handling of wood, wool, hides and skins, lead poisoning, and in the process involved in the use of lead or the preparation of paints, any process involving the use of mercury, phosphorous poison, and so on. The British act provides that to the list which the act contains the Secretary of State may add other industrial diseases, and eighteen have been added by him. It is not necessary to read them. I have a schedule of them and anybody who is interested can look at them. My present notion would be to include only those which were included in the British act, the six, and leave to the Board proposed to be constituted under the act the power of adding as the Secretary of State in England has power to add, other diseases as they may deem proper. That there should be compensation in cases of industrial diseases of this class I think admits of no question. If a workman is entitled to be compensated on the principle on which the legislation such as is proposed here is based, for accidents arising in the course of his employment *a fortiori* he ought to be compensated if the industry in which he is employed is of such a nature as to subject him to the danger of contracting what is called an industrial disease. Take the first one, anthrax, a disease contracted through the handling of wool, hair, bristles, hides and skins, which is applicable perhaps primarily to the case of the tanner. It seems to me a monstrous proposition if a workman contracts the disease of anthrax in a tannery that he should not be compensated just in the same way as a man who receives a personal injury in the course of his employment.

MR. HALL: What has been done with regard to the co-labourer? If the accident is caused by a co-labourer does that make any difference?

THE COMMISSIONER: Not at all. It does not make the slightest difference. The

question is, did the accident arise in the course of the employment and out of the employment. If it did then the employee should be compensated.

I have in the main adopted the principle of the British act making some modifications to meet what are admitted to be difficulties in the construction of that act and its administration. Now, having thus outlined the principles upon which the bill I have drafted proceeds, I will ask the Secretary to read the draft bill.

The Secretary then read the draft Bill.

THE COMMISSIONER: With reference to "b" of section 3 I have departed somewhat from the British act. I have introduced the words "attributable solely." In the next sub-section it creates the presumption that it comes within the act unless the contrary is shown.

With reference to the definition of accident, I am not sure whether those words adequately convey the meaning that I intend they should convey. There have been several cases decided in England which show that an accident is not considered in the way in which an ordinary man would understand it. For instance in one case it was a man's business to carry money, and he was killed or murdered, and that was held to be an accident arising out of the employment. The object of the first part of this section is to make it clear that if a man, while engaged in the performance of his duty, is injured, although it be by the wilful act of somebody else, he should be entitled to compensation. For instance take the two cases which occurred, one where a workman or foreman was directing his workmen and a workman taking offence at it struck and injured the foreman seriously. It was held that that was not within the act. I think it should be within the act. The first part of that interpretation is designed to cover cases of that kind. I am not sure whether in the second part of it the language is not too wide, "A fortuitous event occasioned by a physical or natural cause." What I meant to cover by that is a case like this: A man is working on a scaffold and is struck by lightning, or a man engaged in doing his work is frost bitten. I want to make it quite clear that these are matters for which he is entitled to compensation just as much as if the injury was caused by being struck by something in the course of his work. I shall be glad to have any suggestions with regard to the language that is used to convey the idea.

With reference to section 4, sub-section 2, that is intended to cover such cases as the Grand Trunk and the Canadian Pacific Railways where men are employed, and where their work takes them sometimes outside the Province.

With reference to section 6, sub-section 2, this is only applicable to dependants, not to the workman himself, the idea being that if a man is injured under circumstances which entitle him to compensation, that his dependants if they are not resident in Ontario are not entitled to compensation unless by the law of the country in which they reside there is reciprocity.

Section 9 is intended to guard against the accident fund being loaded down with a larger payment than would be fair to a workman who was a member of the family of the employer, and therefore it is provided that his compensation shall be based upon the wage that according to the payroll he was actually receiving. The other section is to enable an employer

to get the benefit of the act the same way as if he is a workman if he is carried on the pay-roll as a workman, and his wages included in the pay-roll upon which the estimates are made.

HON. MR. I. B. LUCAS: Would section 12 apply to those who may be excluded from the operation of the act?

THE COMMISSIONER: No, they would be outside altogether. Their case would be decided in the courts unless it was thought better to make this Board the determining body.

There is no provision as to how the accounts should be kept. I did not know whether it would be better to leave them to the Board. I suppose it will be necessary if any such system as this is adopted that separate accounts shall be kept with regard to each class at all events, and perhaps to each sub-class and each employer.

MR. HALL: Will you explain what was meant by the clause which spoke of the young man after arriving at the age of 21. The statement was made that payment ceased in some manner.

THE COMMISSIONER: That is where a child is a dependant. It is blank yet as to what year it shall be applicable, but when children under a certain age reach that age the payment ceases. Supposing \$5 a month was payable in respect of a child under 14 or 15, whatever age is put in, when he reaches that age the payment stops.

MR. HALL: I think it was section 21 that I meant.

THE COMMISSIONER: If children under 16 get a monthly allowance, when they reach 16 the allowance stops, of course.

MR. HALL: You will recollect a little discussion which took place before you with regard to deliberate neglect on the part of the workman. Has there been any consideration given to that point?

THE COMMISSIONER: If you have followed it you will see the only case where there is no recovery is where the accident is due wholly or solely to the serious or wilful misconduct of the workman. That will depend on circumstances.

MR. BANCROFT: Is there not a provision where compensation shall be paid anyway in case of death or permanent disability?

THE COMMISSIONER: That is left just as it was.

MR. HALL: What is to be considered proof of the serious and deliberate neglect of the workman?

THE COMMISSIONER: If you want to draw an act which would determine all those points you would be here for a year. That will be determined by the Board.

MR. HALL: A statement was made here at the last meeting about a deliberate act which I have found out was wrong, although the gentleman making it, I believe, thought it was right.

THE COMMISSIONER: That would be left to the Board to determine whether under  
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all the circumstances it was serious and wilful. It must be both serious and intentional. That means that he did it on purpose, not necessarily with the purpose to injure himself.

Mr. Wegenast, acting for the Canadian Manufacturers Association, has sent in what he proposes to be the classification. I do not propose if this scheme is adopted to include all the industries that he has put in these schedules. My idea would be not to include the railway companies and not to include telephone companies. I doubt very much whether lumbermen should be included, and perhaps there are other industries that ought not to be included. I would not include the farmers and I would not include the employers of domestic servants, nor the retail stores. I would leave them liable to whatever the law made their obligation, with the provision to enable the Board to compel them to insure.

MR. BANCROFT: That means they will lose if they are not under the act all the present common law defences?

THE COMMISSIONER: There will be no question of common law defences with anybody who is within the act. The right is to compensation if a man is injured, as provided in the earlier section.

MR. BANCROFT: Is it not the tendency of the bill to bring in the men outside?

THE COMMISSIONER: No, but supposing the legislature is of opinion that farmers should be excluded and is of the opinion that domestic servants should be excluded, then what I would suggest in my report would be that they should be left outside the Act altogether, and there should be a provision that all these common law defences—that two of them should be done away with altogether, and the one of contributory negligence should be modified so that contributory negligence would only affect the amount of damages and not the right to it. That is it would not disentitle him absolutely to damages.

MR. McCARTHY: I do not understand you to mean that the railways would be outside the act?

THE COMMISSIONER: I certainly do not. I am talking about leaving them out of the groups. They all would be under the act. Then if the legislature chooses to shut out any they will be outside the act and a special provision made as to them. Of course nobody can shut his eyes to the fact that to some extent it is experimental legislation. In no country has it been sufficiently proved to enable anyone to say what is the best system. Now, I think an advantage in having a considerable body of employers outside of the group, is that it will furnish a test as to whether or not what these accident companies have been saying is right, and whether the men outside are not better off than the men who are inside. I think that is one of the advantages that would be derived from such a separation as I have suggested in this draft bill.

MR. HALL: Would you give us some idea as to what is understood in the way of the percentage of contributory negligence in regard to neglect?

THE COMMISSIONER: They would make the punishment fit the crime, in popular language.

MR. HALL: There is a great deal of doubt as to how contributory negligence comes about.

THE COMMISSIONER: I can only deal with general principles.

MR. BALLANTYNE: I understand in case of individual liability the measure of damages will be assessed by the Board?

THE COMMISSIONER: Yes. The only difference is in one case it is payable out of the accident fund and in the other individually.

MR. HALL: Will they have the right to determine the percentage of contributory negligence?

THE COMMISSIONER: It has nothing to do with the right to compensation under the act. The workman is entitled to his compensation if the injury arises out of and in the course of his employment unless it has been caused solely by his serious and wilful misconduct, but even in that case it does not affect him if death or serious disablement is the result. If he is killed his dependants are entitled to compensation even though he has been careless.

HON. MR. LUCAS: Will there be any contribution to the accident fund by those outside of it?

THE COMMISSIONER: Certainly not.

HON. MR. LUCAS: How about the administration?

THE COMMISSIONER: Power will have to be given to the Board to impose costs in connection with any claims which are decided, where they are called upon to decide a question.

HON. MR. LUCAS: But no general contribution to the costs of the administration by those entirely outside of it?

THE COMMISSIONER: I do not see how that could be worked very well. I think what ought to be done is to enable the Board to assess against the employers if they have to determine a claim, a reasonable sum to assist in defraying the cost of administration, because they should contribute in some way to that cost.

MR. HELLMUTH: That is in any individual case?

THE COMMISSIONER: Yes.

MR. HELLMUTH: If the Board had to determine what compensation should be paid to an employee by an employer who is not within the schedule then that employer might be made to pay in that case?

THE COMMISSIONER: Yes.

HON. MR. LUCAS: You would not suggest a contribution to the general overhead cost of administration from those outside?

THE COMMISSIONER: I do not see how you could work that. One of the difficulties would be to get hold of all these people. The Province covers an enormous extent and it would be extremely difficult to get hold of everybody.

MR. BANCROFT: You pointed out the fact that the retailers, telephone companies, lumbermen and farmers would not come under the act proper?

THE COMMISSIONER: They would be still liable to compensation just like the others. As the bill is drawn everybody will be in and the legislature will take the responsibility of leaving anybody out. There are a great many difficulties. It probably would shock the farming community if a man goes into the stable and without any fault of the employer the man is kicked by a horse and killed that the employer has to pay him. However, that applies to all the other industries.

MR. HELLMUTH: That is they will be shocked.

THE COMMISSIONER: I do not think they will be shocked.

Now, you will notice I have tried to make stand out in this Bill the necessity of maintaining this accident fund so that it will be sufficient to meet the claims upon it, and that it will not unduly burden the employers in future years with the cost of accidents that have happened in previous years. I think that is a most important thing. There has been a great mass of figures and documents presented to show that it is not going to press unduly under the system that Mr. Wegenast suggested, but I would rather let that be a thing that the Board can deal with from time to time as the circumstances show whether or not it is necessary to increase the contribution.

MR. GIBBONS: The act says where an employer is personally liable. Does that mean in certain groups where they do come under the act that an employer may stay outside and assume his own responsibility?

THE COMMISSIONER: No, if he is in the group he has got to contribute to the accident fund, but of course with regard to any class of industry if the persons in it make a case the Board has power, if this bill is passed, to withdraw them and leave them under the individual liability. That is a matter entirely with them.

MR. BANCROFT: Supposing the industries are outlined when the legislature passes the bill, and insurance will be compulsory so far as they are concerned?

THE COMMISSIONER: You will notice there is power in the Board to re-arrange and re-classify.

MR. BANCROFT: It says transfer after withdrawal. I thought it meant after he had withdrawn he must be transferred to another.

THE COMMISSIONER: No, it is intended to give the fullest power to the Board to leave out any of these classes and leave them under the individual liability, or change them from one class to another.

MR. BALLANTYNE: Does the bill provide what payment shall be provided by the Government?

THE COMMISSIONER: I suggested in the interim report that the State should contribute towards the cost of administration. There is no doubt that the effect of such a bill as this will draw a great deal of business from the

courts, and in that way the Province will be relieved of part of the cost of administration of justice. That seems to be a reason for them contributing to the cost of administration. Then as it is pointed out this is in part social legislation and perhaps that might be another reason why the Government ought to contribute, or that the Province ought to contribute. However, that is a matter entirely for the legislature.

MR. HALL: Are the maximum and minimum rates to be dealt with by the legislature?

THE COMMISSIONER: No, I propose to fill in these blanks, and that is one of the things I would like to have some discussion on.

MR. LAWRENCE: I suppose if there is a minimum rate there will be a maximum rate?

THE COMMISSIONER: The bill is drawn so that the compensation shall in no case exceed whatever percentage is ultimately determined of the weekly wage.

MR. LAWRENCE: You would not recommend one without the other?

THE COMMISSIONER: Certainly not. This provides for that. You will notice in one section provision is made for certain payments to the wives and husbands and children, and so on. That is in cases of permanent disability. As the bill is drawn the workman instead of taking that may elect to take the percentage, or whatever it is, of the wage.

MR. BANCROFT: In cases of partial disability I think it is, you conceded in one clause that there might be a monthly payment, and then you have also given the workmen the right to choose a percentage of his weekly earnings.

THE COMMISSIONER: No, that is not it. In case of partial disability he gets compensation proportionate to the extent of the disability not exceeding a certain percentage of his wages. Those two clauses which speak of monthly payments and payments to children, are confined to total and permanent disability—not necessarily total, but permanent disability.

MR. HELLMUTH: I notice, Mr. Commissioner, you propose to remove statutory liabilities placing in lieu thereof the compensation under the act. In the case of the railways there is a statutory liability under the Dominion Railway Act.

THE COMMISSIONER: This could not affect that.

MR. HELLMUTH: I was wondering whether any recommendation would be made with regard to that, because it would seem somewhat double liability if they had to pay compensation under the Workmen's Compensation Act and the statutory liability under the Dominion act.

THE COMMISSIONER: Is there not a provision here that would cover that? I do not know whether it is wide enough to meet what you are suggesting. It says in fixing the amount of a weekly payment regard shall be had to any payment, allowance or benefit which the workman may receive from his employer during the time of his incapacity.

MR. HELLMUTH: It would hardly come under that.

THE COMMISSIONER: If it is a sum under the act which the employer is bound to pay to him I am not sure that it would not. I have not in mind any provision which enables the employee to get anything directly.

MR. HELLMUTH: Oh yes. Take, for instance, defective couplers. Any regulation of the Board is made equivalent to a statutory order. Then if any injury happened not only has the railway to pay compensation for injury to outsiders but to any employees, a liability which has been held to be equal to the full common law liability. It is a statutory liability.

THE COMMISSIONER: There may be an opportunity, although it is doubtful when it will come, to get an amendment to the Railway Act to cover that, and if a provision were made in that that where compensation was provided under a provincial law that there should not be that liability under the Railway Act, it might cover the case.

We discussed sometime ago the question of making the compensation part of the working expenditure of the railway. That ought to be seen to in the Dominion act. We have suggested the provision in the Ontario act, so that with regard to all street railways, electric railways, inclined railways and steam railways, under the provincial jurisdiction these claims for compensation form part of the working expenditure and come in ahead of everything.

MR. HELLMUTH: That might be a reason for altering the other so as to make the act of the Province of Ontario take the place of the statutory provisions where compensation can be claimed under the Ontario Act.

MR. HALL: Would you amend this act to provide that a man coming under the common law——

THE COMMISSIONER: The idea of this is that a man coming under this act, it is intended to cover everything.

MR. HALL: Does it prevent an employee from coming under the common law?

THE COMMISSIONER: Certainly it does. It takes away all other rights except to compensation under this act.

MR. HALL: Supposing the Railway Act was amended, the Dominion Act, would this not interfere with its operation?

THE COMMISSIONER: Not at all. The amendment suggested would be to make it fit in with such an act as this.

MR. LAWRENCE: It could be made so that it would be elective, they could have either one?

THE COMMISSIONER: No, I would not recommend that. That strikes at the very foundation of all this legislation.

MR. HELLMUTH: I understand Mr. W. N. Tilley has charge of the amendment of the Dominion act. I mean Mr. Tilley is representing the railways.

THE COMMISSIONER: I thought it was Mr. Price. If Mr. Tilley is preparing anything it will be very bad. (Laughter.)

MR. HELLMUTH: It might be brought to his attention.

THE COMMISSIONER: Those two things ought to be provided for, that compensation under the Provincial act is to be assumed part of the working expenses, and then a provision such as this. It seems to me that might not be unreasonable.

MR. McCARTHY: You will remember the Fralick case. That was a breach of the statutory provision.

THE COMMISSIONER: There is no doubt some workmen will have to give up something for the benefit of the whole body.

MR. HALL: I hope the maximum will be large to compensate them.

THE COMMISSIONER: I do not know. The figures vary from fifty to sixty. It may be a little higher in one State. We will have to commence with a reasonable amount.

MR. BANCROFT: It is sixty-six and two-thirds in Ohio.

THE COMMISSIONER: That is very limited, and elective.

MR. BANCROFT: Then take Switzerland.

THE COMMISSIONER: That is a bad example. They have some curious things in Switzerland.

MR. BANCROFT: The workers would hardly agree to surrender all their common law rights and statutory rights unless the compensation was generous.

THE COMMISSIONER: It would never do to alter the whole law to cover the case of a very few instances where a man can recover at common law. I think I can count on my fingers and thumbs the number of cases in which there has been recovery at common law in all the actions that have been brought.

MR. BANCROFT: Of course there have been recoveries under Employers' Liability.

THE COMMISSIONER: Yes, but the maximum is \$1,500 or three years' wages. That is a very different story to a compensation for life.

MR. LAWRENCE: Whatever percentage is made it will be paid for life?

THE COMMISSIONER: As long as the impairment is continued.

There is a provision there, perhaps you noticed, about the employers being able to buy an annuity. That is in the British act, and apparently they do not require the annuity to be for the whole amount of the payment, but seventy-five per cent. I suppose the idea of that is that a man in the ordinary course if he lives a long time would be past working, and therefore the employer ought to be able to get off with that amount.

Did you notice, Mr. Ballantyne, a provision in the British act, I think, of 1907, affecting your clients? It is No. 23. Where an employer insures by a contract of insurance of an insurance company, or any other underwriter is liable to make a weekly or other periodical payment to a workman or his dependants, and the payment is continued for more than six months, the liability shall, if the Board so directs before the expiration of twelve months from the commencement of the incapacity of the work-

man, or his death, if the accident resulted in death, be redeemed by the payment of a lump sum in accordance with the next preceding section.

MR. BALLANTYNE: There is some similar provision in the Quebec act, I think.

THE COMMISSIONER: That would only apply to a contract of insurance after it was entered into.

MR. BALLANTYNE: That applies to occupations outside of the schedule?

THE COMMISSIONER: Yes. You won't have anybody foolish enough to contract for insurance with anybody in the schedule.

MR. LAWRENCE: I wasn't here at the beginning of the meeting. Is there any provision in there, for instance, if a husband gets injured and dies in a certain length of time that his dependants will receive anything? For instance, he might get injured seriously and at the end of a year or eighteen months it indirectly might be the cause of his death?

THE COMMISSIONER: If it was because of an injury and it is a case where death happens he comes within the death provision.

MR. LAWRENCE: There is no limit to the time he might die from the injury?

THE COMMISSIONER: No.

MR. LAWRENCE: You have made quite a study of this. What would you think would be a fair percentage?

THE COMMISSIONER: I do not think under any circumstances it should go more than 55 per cent. I am hovering between 50 and 55.

MR. LAWRENCE: Do not drop to 50. I would like to see you make that 60.

THE COMMISSIONER: No, you must not make this too heavy or the whole thing will break down.

MR. LAWRENCE: We want to be reasonable, but what one person thinks reasonable another does not.

MR. BANCROFT: That is going backwards. Why not hover between 55 and 60?

THE COMMISSIONER: That is too much for a start. I really think it would be better in the interests of the workingmen if we started at 50, and not make this act unpopular.

MR. BANCROFT: With whom?

THE COMMISSIONER: With the general public who have to pay for it. It is not the manufacturer that pays, you know. I am paying, although I hope I am not influenced by what I contribute.

MR. LAWRENCE: We all contribute.

MR. BANCROFT: The consumer pays.

THE COMMISSIONER: And the more a man consumes the more he pays.

MR. HALL: The man who contributes more than anybody else is the man who gets hurt.

THE COMMISSIONER: We all take chances of getting hurt. There are lots of people outside of this act who may suffer severe injury. There is nothing to prevent a man insuring himself. A prudent man would do that if he had the money to do it with.

MR. HALL: If a man has a wife and he is severely hurt and dies inside of twelve or eighteen months from the cause of this accident what provision has been made for his wife?

THE COMMISSIONER: None whatever if he chose to marry after he was hurt.

MR. HALL: No, I mean if he had a wife.

THE COMMISSIONER: There is a provision of so much a month for his wife and children.

MR. HALL: If there are no children?

THE COMMISSIONER: Then for her.

MR. HALL: She is provided for for life or until she remarries?

THE COMMISSIONER: Yes, and then she gets a lump sum of two years' compensation.

MR. HELLMUTH: That is to encourage remarriage, I suppose?

THE COMMISSIONER: There would be nothing to prevent the manufacturers offering an additional premium.

MR. BANCROFT: It might be a wise provision to let the Board issue licenses for remarriage.

THE COMMISSIONER: An eminent judge once said, "God forbid that I should know all the law." Do you think, Mr. Wegenast, you have got all the industries in your groups? Have you any general words to cover those you do not name?

MR. WEGENAST: I think they are all in. I endeavoured to get them all in except the retailers, the farmers, and the domestic servants.

MR. F. C. CARTER: Are the departmental stores included with the retailers?

THE COMMISSIONER: If they had manufacturing departments they would be under the act.

There is another thing I would like those who are interested to consider. Take the case of railway construction, whether it would not be better to leave them outside of the groups.

MR. LAWRENCE: Contractors engaged in railway construction?

THE COMMISSIONER: Yes, they are in remote parts of the country generally. Then very often it is the railway company that is doing it although it is done by a subsidiary company.

MR. LAWRENCE: I think it would be as well to leave them in the group.

MR. HALL: They would hardly come under the railway group until the road was taken over by the railway.

THE COMMISSIONER: No, but the men who are employing the workmen doing this work are all under one or other end of the act.

MR. LAWRENCE: Of course we do not have much trouble in Ontario, but we might at some time, but in the west the contractors operate the roads to haul freight and such like until it is taken over by the company, or until the Railway Board gives permission to the railway company to operate it. Now, that is why I mentioned that the contractors should be in the group, because they are outside of the railway companies entirely.

THE COMMISSIONER: Some gentlemen seemed to think that those that were outside the group were better off than those in the group.

MR. LAWRENCE: If they were not in the group then they might not be in a position to pay the liability. For instance a contractor might take a contract to build a certain piece of road and after that was done he might go out of business.

THE COMMISSIONER: That is perhaps doubly guarded by giving the Board power to require him to insure all his workmen or give security for the payment of compensation. Perhaps some may think that is sufficiently guarded.

MR. LAWRENCE: His workmen might be injured and there should be some provision made for it.

THE COMMISSIONER: If he has to insure his workmen and give security that might be sufficient.

MR. LAWRENCE: Yes, if that is provided for in that way.

MR. HALL: If he was kept under the act it would have a tendency to better conditions.

THE COMMISSIONER: It would be extremely difficult to get hold of all these contractors and sub-contractors. There are little bits of contracts all over the country. However, that is a matter to be considered. I should think a better way would be to leave enough out, and then the Board has power to bring them in afterwards.

MR. LAWRENCE: The Board would have power to bring parties in, and if that continued to any great extent the Board could deal with it.

MR. GIBBONS: I should think they would want to come in after a year or two.

MR. BANCROFT: There is no appeal from the Board?

THE COMMISSIONER: No, not on any question. It is important that you get a good Board.

MR. BANCROFT: When the Legislature is not in session the Board is the Legislature in that respect?

THE COMMISSIONER: Yes. Of course these new groups cannot be formed except with the approval of the Lieutenant-Governor in Council.

MR. HELLMUTH: That is bringing any new class into the act would be subject to approval?

THE COMMISSIONER: Clauses (a) and (b) of section 68, I think it is.

MR. BANCROFT: The Board can do it on their own motion?

THE COMMISSIONER: Yes. Of course it ought to be subject to the approval of the Lieutenant-Governor.

MR. BANCROFT: I did not understand it.

THE COMMISSIONER: I will put a few words in there to make that clear. I will put in "or for any other reason which the Board may deem sufficient."

MR. HELLMUTH: If the transfer is subject to the Lieutenant-Governor in Council it would seem logical that the bringing in of new classes should be subject.

THE COMMISSIONER: I think when that goes to the House they will strike out all of that. However, I have put it in.

MR. BANCROFT: I do not know whether it would not be safer the other way, to have the Board with power to withdraw industries from the group and leave them out. That would be a pretty serious proposition.

THE COMMISSIONER: For whom?

MR. BANCROFT: For the general public—for the workmen.

THE COMMISSIONER: They would be still under the act with individual liability. I do not mean to withdraw them from being liable for compensation.

MR. BANCROFT: Under the individual liability under the act, just as Mr. Lucas said, they are not contributing anything to the accident fund. That is where the whole point comes in.

THE COMMISSIONER: What difference does it make as long as they pay the shot themselves?

MR. HALL: Is there any guarantee of that?

THE COMMISSIONER: They can be required to insure or give security, and if they do not insure the Board can insure. I thought you were a strong advocate of keeping the railways out of the group.

MR. HALL: So I am.

THE COMMISSIONER: I do not see what you are troubled with. You are getting what you want.

MR. HALL: It is just a general interest in the act and my inability to understand some of it.

THE COMMISSIONER: If anyone else has anything to say I would like him to say it now.

MR. LAWRENCE: I have nothing except the percentage. I do not like to see you make that too low. I thought 60 per cent. was a fair percentage.

MR. BANCROFT: In Great Britain where the percentage is fifty the workman has still his Employers' Liability rights left.

THE COMMISSIONER: That does not amount to very much. That is very limited.

MR. BEST: There is a question I would like to ask regarding the railways being left out of the groups. To whom will the employees if injured make application for compensation?

THE COMMISSIONER: To the Board if he wants to. Every employer is required within three days after an accident happens to send notice of it to the Board.

MR. BANCROFT: It seems a very serious proposition to leave out the railways when the railways include so many big shops, such as boiler shops, and machine shops. You include them in the manufacturers and you are going to except them in the railways, the same class of men, and the railways being such large corporations and being so wealthy and so willing to compensate, I do not see why they should not pay into the accident fund the same as anybody else.

THE COMMISSIONER: I am not going to put anybody into the group simply for the sake of uniformity. Unless there is some valid reason against leaving them out I do not see why they should not be left out. I am not framing this on sentiment at all; I am trying to make, as far as I can, a practical measure. When I said railways I did not necessarily mean anything but steam railways.

MR. BANCROFT: Take the shops in Montreal. They are not in Ontario, but that is an illustration showing how much the railway business is really a manufacturing business.

THE COMMISSIONER: Is there any suggestion by anybody that every dollar of compensation that the Canadian Pacific Railway becomes liable for will not be paid? If there is I would like to hear the suggestions and I will put in a safeguard against it. I think I have plenty of safeguards in it. If a man is injured and the Board chooses to do so they can call upon the Canadian Pacific Railway to put up the money or give security for it. I do not suppose they would do it unless it was a little weaker than it apparently is to-day, but there might be a railway that was pretty shaky.

MR. GIBBONS: One question came up in regard to having enough industries to form a group. Take the machine shops, for instance, or such shops as those. If that department of the railways were grouped in with the others it would make a larger group, and you could leave out the operating part if you liked.

THE COMMISSIONER: They are plenty big enough without. There is no difficulty about the exposure of that class, I should think.

MR. GIBBONS: There are a number of foundries that are manufacturing rolling stock for the railroads and they may be partly owned by the railways and partly by private individuals.

THE COMMISSIONER: If the railways only are excluded they will be in.

MR. HALL: Could you give us any idea when this bill will be presented to the House?

THE COMMISSIONER: No, that is out of order. It will be presented soon.

MR. HALL: Perhaps Mr. Lucas can tell us whether there will be time between the introduction and the passing of the bill to give it consideration and look into it?

HON. MR. LUCAS: Oh, I think so; yes.

THE COMMISSIONER: I think we had better adjourn until three o'clock and then anybody who wishes to say anything further may do so.

MR. WEGENAST: Is it intended that the adjourned meeting shall be the final meeting?

THE COMMISSIONER: It certainly is. I am going to get to the end of this.

MR. WEGENAST: I feel it my duty to say that I do not consider myself competent, on behalf of my clients, to go on discussing the proposition that has been brought down. It is so entirely and radically different from anything we had supposed was under consideration that I would like to ask for time to consult my clients with regard to it.

THE COMMISSIONER: With all respect to you you have not been very wide awake if you expected it to be any different in its general lines.

MR. WEGENAST: Well, that is a question of fact on which I would not like to enter into dispute. I suppose there is no appeal from it.

THE COMMISSIONER: No appeal as far as this court is concerned.

MR. WEGENAST: I am representing in this aspect the Builders' Exchange and the Employers' Association of the Province as well as the Manufacturers' Association in asking that there be time given to consider the subject in the light of the entirely changed conditions.

THE COMMISSIONER: What do you mean by the entirely changed conditions?

MR. WEGENAST: Well, there again I fly in the face of your suggestion that this is what was proposed.

THE COMMISSIONER: What are the points where there is a divergence from the general scheme that was originally talked about?

MR. WEGENAST: Well, they are so numerous I do not like to enter into the subject.

THE COMMISSIONER: Mention one, the biggest.

MR. WEGENAST: The principle of an individual liability act.

THE COMMISSIONER: That is an entire misstatement, if I may say so. It is only a few of the industries being left outside. Probably there may be more before I finish.

MR. WEGENAST: That is the danger that lies in it.

THE COMMISSIONER: You have no right to make a statement of that kind, in view of what I have said.

MR. WEGENAST: Well, of course we have not got to the real heart of the bill. That is, the schedules and the schedule of benefits, but in order to make my own position clear I may say that I know the manufacturers and employers of the Province had not in view for one moment and had not the remotest idea of any such scale of benefits as is proposed in connection with an individual liability.

THE COMMISSIONER: Are the manufacturers of this country less able to bear the burden than the manufacturers of England?

MR. WEGENAST: No, but they are not able to bear ten times the burden.

THE COMMISSIONER: Who said they would?

MR. WEGENAST: That would depend on the schedule of benefits. If any such schedule of benefits as is proposed is made I would say it would make the act impossible of operation in this Province for those who are individually liable. The highest maximum benefit at present in force in the Dominion is \$3,000. We had supposed that the Washington schedule would be out of the question, that it would be too large, in view of conditions in this country. That is a maximum of \$4,000, but we are willing to give a schedule of benefits corresponding to those in the Washington Act, or at least one that could be brought within the maximum of \$4,000 if it were done on the collective principle and on the current cost plan.

THE COMMISSIONER: That is a rather contradictory statement. First your proposition is it is too hard on the individuals, but it should be on the collective principle.

MR. WEGENAST: That is my proposition.

THE COMMISSIONER: I would think that was not a very tenable position.

MR. WEGENAST: I can only state that I am unable to make any statement in view of all that has transpired. It will almost paralyze those industries that are not included under the act, and if the scale of benefits that is proposed in this act is imposed on the industries of this country it will handicap them three to one with the industries in the other Provinces.

THE COMMISSIONER: That is an old story.

MR. WEGENAST: I will not take issue with that.

THE COMMISSIONER: What I am talking about is the fact of there being a more onerous law in one Province than in another. That is a worn-out argument.

MR. WEGENAST: Well, the argument stands, I think, in your name in several places in the record, but apart from that I, of course, adhere to it entirely. If the furniture industries in this country are obliged to pay five or six or seven per cent. on the pay-roll in this Province as against one or one and a half per cent. in another Province I do not think it can be denied for one moment that those industries will be at a disadvantage. In fact in many industries a difference of two or three per cent. on the

pay-roll will make the difference between success and failure. In view of this condition it is my duty to ask for time to consult my clients with regard to their attitude on the various features of the act.

THE COMMISSIONER: I do not think there is any object in any adjournment if they are so radically opposed to this Bill. I do not desire these statements simply repeated at another meeting. If you have any practical reason I will adjourn for a few days.

MR. WEGENAST: That must be for my clients. My instructions do not go so far as to cover what shall be my attitude.

THE COMMISSIONER: It is a little singular that the railway companies and those who are asking to be kept out, and the telephone companies, are quite willing to take this responsibility. If they can take it individually I do not know why the manufacturers cannot take it collectively.

MR. WEGENAST: That is assuming that the manufacturers are all in the schedule. If that is to be assumed, and the builders for whom I speak, and the other employers belonging to the Employers' Association, if they are all under the schedule then of course it puts the matter on a different basis.

THE COMMISSIONER: I do not say it is to be assumed. We cannot tell until we come to consider in detail the schedule. I have mentioned half a dozen different industries, and those are the only ones that at present occur to my mind. There may be others when I come to look into it, but you certainly are not going to have me recommend a Bill that is going to break down of its own weight.

MR. WEGENAST: That is what we submit would be the effect of this bill. I can perhaps indicate my point of view by reference to a concrete case. For instance, suppose the schedule should be that of the Washington Act, based on \$20 a month for the widow. Take the case of a painter with a contract to paint a house. He asks a friend of his to help him and offers to pay him a couple of dollars a day. The friend falls and is killed and the widow of that man becomes a pensioner upon the employer.

THE COMMISSIONER: That is not the fact. There would be no claim at all in a case of that kind. If he was a workman there would be.

MR. WEGENAST: I am assuming he is a workman. I am assuming a contract of employment.

THE COMMISSIONER: Well, in a case such as that if they were outside the act the man could insure.

MR. WEGENAST: Let me outline what would happen. There is a pension of \$20 a month, which amounts to \$240 a year. The widow might conceivably live for forty years.

THE COMMISSIONER: You have no right to say what the pension is. There are no figures in this bill.

MR. WEGENAST: Well, take it at \$10 a month. Then it would be \$120 a year, and if the widow lived for forty years it would be forty times \$120 or

\$4,800. This painter would be liable for his whole life and the life of the widow, and I suppose his heirs.

THE COMMISSIONER: Can he not insure?

MR. WEGENAST: Who is going to make him insure?

THE COMMISSIONER: According to what you stated at one of the meetings, under the grouping system you make him pay as large a sum as he would in that case.

MR. WEGENAST: That is if he was in the group. I am assuming he was not in the group.

THE COMMISSIONER: If he was in the group you make him pay the same as if he was outside?

MR. WEGENAST: Yes.

THE COMMISSIONER: How is he any more hurt if he is outside?

MR. WEGENAST: He does not pay unless the accident happens, and when it does come it comes like a bolt out of the blue and paralyzes him for life. It is conceivable that it is a small workman, a carpenter or painter, or may be a farmer, because this act as it stands covers farmers. If it was a farmer he would have to pay the widow of his hired man a pension of \$20 a month for life, but if the farmer dies where is the pension to come from? Then there is a provision that a capital sum may be paid into the fund. Where is the farmer or the painter, as the case may be, going to get \$9,600 to pay into this fund?

THE COMMISSIONER: There is no use taking cases like that. You can prove anything by taking an improper case.

MR. WEGENAST: I say it is not an improper case. It is very far from improper, I submit. However, that is one feature of the bill that on behalf of my clients I would have to say I was not competent to consider, and we think we should have an opportunity to consider it.

MR. HELLMUTH: So far as the principle of the bill is concerned the clients I represent here, as you know, sir, are not objecting to it, nor do we object to pay compensation of such an amount as may reasonably be thought just. Of course as to the details of this bill we have not yet had any opportunity of going through it and I would not want to say, except as to the principle, that we are absolutely in accord with each of the details of the bill.

THE COMMISSIONER: They are all blank so far, as far as the figures are concerned.

MR. HELLMUTH: A good many of them are, and with the provision that adding to the groups should be subject to the Lieutenant-Governor in Council, or somebody of that kind, it seems satisfactory. We do not want it to be assumed that we are hostile in any way to this proposed bill although we do not want to feel bound in regard to details, which as you say are really not yet settled.

# WORKMEN'S COMPENSATION COMMISSION

1913

MR. McCARTHY: That is the position I take also, Mr. Commissioner. We cannot draft size the blanks.

THE COMMISSIONER: You can imagine them. I cannot adjourn the enquiry beyond Thursday evening, or I would prefer Thursday morning if it is not going to interfere with the House.

MR. MACMURRAY: May we have copies of the bill?

THE COMMISSIONER: I sent one to Mr. Wegenast and one to Mr. Baillie, and Mr. Lucas got one, and two or three to Mr. Hanna. That is the extent to which they have been distributed so far. I suppose copies can be furnished to those who are interested if they will hand in their names to the Secretary.

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## TWENTY-SEVENTH SITTING.

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THE LEGISLATIVE BUILDINGS, TORONTO.

*Thursday, 20th March, 1913. 11 a.m.*

PRESENT: SIR WILLIAM R. MEREDITH, *Commissioner.*

MR. F. N. KENNIN, *Secretary.*

MR. W. B. WILKINSON, *Law Clerk.*

THE COMMISSIONER: Mr. Wegenast, why do you use in some cases in your classification "manufacturers of furniture," for instance, and then such an expression as "metal-wares?" Why do you not use the same expression, "manufacturers of metal wares?"

MR. WEGENAST: I tried to as far as possible. One thing I had in view was the first words of the section, or the words nearest describing the section ought to be placed at the beginning.

THE COMMISSIONER: Why could it not have been "manufacturers of metal wares?"

MR. WEGENAST: It might have been that. I am not depending on that for the definition.

THE COMMISSIONER: What do you depend on?

MR. WEGENAST: Well, the definition was in the draft act which I submitted. This was only distribution.

THE COMMISSIONER: I do not know that there is any form of definition in that, is there?

MR. WEGENAST: Yes, section 3. The general terms "manufacturing" covers over half the titles.

THE COMMISSIONER: You have only included a small part of them. There must be hundreds more in your list than that.

MR. WEGENAST: No. If there are they should be added. Manufacturing covers two-thirds of the industries in this Province alone.

THE COMMISSIONER: I have a clause here that probably should be added, "The powers conferred by sub-section 1 shall include the power of determining whether an employer is individually liable to pay the compensation or liable to contribute to the accident fund and to determine all questions as to whether an industry, employment or business, or any branch or department of it, is included in any class or sub-class, and if included to which class or sub-class it belongs."

I notice section 68 (2) was one you had underscored, Mr. Wegenast?

MR. WEGENAST: I only underscored those that constituted the outline.

THE COMMISSIONER: What was the objection to that particular clause?

MR. WEGENAST: I do not know that there is any particular objection.

THE COMMISSIONER: I propose to add after the word "business" "or for any other reason which the Board may deem sufficient." That will give greater latitude. What do you think of that?

MR. WEGENAST: I am hardly in a position to gather the effect of it off-hand.

THE COMMISSIONER: It is to give the Board practically full discretion to make sub-classes wherever they think it is proper that sub-classes should be made. I think that was part of your scheme?

MR. WEGENAST: Yes, the idea embodied in that section is what we proposed.

THE COMMISSIONER: It did not appear quite clear where a class or an employer was excluded from the accident fund whether he was excluded from the class and that put him outside of the accident fund contribution. I have drafted a section to cover that.

"Where any class or sub-class or any industry, employment or business is withdrawn or excluded under section 68 or section 69 and is not formed into a separate class or sub-class or added to an existing class or sub-class, every employer in such industry, employment, or business shall thereafter be individually liable to pay the compensation and shall not be liable to contribute to the accident fund in respect of accidents which thereafter happen."

This is to meet the suggestion that it was unfair, as no doubt it would be, that those who were not liable to contribute to the accident fund should escape contributing to the cost of administration which is as much for their benefit as for the benefit of those who are liable to contribute, and I drew this section to cover that.

"The Board may assess and levy upon the employers in every industry, employment or business not included in any class or sub-class such proportion of the cost of the administration of this act as the Board may deem just, and the Board shall have the powers and rights for collecting and enforcing payment of any sum so assessed as it has for collecting and enforcing payment of assessments upon employers liable to contribute to the accident fund."

There is no hard and fast rule which can be laid down. It will have

to be left and they will have to take into consideration the facts. I suppose the way they would get at that is they would find what the pay-roll of the industry was that was outside and make it pay about the same as those within to the cost of administration.

Then here is a provision that seems to me to be necessary. "The Board may award such sum as it may deem reasonable to the successful party to a contested claim for compensation, or to any other contested matter, as compensation for the expense he has been put to by reason of or incidental to the contest, and an order of the Board for the payment of any sum so awarded when filed in the manner provided by section 63 shall become a judgment of the court in which it is filed and may be enforced accordingly."

It would be reasonable if the claim to compensation was resisted and the man had to bring his witnesses that he should not pay the expense out of his pocket, and this gives the Board power to award that.

Now, the matter I am about to mention was discussed, and my impression is that both sides were against making any such change as I am going to mention. Under the British act the compensation is not payable to a workman who receives more, I think it is, than £250 a year. I thought that the consensus was it was not desirable to have that limitation here. How is that, do you remember?

MR. WEGENAST: It would be unnecessary under our proposal.

THE COMMISSIONER: You have cut the hair so short there would be no room.

MR. WEGENAST: We left it ten times as long as the English act.

THE COMMISSIONER: Then the British act excludes from it as well as the out-worker the casual worker. Somebody said in the course of the enquiry that that had been dropped from the British Act, but it is not so, I think, and it would not perhaps be right to leave the casual worker out. It is rather an indefinite expression but it has received interpretation in the British courts. Take the case of a man brought in to saw a cord of wood, whether the employer should be liable to pay compensation. A man working there an hour or two would be excluded under the British act and be left to his ordinary remedies.

I do not know that it is quite clear in the act but I intended that no agreement between employer and workman as to compensation should be binding upon the employees unless it was approved by the Board.

MR. MACMURCHY: Section 15 says the right to compensation shall be waived and every agreement is void.

THE COMMISSIONER: Yes. The British act provides substantially the same, that no agreement between the employer and the workman is binding upon the employee unless it is approved by the Board. It has to be filed.

I notice, Mr. Wegenast, in your copy that I had the opportunity of reading, you did not mark the clause which provides for the Superintendent of Insurance investigating the affairs of the Board, and the Lieutenant-Governor being given power to require the Board, if the accident fund was not on a sound basis, to make a supplemental assessment in order to

bring it up to a proper basis. That apparently was not objected to, but a clause which was on the same lines I think was underscored; I don't know why.

MR. WEGENAST: The underscoring has nothing to do with objecting at all.

THE COMMISSIONER: Perhaps it would be well if you would leave your general objection and state any criticisms you have of the details of the bill.

MR. WEGENAST: They are all involved in the general statement.

THE COMMISSIONER: No, they cannot possibly be.

MR. WEGENAST: I could not possibly deal with it in any other way, Sir William.

THE COMMISSIONER: Then apparently you do not want to assist us?

MR. WEGENAST: I want to assist in every way possible and have held myself open for three years for that very purpose.

THE COMMISSIONER: It does not look like it from that statement, because there are numerous details in this bill that would be applicable either to the principle that is contained in it, or the principle that you advocate.

MR. WEGENAST: I am quite willing to deal with it on that basis. I was afraid I would be running up at every point against questions of principle.

THE COMMISSIONER: Perhaps you had better settle the question of principle first.

MR. WEGENAST: I should like to read what I have prepared. I thought it would be more satisfactory and more brief if I dictated it in order to place before you in definite form the views of the Canadian Manufacturers with respect to the draft bill presented on the 17th inst. The following memorandum is submitted:

"It is impossible to deal with the draft bill without filling, in imagination at least, some of the blanks, such as, for instance, those in sections 3 and 29. For the purposes of this memorandum I am assuming the blanks in section 29 to be filled with the same amount as in the draft schedule which was submitted at your request."

THE COMMISSIONER: You may start with a different assumption, probably.

MR. WEGENAST: It is absolutely impossible to deal with the act except on the assumption that the blanks will be filled with something.

THE COMMISSIONER: Certainly. Whatever is in the record ought to be the proper figure.

MR. WEGENAST: I have to make some sort of working hypothesis to discuss it at all, and it is a distinct disadvantage to ask us to discuss an act with these blanks unfilled.

THE COMMISSIONER: You are here to give me, if you will, the benefit of your views as to how the blanks should be filled in. That is what I want discussion on.

MR. WEGENAST: We have already submitted a schedule which has been in effect incorporated in the act containing certain amounts. The first blank for

instance in section 29, the amount payable to the widow, was \$20 per month, with an addition of \$5 per month for each child up to three children, the total not to exceed \$35.

"If the amounts proposed by you should vary from this assumption, the results would vary only in degree."

#### SCALE OF BENEFITS.

"On the above assumption the initial objection is that the scale of benefits is unreasonably large for a collective system, and is beyond all reason for an individual liability system. The English act provides, in the case of death, a lump sum of three years' earnings, or £150, whichever is the larger, the total not to exceed £300. In cases of total disability a weekly payment is provided not exceeding 50 per cent. of the loss of earnings, and not in any case exceeding £1. In the light of the fact that the Act covers workmen in receipt of earnings up to £250 a year it will be seen that the £1 maximum is in many cases much less than half wages, and in some cases less than quarter wages. It is in fact about equivalent to the \$20 per month of the Washington act.

"But two more phases of the English act must be considered in this connection: first, that it is the general practice in England to commute the weekly payment by a lump sum representing a reduction of the capitalized value, and second, that under the English system there is no certainty of the payment or continuance of the weekly sum. The English act itself recognizes the inferiority of the claim for weekly indemnity by allowing it to be commuted for a certainty of 75 per cent. As against the uncertainty of the English act a collective system offers absolute security for the compensation payments.

"The scales of benefits under the acts of the other Canadian Provinces fix minimums corresponding to those of the English act, the highest being that of Quebec, where there is a pension of half wages up to \$2,000, which amount having been reached the pension is stopped. Some of the recent Acts in the United States provide pensions of a proportion of wages, but they are all limited either by a period of years or by a maximum, or by both. In Massachusetts the period is three hundred weeks in cases of death, and four hundred weeks in cases of total incapacity. In New Jersey the period is four hundred weeks, and in Wisconsin the period is four years and the maximum is \$3,000.

"The scale of benefits in the draft act which we have submitted is based on an entirely different principle. No period of years is named, nor any maximum, except that of the monthly payment. The actual maximum depends upon the number and condition of the dependants, and upon the length of their life. The actual lump maximum represented by these payments would be in the neighbourhood of \$12,000. The average amount would according to the calculations under the Washington system be \$4,000 or over. This feature in itself, when compared with the English act and the acts of the other Canadian Provinces and States of the United States, in a position corresponding to that of this Province, shows a disparity which the employers of this Province would be justified in regarding as unjust and unreasonable."

THE COMMISSIONER: You are barking up the wrong tree there. There is no such result from the figures or the scheme as suggested in this bill. The Bill is practically subject to the figures adopted. That criticism is wholly inaccurate.

MR. WEGENAST: I say our own proposition might well be regarded in the light of what is given in the other jurisdictions as entirely unjust and unreasonable because we have gone so far. Our average is \$4,000, and no maximum. No other State except Washington goes up to \$4,000 as far as I am aware.

THE COMMISSIONER: Having been so generous with regard to the people who are killed why do you not be equally generous with regard to those who are injured?

MR. WEGENAST: I am coming to that, Sir William.

"But the draft Bill goes further. In cases of disability it is proposed to give the workman his choice of taking either the flat rate pension or an annual pension equal to half his weekly earnings during the previous twelve months. So that beyond the maximum fixed in the schedule of benefits there is a super-maximum of an indefinite amount which might conceivably reach \$20,000 or \$25,000."

THE COMMISSIONER: You would have to have a very imaginative mind to make that out.

MR. WEGENAST: I am coming to that.

"Certainly it would raise the average amount much over \$4,000. What is in fact proposed by the bill is to take the maximum of the draft submitted by us as the minimum of the proposed bill with no reduction in the cases of children or other workmen receiving a low wage. The minimum payment is the monthly payment of from \$20 to \$40 according to circumstances."

THE COMMISSIONER: Do you know anybody in this country who gets less than \$10 a week?

MR. WEGENAST: Yes, I know a great many.

THE COMMISSIONER: Perhaps you and I do not get that much, but ordinary people? Would that not be a very low average to put as an average wage?

MR. WEGENAST: What about the little boys and girls that are working here and there?

THE COMMISSIONER: For an ordinary workman?

MR. WEGENAST: You take the large things and build your whole argument on that.

THE COMMISSIONER: For an adult workman is there anybody pretends that \$10 is not a very low wage?

MR. WEGENAST: Yes. I do not only pretend it but say it, Sir William.

THE COMMISSIONER: You are very bold if you say that. Bear in mind too that the man who gets \$25 a week or \$30 a week is put upon the same footing in this.

MR. WEGENAST: I would venture to say, Sir William, there are more men in Ontario who get less than \$2 a day than more than \$2 a day.

THE COMMISSIONER: I wish you would bring some of them here.

MR. WEGENAST: "To illustrate the operation of the proposed bill let me suppose the case of a mason, A, who has undertaken the contract to build a house. He engages another mason, B., at \$4 a day to assist him in carrying out the contract. If B. should fall from the scaffold and be killed, A. would pay to the widow of B. the pension of \$20 per month for life or until marriage. If the widow lived unmarried for forty years the total payment would be \$9,600. If there were small children this total payment might, under our proposed act be increased by \$180 a year for a period of over ten years, raising the total amount to \$11,000 or \$12,000. Similar payments would be due under our proposal if the workman himself were totally disabled, and if the workman required constant personal attention the payment would still further be increased to \$40 a month. What is proposed in the bill is to give the workman or his dependants, in case of disablement, the option of taking either these payments, or a payment of half the wages the workman had been earning."

THE COMMISSIONER: That is not accurate. It is not given to the dependants at all. It is only given to the workman.

MR. WEGENAST: Well, if the workman has children?

THE COMMISSIONER: It does not touch dependants at all. Under your proposition the workman gets so much for himself and so much for each child, and what the proposition of the bill is, is that where the man is permanently injured he is entitled to take as an alternative fifty per cent. of his wages, or whatever the percentage is. It is blank. Perhaps forty per cent. It only applies where the workman is permanently injured.

MR. BANCROFT: The workman may claim that instead of the pension.

MR. WEGENAST: The section says it shall be a monthly payment during his life equal to — per cent. of his average weekly earnings.

THE COMMISSIONER: That would only apply to the workman himself.

MR. WEGENAST: Yes, as long as he lived.

THE COMMISSIONER: It does not apply to dependants.

MR. WEGENAST: And then when the workman died the payments to his dependants would go on?

THE COMMISSIONER: No, that is not it at all. If he lived all he would get under that clause would be the percentage of his wages during his life, nothing else.

MR. WEGENAST: Supposing he had three small children?

THE COMMISSIONER: The children would get nothing.

MR. WEGENAST: I submit under the construction of the section they would.

THE COMMISSIONER: If that is the construction of it it will be made plain.

MR. WEGENAST: Then it would have this anomalous result, that it would be to the interest of the children to have the father killed or die soon?

THE COMMISSIONER: I do not think there would be much danger of that. It gives him the choice. He need not take it. He can stand under the schedule.

MR. WEGENAST: The effect of the proposed construction would be to take out the word "dependants." As far as the workman is concerned it stands.

THE COMMISSIONER: There is no election at all in this Bill in the case of dependants; it is only an election which the workman himself may make in lieu of the allowance to him and his children.

MR. WEGENAST: "The Act places absolutely no limit upon the amount of wages upon which such payments might be based." That would be qualified by your suggestion. "Skilled workmen in the Province receive as high as \$75 per week. A man receiving this wage would conceivably draw as high as \$50,000. A conductor receiving \$120 per month would draw over \$20,000 if he lived for thirty years after disablement."

THE COMMISSIONER: Where would you be if what has happened in many of the States is adopted, the doctrine of common employment, contributory negligence and assumption of risk all abolished? Would you not be liable for a good deal, more?

MR. WEGENAST: I think 7 per cent. more than now. That was the figure given on the records.

THE COMMISSIONER: That is absurd.

MR. WEGENAST: The liability of the employer for his own negligence and the negligence of the fellow workman apart from the defences of assumed risk and contributory negligence, would not amount to over 20 or 25 per cent.

THE COMMISSIONER: That is very inconsistent with your argument that to leave the common law liability would make the rates of the insurance companies so onerous.

MR. WEGENAST: I do not know that I have put any great stress on that argument. It is the idea that the workman will endeavour, however unsuccessfully, because it is always a case of "heads I win and tails I don't lose" with the workmen in an action, that the workman will bring an action and incur expense which the employer or the insurance company must bear.

"It is submitted as a proposition which cannot be departed from in the framing of the schedule of benefits that the maximum should be kept within reasonable limits, and that if a pension system is adopted the pension should be one capable of being capitalized at an amount within this reasonable maximum."

THE COMMISSIONER: Let me interrupt you for a moment. Would you prefer to leave the employee the option of taking his common law remedy or under this act?

MR. WEGENAST: Well, that all depends on the schedule of benefits.

THE COMMISSIONER: On the schedule you assume.

MR. WEGENAST: On the sort of scheme we propose certainly not, and there would be no occasion for having it.

THE COMMISSIONER: I am asking upon the scheme you are attacking would you prefer to give the employee the option of taking his common law remedy?

MR. WEGENAST: Yes, absolutely.

THE COMMISSIONER: Perhaps I will put that in.

MR. WEGENAST: Well, it would not make it a great deal more onerous on the employers.

THE COMMISSIONER: I think you will revise your opinion after consideration.

MR. WEGENAST: Where could the workmen expect to get any such amount as the maximum we propose at common law? How many cases are there in this Province where the workman gets \$4,000?

THE COMMISSIONER: Do not attack your own scheme. Attack the scheme as far as it departs from yours.

MR. WEGENAST: We have proposed a scale of benefits more generous than any other country in the world, and this is taken as a minimum instead of a maximum.

THE COMMISSIONER: It is a most specious way of putting it.

MR. WEGENAST: I think not, and I am willing to argue it.

"A maximum of \$4,000 would probably be considered by the majority of persons in the Province as unreasonably large. It represents a compensation much larger than would be obtainable at common law, except in extraordinary cases. It should be repeated that the proposed capitalization at \$4,000 represents not a maximum but an average, the real maximum being an indefinite sum very much larger, and that this sum as a maximum is unreasonably large and as a minimum is preposterous.

"The scale proposed on behalf of the Canadian Manufacturers' Association was proposed upon the assumption that the system would be collective and upon the current cost plan. Furthermore, it was proposed if workmen were to be compensated for the twenty-five per cent. or thirty per cent. of accidents due to workmen's fault there should be a substantial contribution, recognized as such, whether this contribution assumed the form of a direct payment, a waiting period, or a reduced scale of benefits. What is now proposed is to compensate in all cases regardless of fault, in cases of death and all serious disablements to compensate even where the injury was due solely to the wilful misconduct of the workman, and to base this compensation on a scale which adopts as its minimum the maximum of the most extensive scale of benefits of any system in the world.

"We cannot conceive that it was the real intention in framing the bill, that it should involve such anomalous and oppressive results, but the above mentioned features are illustrative of others which follow from the

detaching of the proposed schedules from their context in the draft submitted by us and placing them in a bill drafted on the basis of the British act. The schedule proposed on behalf of the manufacturers was absolutely conditioned upon the adoption of a collective system of the Washington type and it is entirely incompatible with a system of individual liability. It was thought that if the dissatisfaction and waste of an individual liability system were eliminated the employers of the Province would be willing to pay the very extensive benefits proposed, but—

THE COMMISSIONER: Let me point to a little inconsistency. You propose to put telegraph companies in a separate class and the railways in a separate class. Is that not destructive of your present argument?

MR. WEGENAST: I do not think so, Sir William.

THE COMMISSIONER: What concern is it of Mr. Smith or Mr. Jones as manufacturers if the railways instead of being put in a separate class and liable to assessment are left to bear their own burden?

MR. WEGENAST: None, except as it affects the form of the scheme.

THE COMMISSIONER: I do not care about form, I am after the substance.

MR. WEGENAST: None, unless it affects the actual operation and substance of the act.

"It is absolutely beyond reason that such a scale of benefits should be contemplated for a system of individual liability, apart entirely from the immense increase proposed in the bill.

#### FORM OF BILL.

"The chief fundamental objection to the bill is that it is drafted from the standpoint of the imposition of an individual liability. It is submitted that it is not an answer to this that it is proposed to take out of the field of individual liability certain groups of industries, even if these groups should constitute the major part of the industries of the Province. If these groups could be so defined as to cover all manufacturing industries, the objection of the manufacturers would be reduced to a mere formal objection to the technique of the bill, but if and so far as any industries represented by the Canadian Manufacturers Association are excluded by the Act, it is objectionable to the Association.

"I represent also the Builders' Exchange of Ontario and the Employers' Association of Toronto. The former represents all building and construction trades throughout the Province and the latter represents a large proportion of the employers of the city of Toronto. On behalf of these bodies I am instructed to state that the employers represented by them will be unitedly adverse to the exception of any of their members from the grouping principle. All the bodies represented by me take explicit objection to the suggestion made at the last sitting, that some of them might be made the subjects of an experiment with insurance in liability companies. Such experiments have been in progress in some of the American States and it is submitted that the results should be conclusive against any further

experimentation in this Province, at all events at the expense of any member of the bodies represented."

THE COMMISSIONER: Have you read the statement by the Superintendent of Insurance of New York with regard to that? It flatly contradicts your view.

MR. WEGENAST: Well, it means then that I have to take up the question of the liability insurance systems as against the compulsory mutual systems which I had supposed was disposed of.

"It is submitted that the results should be conclusive against any further experimentation in this Province, at all events at the expense of any members of the bodies represented."

THE COMMISSIONER: My dear sir, it is all experiment. It is all empirical legislation.

MR. WEGENAST: So far as these bodies are concerned they are convinced that an individual liability system cannot be operated successfully, and that a liability insurance system cannot be operated successfully.

THE COMMISSIONER: Then your body, large and influential as it is, must allow other people to have their opinions.

MR. WEGENAST: If it is deemed necessary that different treatment should be given to the small percentage of industries not represented by us it may be desirable or necessary to provide for them under a separate act."

THE COMMISSIONER: I will venture to say there is a very great body of the employers in this country that are in no way represented by you or by your Association.

MR. WEGENAST: I quite recognize that.

THE COMMISSIONER: You represent only a percentage of the employers of this country?

MR. WEGENAST: I am coming to that.

THE COMMISSIONER: And perhaps a small one relatively. It may be in volume, but in numbers I would say a small percentage.

MR. WEGENAST: "Whether this is done or not it is submitted that it is unfair to load down the great bulk of the industries of the Province with a form of act based on the individual liability principle. If it were possible to lay down in the proposed schedule to the act a definition sufficiently comprehensive to cover all the industries represented by us, and if the provisions of the bill could be so redrafted as to deal primarily and directly with these industries, the same result would perhaps be attained. But it is submitted that such a definition would be very difficult and would involve the probability of frequent disputes and endless trouble for the administering Board.

"The industries which I represent constitute the large bulk, possibly 80 per cent. or 85 per cent. of the pay-roll of the Province. They constitute the bulk of the classes itemized in the classification submitted in our draft act."

THE COMMISSIONER: That is misleading. I do not mean it is any way inaccurate.

Take out fifty industries that you mention and probably they represent half of the whole amount invested in the industries, and yet the other one hundred or one thousand would represent only the other 50 per cent., so that 85 per cent. of the amount invested does not at all tell us anything.

MR. WEGENAST: I am not taking the amount invested. I am taking the actual pay-roll.

THE COMMISSIONER: That is the same thing.

MR. WEGENAST: It is indicative of the number of employees.

THE COMMISSIONER: Take out twenty or thirty of the industries and they would represent a large portion of the pay-roll.

MR. WEGENAST: But we represent those industries.

THE COMMISSIONER: It is fallacious to argue because you represent eighty-five per cent. of the pay-roll you represent eighty-five per cent. of the employers of this country.

MR. WEGENAST: I am not speaking of the employers numerically or individually.

THE COMMISSIONER: I think that is important.

MR. WEGENAST: It is not important that we should consider the number of employees? Is the Massey Harris Company for one moment to be compared with a small concern?

THE COMMISSIONER: It has no more rights, in my judgment, than the smallest concern employing three men.

MR. WEGENAST: Possibly the individual employer has no more right to vote, but is the interest of that large concern not to be considered as more important?

THE COMMISSIONER: Not as far as I am concerned. One interest is not to be considered in any greater or better light than another interest which may be termed a little one-horse shop.

MR. WEGENAST: Well, in that view I submit the interests of the small employer have not been represented in this enquiry and that the act is excessively oppressive on the small employer.

THE COMMISSIONER: That is an entirely false view that you ought to have known was fallacious.

MR. WEGENAST: There, again, you have the advantage of me.

THE COMMISSIONER: I mentioned the principal ones I thought ought to be excluded.

MR. WEGENAST: I represent some of those it was proposed to exclude.

THE COMMISSIONER: I did not suggest any small employer or any class of small employers.

MR. WEGENAST: Certainly I should imagine it would not be proposed to classify the casuals and clericals.

THE COMMISSIONER: Well, a gentleman that is not very far from me made a suggestion at one time that there should be excluded from this bill people employing less than a stated number of employees.

MR. WEGENAST: Precisely.

THE COMMISSIONER: What would you do with those people who employed only five?

MR. WEGENAST: I made it two. In my draft act it was three and over, and I submitted with some emphasis at the last sitting, I think, when the matter was under discussion that the employer of two employees or less might very well be left as they are now.

THE COMMISSIONER: They will not be left, as far as I am concerned.

MR. WEGENAST: That is one of the features which we submit makes this act unworkable. "If it were possible to lay down in the proposed schedule to the act a definition sufficiently comprehensive to cover all the industries represented by us, and if the provisions of the bill could be so redrafted as to deal primarily and directly with these industries, the same result would perhaps be attained."

THE COMMISSIONER: What do you mean by primarily and directly? I do not understand it.

MR. WEGENAST: The same as in the Washington act.

THE COMMISSIONER: What do you mean by those two words?

MR. WEGENAST: I mean the act starts with the imposition of an individual liability.

THE COMMISSIONER: The basic principle is that there must be compensation payable to every workman with the exceptions that are named. The main part of the act would be the groups, and then there would be the smaller part of it in which there would be certain classes of industries where the liabilities would be individual.

MR. WEGENAST: If in our view that were the intention of the act, not the presumption of the act, if you will pardon me, but the intention of the act as it stands, we will be satisfied.

THE COMMISSIONER: The Manufacturers Association are very blind if they read that in the act.

MR. WEGENAST: That is my submission, and it puts me under a certain amount of disability.

THE COMMISSIONER: You will not want a pension for that disability, will you?

MR. HELLMUTH: Perhaps it is not permanent.

THE COMMISSIONER: The objection I have to this is you are just raising a cloud of smoke in order to make a noise and excitement, and the main thing is just this question of the extent of liability.

MR. WEGENAST: In order that that may not go in as a headline unqualified, I want to say if there is any smoke raised it is raised by one of the strongest committees of practical business men that has ever considered a question in this country.

THE COMMISSIONER: And therefore more able to raise a smoke when their interests are affected.

MR. WEGENAST: But it begs the whole question of our attitude.

THE COMMISSIONER: Certainly they will fight for their pockets. That is right.

MR. WEGENAST: We have not fought for our pockets in proposing such an act as we have.

THE COMMISSIONER: I do not think any employers ever consented to increase their liability unless they saw it was coming. They saw the present law would not stand and very wisely they wanted to meet the devil half-way.

MR. WEGENAST: It was not the case of meeting the devil half-way, but it was the case of putting an act on the statute books in which the employers and the workmen alike could take some pride and satisfaction, and that would settle once for all this difficult problem.

THE COMMISSIONER: And to do that you propose a scheme that would be scouted by the workingmen of this country.

MR. WEGENAST: To do that I proposed a scheme which was workable and which would be absolutely satisfactory to the men of this country. Apart from the schedule of benefits it should be satisfactory.

MR. BANCROFT: Did I understand Mr. Wegenast to say that he proposed a scheme that would be thoroughly satisfactory to the workmen of this country?

MR. WEGENAST: Yes.

MR. BANCROFT: I say absolutely it would not.

MR. HARRIS: You agreed that it was a good one.

MR. BANCROFT: This gentleman here says we agreed that it was a good one. Are you speaking of the draft act of Mr. Wegenast?

MR. HARRIS: Yes.

MR. BANCROFT: We never expressed that opinion.

MR. HARRIS: You did say so at one of the meetings.

MR. BANCROFT: I want to point this out and make it clear. This gentleman says it was stated at one of the meetings of the commission that we agreed to this draft act of Mr. Wegenast. That draft act has never been before the Commission.

MR. HARRIS: It was in private conversation around the table.

MR. BANCROFT: We kept ourselves clear of that. I deny any such thing. We have not expressed any views except our own at any time.

MR. WEGENAST: In order to meet your observation, Mr. Commissioner, as to the

general character of the act I would simply point to the difference between the two methods of approach. In the Washington act on the one hand, and the same method is adopted in the draft which we submitted, and the English act on the other hand and the bill which is under consideration. In the draft which I submitted I said where personal injury is caused to the workmen compensation should be paid. The draft bill provides where in any employment a personal injury arising out of, and so on, his employer shall be liable, and practically all the results follow from that radical difference.

THE COMMISSIONER: Well, if that is all, I do not think we need take up much time with it.

MR. WEGENAST: If you will make that alteration in the act I am satisfied.

THE COMMISSIONER: There certainly is not anything in it. I certainly will not.

MR. WEGENAST: That is our submission.

THE COMMISSIONER: Do you mean to argue if you draw an act and say compensation shall be paid and who is to pay it, it does not mean that the employers are collectively liable?

MR. WEGENAST: Shall be paid out of a fund.

THE COMMISSIONER: I am providing where it is not payable out of a fund it is payable individually.

MR. WEGENAST: The whole framework of the act proceeds on the assumption—perhaps that is putting it too broadly, but the main framework of the act proceeds upon the assumption that the employer is individually liable.

THE COMMISSIONER: It does nothing of the kind. The act says upon its face, if you will only read it, the section you partly read. I do not see what is the object of raising these unreasonable objections. It minimizes any substantial objection you are raising.

MR. WEGENAST: This is a substantial objection.

THE COMMISSIONER: Nonsense. Excuse me for using that term. (Reads section 3.)

MR. WEGENAST: Then there are provisions to contract out and by what means the employers' liability shall be enforced.

THE COMMISSIONER: Let me ask you, supposing the Canadian Pacific and the Grand Trunk and the Canadian Northern Railways were left to their individual liability, what is wrong about that?

MR. WEGENAST: Nothing wrong about that as long as the tail does not wag the dog.

THE COMMISSIONER: What do you mean?

MR. WEGENAST: As long as the act is not fixed with reference to the views of those who wish to remain under the individual liability.

THE COMMISSIONER: I do not know what is the matter with you. The act provides that those who are left out pay the same as those who are within the clause.

There is no greater liability in one case than the other. In one case it is collective and the other individual.

MR. WEGENAST: In so far as the industries represented by me are included in the grouping principle we are satisfied, except we say that the operation of the act would be cumbrous and indirect.

THE COMMISSIONER: You shut yourself out from being appointed one of the Board if you find it unworkable.

MR. WEGENAST: If there is any question of my desire to be put on the Board let me at once disclaim any such desire or anything that might be considered as such.

THE COMMISSIONER: I am sure you have not said a word to indicate that. It might be the country's desire.

MR. WEGENAST: At the same time I appreciate the compliment in your suggestion. I say the industries I represent constitute eighty or eighty-five per cent. of the pay-roll whether that is conclusive or not that they constitute the bulk of the class. These classes as I suggested them were drafted with an eye to the scheme under the Washington act. I want to point out that of the forty-six classes thirty-eight are represented by me.

THE COMMISSIONER: Members of these classes are represented by you.

MR. WEGENAST: Well, possibly we can put it in that way.

THE COMMISSIONER: How many lumbering firms have you in the Manufacturers Association? I mean men who go into the woods?

MR. WEGENAST: We have practically all of them. There is the Parry Sound Lumber Company, and Mickle, Dymont.

THE COMMISSIONER: Have they been on your committee?

MR. WEGENAST: Mr. W. B. Tyndall, of the Parry Sound Lumber Company, has been one of the most active men on our committee. "We submit that the proposition is not only fair but unanswerable, that if any different treatment is to be given to the remainder of the classes of employment in the Province it should be by way of exception, and that the general form of the act should be primarily adapted to a collective system."

THE COMMISSIONER: I will not alter the form of the act for any notion of that kind. I think it is purely fanciful.

MR. WEGENAST: With every emphasis consistent with respect we submit not.

"Every necessary exception could be made by allowing individual employers to stand as separate groups.

"Our submission was and is that the act should be based on the same principle as the Washington act, which begins by defining the industries which are to come within the scope of the act and then segregates these industries into groups. All that the administering Board has to do is to assess the necessary premiums upon the groups and to pay the compensation out of the funds thus raised. The work of the Board is thus wholly administrative and its functions similar to those of a Board of Directors.

## FUNCTIONS OF BOARD.

"Under the proposed bill the functions of the administering Board would be immensely more complicated and onerous. They would not only administer the funds in such industries as were grouped, but would adjudicate as between man and man in all cases of individual liability."

THE COMMISSIONER: Will you tell me what difference it would be if it was collective and if it was individual?

MR. WEGENAST: I am very glad to have the opportunity. In the case of a collective liability the function of the Board is to pay a sum out of a fund already collected or to be collected, which falls only in infinitesimal proportions on the individuals in the group.

THE COMMISSIONER: Direct yourself to the question. I am talking about the labour of the Board.

MR. WEGENAST: I am referring more particularly to the responsibility. Supposing the Board should make a mistake and award a sum out of the fund which was unwarranted or unjust or unfair, all the harm would be that employers would suffer to the extent of a few dollars.

THE COMMISSIONER: The employers who are willing to be left out are quite willing to take those chances.

MR. WEGENAST: I would like to submit that the employers who are left out have not so represented here, and they would be the first ones to take exception to that suggestion.

THE COMMISSIONER: Perhaps so.

MR. WEGENAST: Can it be doubted that the small employer who is not represented here will oppose having this tremendous liability thrust upon him? Take the case of the small painter I mentioned.

THE COMMISSIONER: What is the use of building up a straw man to knock him down? If the painter's or the mason's industry is included in your groups they will not.

MR. WEGENAST: Then what about the small employers whom we have who are not able to pay?

THE COMMISSIONER: You told me you had every industry in your classes.

MR. WEGENAST: Absolutely not.

THE COMMISSIONER: Then your scheme is very defective.

MR. WEGENAST: I say if it were possible to define, and if you will now adopt the definition in section 3 of the draft act, so that there is no doubt that all the industries I represent are included—

THE COMMISSIONER: Surely you must see if the act says that every employer of labour shall be liable, with the exceptions of whatever may be excepted, they are embraced in the act, and are liable to compensate their employees, either individually or out of the accident fund.

MR. WEGENAST: But the proposition is to make these men liable unless they happen to pay their insurance premium.

THE COMMISSIONER: Do not let us get into details.

MR. WEGENAST: That is vital, Mr. Commissioner.

THE COMMISSIONER: We are discussing principles.

MR. WEGENAST: I submit it is not fair to suggest that it is a matter of detail.

THE COMMISSIONER: Do you mean to say that if a man was liable to contribute to the accident fund and refused to pay his premium that he should be saddled upon the others in the group?

MR. WEGENAST: I have already suggested that very thing.

THE COMMISSIONER: What?

MR. WEGENAST: That compensation should be paid at all costs and the individual should not be liable, but the liability should fall in every case on the group whether the insurance premium has been collected or not.

THE COMMISSIONER: I think it is a monstrous proposition.

MR. WEGENAST: I am submitting it, and I am submitting it under instructions.

THE COMMISSIONER: Supposing the Massey-Harris Company defied this Board and said they would not pay, is it your proposition that all the accidents in their concern must be compensated out of the fund contributed by the other employers?

MR. WEGENAST: Yes.

THE COMMISSIONER: I am sorry that is so, because if your objections are all on the same basis I do not think they require very much consideration.

MR. WEGENAST: That is exactly what is done in the Washington Act.

THE COMMISSIONER: I do not care. It is unreasonable.

MR. WEGENAST: The Dupont victims have been compensated.

THE COMMISSIONER: They were all in the group, and there is no provision in the Washington act as there ought to be if a man, as the Dupont Powder Company did, defied the validity of the act and refused to come in, he should have the benefit of it.

MR. WEGENAST: We do not object to a heavy penalty for the non-payment of the premium, but what I am thinking of is the thousands and tens of thousands of small employers scattered over the length and breadth of this Province.

THE COMMISSIONER: I think you are thinking of the big employers you represent.

MR. WEGENAST: Why should I? It will come out of their pockets. Take the case of a small builder up on James Bay, if you like, who has not paid his premium.

THE COMMISSIONER: That is more smoke. There will be plenty of time for everybody to be informed.

MR. WEGENAST: Then I am coming to the task which the Commission would assume under this Act of having those people insured.

THE COMMISSIONER: Probably if your arguments were entitled to prevail they might induce me to recommend an act like the Norwegian act and finish up with personal liability and compulsory insurance. If your arguments are sound that is the only alternative.

MR. WEGENAST: "Under the proposed bill the functions of the administering Board would be immensely more complicated and onerous. They would not only administer the funds in such industries as were grouped, but would adjudicate as between man and man in all cases of individual liability. They would constitute the judge and jury in fixing a tremendously heavy liability as between the workman and his individual employer."

THE COMMISSIONER: Would they not be the judge and jury in passing upon a case that came within the group? What difference does it make if it is between man and man or between one man and five hundred men?

MR. WEGENAST: I say it makes every difference in the world if a man is to be saddled with \$20,000.

THE COMMISSIONER: I am talking about the burden on the Board.

MR. WEGENAST: I say the Board need not be so careful. In whatever mistake they may make there is the power of readjustment.

THE COMMISSIONER: I hope we will have a Board that is always careful.

MR. WEGENAST: If you load down this Board with a task of that kind you will break down the whole thing.

THE COMMISSIONER: Perhaps so, but we will try it.

MR. WEGENAST: "And that, under the proposal of the bill, without appeal. It would be as serious a function as that of any court of justice in the country. In addition to this the Board would have to decide in many cases whether a particular workman should be compensated by the employer or by the group, and the contest would be three-fold, the workman proceeding against the employer and the employer against the fund."

THE COMMISSIONER: How far afield you have gone with your objections to this bill. Upon every question of fact the judge of a county court determines the question of individual liability in England finally. Do you think the judge of a county court stands on a better footing than the three members of this Board?

MR. WEGENAST: But how many county judges are there in England to do this work?

THE COMMISSIONER: I do not know. I do not think that makes any difference.

MR. WEGENAST: They are considerably overloaded with the work as it is. How can a Board of three Commissioners deal with all this work?

THE COMMISSIONER: I think your arguments will drive me to recommend the British act with compulsory insurance. Perhaps you would feel you were not in as comfortable a bed if you got that.

MR. WEGENAST: Besides these functions the Board would be expected under the proposed Bill to see that the employers not coming within the groups insured themselves in an approved insurance company. The extent of the Board's duties in this respect would, of course, depend upon the extent of the field of industries left ungrouped, but there can be no reasonable doubt that if any considerable number of industries were left ungrouped the Board would have upon its hands a task vastly more serious than that of collecting and disbursing funds. The Board would have to deal with such problems as the solvency of the insurance company.

THE COMMISSIONER: There is another unfair statement, I should say. Every claim made upon the fund has to be dealt with by the Board just in the same way as a claim made upon an individual.

MR. WEGENAST: Is it not a serious thing to fix a liability on an individual man, a labour man we will say, who has just happened to step into the ranks of the employers for a few days, who becomes liable for this tremendous liability of a pension for life, than it is to direct a fund to make these payments?

THE COMMISSIONER: I do not think so.

MR. WEGENAST: I submit it is, and that is all I can do.

"The Board would have to deal with such problems as the solvency of the insurance company, the adequacy or fairness of the insurance rates, the extent of the liability of the company and the whole form of the contract between the company and the employer,—a task which might well be regarded as impossible, but in any event sufficient in itself to occupy the full attention of a Board of Commissioners.

"In connection with this it would be necessary for the Board, without the aid of the co-operation induced by the grouping system, to scour the Province over its full territorial extent for delinquents in insuring."

THE COMMISSIONER: Are all your members going to be evaders?

MR. WEGENAST: That suggests one of the salient features of our proposition. You group all the furniture men and make the liability fall on the furniture man whether the premium has been collected or not, and you will have the co-operation of every furniture man to get in every last furniture man who ought to pay a premium, and the same is true of the sash and door men, or any class of employer you can think of. That is the great advantage of imposing the liability on the group.

THE COMMISSIONER: I would have thought that was rather illogical. You are willing to pay the loss even if a man does not contribute, and therefore I should think if you are so generous as that you would not be looking around for every little one or two men employers to bring them in.

MR. WEGENAST: Of course our submission was in the meantime the one or two might be left out. If we are to be credited with these selfish motives there is no use going on. We want to have a system that will be a success.

THE COMMISSIONER: Everybody is selfish.

MR. WEGENAST: If selfishness takes the form of wanting a system that will work then we plead guilty.

"Failing in this the employer would be subject, in many cases ignorantly, to his severe individual liability, and in a vast number of cases the workman would receive no compensation. Even if the workman insured and the premium collected the difficulty is only deferred because the Board must see that the pension payments made by the insurance company or the necessary capital amount are deposited with the Board. A further and serious difficulty arises in determining the proper capital amount, whether as between the insurance company and the Board or as between the individual employer and the Board, or as between the individual employer and his workman, or as between the workman and the company undertaking to pay the annuity under section 22."

THE COMMISSIONER: And yet you propose there should be a maximum based upon the capitalized sum of the payment? You have already suggested that.

MR. WEGENAST: No, sir.

THE COMMISSIONER: You suggested a maximum and that there should be power to capitalize within that maximum.

MR. WEGENAST: No, that was not my submission.

THE COMMISSIONER: It was like it.

MR. WEGENAST: It was like it, but it is this, that the monthly payment should be such that in the average case it can be capitalized within a reasonable limit.

THE COMMISSIONER: That is the very same proposition, and you say it cannot be done.

MR. WEGENAST: It is a different thing to make a calculation when there are no serious consequences dependent upon a miscalculation in the rough for a whole industry or a class, from making a miscalculation in an individual case and not collecting enough or too much.

THE COMMISSIONER: The framers of the British Act did not find much difficulty.

MR. WEGENAST: That is the great defect in the English Act. I feel very keenly my position in this matter, as a junior member of the bar before the Chief Justice of this Province.

THE COMMISSIONER: I am simply Commissioner here.

MR. WEGENAST: Particularly when the Chief Justice is Sir William Meredith.

THE COMMISSIONER: I think you would show your appreciation better if some of these objections had not been made.

MR. WEGENAST: It is my duty to make them.

THE COMMISSIONER: I think some of them are very weak.

MR. WEGENAST: I submit not, and I would not like to have your off-hand decision on them, because I am absolutely convinced that if they receive the consideration which I think they deserve they will be considered vital.

THE COMMISSIONER: They shall have their due weight, but they would have had

much more weight if they had been confined to what is really your objections, that these figures that you suppose will be in this bill are excessive and impose too large a burden. Boiled down, that is your whole argument. All the other is fireworks and embellishments.

MR. WEGENAST: That, I submit, Sir William, is unfair, because knowing the attitude of my committee, I speak in the way I do. We want the scheme to work. We have been behind it. We have studied it for three years. Every facility of the Association has been at your disposal. We have spared no pains or expense, and is it to be said that it is all for the sake of scaling down a schedule?

THE COMMISSIONERS You are perfectly right. You say this schedule would impose a most unreasonable burden on the manufacturers. Of course you are right in fighting it as hard as you can.

MR. WEGENAST: Am I not to have credit for proposing this tremendously heavy schedule, and are we to be treated as if we had done that just as a sort of minimum on which a maximum could be built.

THE COMMISSIONER: It is a good deal like the man, it strikes me, who has a few enticing things he sells below cost and the rest he sells at three times the cost.

MR. WEGENAST: Even supposing that were so, I submit it is unfair at this stage to suggest that the attitude of the Manufacturers Association——

THE COMMISSIONER: No, I am not suggesting the attitude, I am dealing with the argument.

MR. WEGENAST: Well, as long as it is purely supposition perhaps I need not deal with it.

“It is submitted that the combination of these various functions of the Board would overload that body, and render the act totally unworkable.”

Now, as to the scope of the bill, and there again you have me at a disadvantage, because there is some suggestion about leaving out certain classes, for instance, the farmer, and subjecting them to other treatment, but I must deal with something definite—I cannot deal with an indefinite, intangible something that does not exist—even in imagination I must imagine something——

THE COMMISSIONER: I would have thought you had been dealing with some intangible things.

MR. WEGENAST: What the manufacturers and other employers of the Province were endeavouring to do, was to place before you and through you and before the Government a clear cut, definite proposal of a system which would be satisfactory to their employees, and which though involving heavy burdens, could be supported with enthusiasm and operated with a minimum friction for the employers, workmen and Government. The industries represented by me were quite willing to have the act exclude any classes of employment which might be regarded as relatively non-hazardous, or which it might be for other reasons of expediency desirable to exclude from the act.

"What is proposed in the bill is to include all employers and employees. The suggestion made at the last sitting that the legislature might see fit to exclude from the act, farmers, domestic servants, and other classes of employers, would leave to the legislature one of the most difficult tasks in connection with the whole problem. What about the 'casuals' who are excluded under every system in the world? The bill as it stands covers the ordinary case of a labourer engaged to mow a lawn or a charwoman to scrub the floor. The bill makes explicit provision in section 35 for the calculation of the earnings of such persons. As the bill stands the accidental disablement or death of such a 'casual' employee, even if caused solely by the serious and wilful misconduct or the intoxication of the employee will entitle him or her or the dependants to a pension for life, and that at the expense of the individual employer. The proposition which we placed before you was intended to obviate all these difficulties by deferring their solution until a system had been put in operation which would take care of the larger industrial employments.

"The act covers also the so-called 'clericals,' that is clerks, stenographers, accountants, etc., in or about an employment. It is not conceivable that the legislature would at this initial stage include this class under the act. It was our proposal that these should be, for the present, excluded, though permission could be given to the employer voluntarily to bring them under the act.

"All these problems are deferred by the Bill either for the legislature or for the administering commission. And this raises a further question of paramount importance to the employers whom I represent. The proposals which we have made are conditioned upon the most strictly non-partisan administration of the system that is obtainable under our system of Government. If it were left to the Lieutenant-Governor in Council, either on the report of the Board or otherwise to add to or subtract from the collective groups, it would be very probable, and perhaps unavoidable, that questions relating to the inclusion of classes of industry would be the subject of Cabinet discussion and decision. Such a condition would be imbecile to the successful operation of the system, and would inevitably involve the Board, the employers, the workman and the Government in difficulty."

THE COMMISSIONER: You seem to misunderstand the process of Government. Supposing you did not give it to the Lieutenant-Governor in Council the legislature could do it. That follows the guide of the Government of the day. It is the same thing.

MR. WEGENAST: I surely need not go into the details.

THE COMMISSIONER: No, but your proposition has no basis. If you had to go to the legislature to have it done it would be just as much a party question as it would be, or a political question if you choose to call it that, as if you go to the Lieutenant-Governor in Council.

MR. WEGENAST: But the Board would not be mixed up in politics.

THE COMMISSIONER: What would the Board have to do with politics?

MR. WEGENAST: That is our proposition.

THE COMMISSIONER: You are driving a nail into the coffin, if that is so. We had better not have this Board at all if you are going to damn it at the beginning as a thing to be used for political purposes. You are gradually getting into the position that all of you must be left to your individual liability.

MR. WEGENAST: I can only make my submission.

THE COMMISSIONER: Surely it is an unwise thing to condemn this Board at the beginning by saying it is going to be a political machine.

MR. WEGENAST: That is what we want to prevent it from being.

THE COMMISSIONER: And you think you are going to prevent it by suggesting now that it would be liable to do that?

MR. WEGENAST: We are trying to guard it in every way, as a practical man would who has a knowledge of political conditions under democratic forms of government.

THE COMMISSIONER: If I do not entirely forget what this draft bill contained, it contained a provision allowing the Board to do this subject to their action being confirmed by the Lieutenant-Governor in Council.

MR. WEGENAST: Yes, in deference to your suggestion. In a note which I made in a subsequent draft I have said that this section is unnecessary and perhaps inadvisable. I would think that questions of such grave importance should not be dealt with by the Executive.

THE COMMISSIONER: I do not agree with that. If this Board is not fit to be entrusted with that it is not fit to be entrusted with anything.

MR. WEGENAST: Whether we are right or wrong in that respect, and we submit we are right, what we have in mind is that every possible care should be taken to keep the systems out of politics in the interest of everybody. It is the danger of having the systems involved in politics which has made the National Association of Manufacturers, the body corresponding to ours in the United States, hesitate to endorse any system of State insurance.

THE COMMISSIONER: I sometimes read the papers and I thought these manufacturing associations did mix a little in politics.

MR. WEGENAST: Even so they are the better able to estimate the evils of it.

"It is submitted it is a matter for the legislature to decide which industry shall come under the act, and that the functions of the Board shall be confined to the rearrangement of groups where it was found necessary."

THE COMMISSIONER: I am entirely against that.

MR. WEGENAST: Well, it is vital so far as we are concerned.

THE COMMISSIONER: Lots of things are vital, but we do not seem to have the right perspective. They do not bulk up in real importance.

MR. MACMURCHY: Workably.

THE COMMISSIONER: Yes. I am much obliged to Mr. MacMurchy for the word.

MR. WEGENAST: It is very well for my learned friend to suggest these words. It comes very well from these gentlemen.

THE COMMISSIONER: He represents about as large a corporation as any you have in your groups.

MR. WEGENAST: He represents not more, but very much less. I should say less than five per cent. as large a pay-roll as I do.

THE COMMISSIONER: You are talking about your aggregate pay-roll. I wonder that Mr. MacMurchy has not been frightened by these terrible pictures and want to come into the group. He appears to be anxious to stay out.

MR. WEGENAST: That is all very well for the C. P. R.

THE COMMISSIONER: Why should it want to stay out if all these evils exist?

MR. WEGENAST: They do not exist for a large corporation like the C. P. R. Surely it is not necessary for me to say that, but why should the tail wag the dog.

MR. WEGENAST: The Manufacturers Association is being treated as though it were the dog.

THE COMMISSIONER: I thought the workmen were being wagged.

MR. GIBBONS: We are only the hair on the end of the tail.

THE COMMISSIONER: These are all jokes.

MR. WEGENAST: Except in so far as they represent an attitude.

THE COMMISSIONER: You cannot object to using your own classical simile.

MR. WEGENAST: I can object to its misuse.

#### CURRENT COST PLAN.

"As to the actuarial feature, the provisions of the bill appear to prohibit the application of the current cost plan of rating, though it was explained that the intention was to permit it. The proposal of so extensive a system of benefits could not have been made on behalf of the manufacturers, except on the current cost plan. The imposition of double the rate now paid to liability companies will be in itself sufficient to cause a shock to the industries of the Province. It is not only fair, but in the highest degree expedient in the interests of the smooth introduction and working of the act, that the tremendous burden to be imposed, even under our proposed schedule should be brought on gradually.

"It is recognized by my clients, the Builders' Exchange, that the current cost plan is not in its strict form applicable in the industries represented by them, but they ask for a form of provision affording some prospect that their rates will not be over-capitalized at the start. For the rest it has been the custom to charge the liability companies' rate to the contract price, and if the increase is not too violent they are content with a capitalized rate."

THE COMMISSIONER: Let me ask you do you want the fund to be kept in such a state that the result of the assessment will be that you overburden the other employers?

MR. WEGENAST: In using the word "overburden," you are begging the question.

THE COMMISSIONER: Not at all. That is a provision in this bill.

MR. WEGENAST: It leaves it open to somebody to decide.

THE COMMISSIONER: Do you suppose I am going to take the responsibility of accepting your figures as conclusive as to the soundness of this financial scheme?

MR. WEGENAST: Well, I submit that that was the intention.

THE COMMISSIONER: To take your figures?

MR. WEGENAST: No, but to decide on the current cost.

THE COMMISSIONER: I will take no such responsibility.

MR. WEGENAST: Then if the section is so drawn as not to invite the Board to invoke the capitalized plan then we are content.

THE COMMISSIONER: Your scheme would make low assessments in the early days upon the employers, with the result that in the later years the insurance would cost them a good deal more than they could insure for with an insurance company.

MR. WEGENAST: Leaving out the qualification that is our proposition, that the employers of the future should pay more than the employers of the present.

THE COMMISSIONER: I said more than they could insure for at the time.

MR. WEGENAST: Under an individual liability system?

THE COMMISSIONERS Yes. That is Mr. Sherman's and Mr. Wolfe's evidence.

MR. WEGENAST: Well, if their evidence in view of the shown facts is to be credited on that, then of course I have to throw up my hands.

THE COMMISSIONER: Why should I take the responsibility of preferring your statement to theirs?

MR. WEGENAST: On the same principle that you have to take the responsibility of determining many other questions in connection with the drafting of this act.

THE COMMISSIONER: What possible objection can there be to leaving to the Board that is charged with the administration of this act, the duty of seeing that the fund is always ample to provide for the claims for compensation without overburdening the future and breaking down the whole scheme?

MR. WEGENAST: That is exactly what we do not want.

THE COMMISSIONER: Then you object to a provision which says so in so many words.

MR. WEGENAST: Precisely. If it were left open to the administering Board to use its own discretion we would take our chances with that Board, and try to show them.

THE COMMISSIONER: That feature I certainly will not change or vary one jot or tittle.

MR. WEGENAST: Then our proposition falls to the ground.

THE COMMISSIONER: Well, let it fall. The manufacturers are not all of this country, they are only part of it.

MR. WEGENAST: I quite recognize that. It is quite conceivable that the Government of this country could introduce a measure of this kind in the teeth of anything the manufacturers could do. It is not conceivable that it would be wise, particularly in view of the attitude the employers have taken.

THE COMMISSIONER: Such an objection as you are now raising leads me to believe you are raising objections without reason. Give us some objections that have some merit. I cannot understand any reasonable man objecting to the provision contained in that bill.

MR. WEGENAST: The provision as it stands shuts out practically every purpose and principle for which we have contended, and which we have said was vital to the operation of the system we propose.

THE COMMISSIONER: Do you mean seriously to say that your clients want to make this proposition that that fund shall be at any time left in such a position that it will not be adequate to meet the claims upon it, and that it shall be in such a position that the employers in after years would be loaded down with greater burdens than if they went into the open market and insured themselves?

MR. WEGENAST: That is not the standpoint from which we are approaching it.

THE COMMISSIONER: You are approaching it from no standpoint then.

MR. WEGENAST: Surely that puts me in an unfair position.

THE COMMISSIONER: I cannot see your position at all.

MR. WEGENAST: I am quite willing to go into it. The Board has it in its power at any time to assess for any deficiency. We propose it shall have a reserve for contingencies, but we propose that it shall not build up a reserve calculated to be adequate absolutely to compensate in the future all the accidents in the present.

THE COMMISSIONER: There is no such provision in the bill.

MR. WEGENAST: Then my submission simply comes down to a criticism of the terms of the section, because I submit it not only invites but it requires the administering Board to build up those reserves.

MR. HELLMUTH: Sections 80 and 90 are the ones.

MR. WEGENAST: Of course it is all very well for my learned friends to come here for the liability companies and for the railways, and to protest against the current cost idea. They wish to retain the individual

liability principle and it is quite possible, I suppose, for them to get some support, but if we have not shown the current cost plan is both feasible and expedient then we have failed in a large part of our undertaking, and our proposition falls with it. It is certainly to the interests of the liability companies to discredit the current cost plan, because there can be no thought for one moment of their competing with it.

THE COMMISSIONER: What you want to do in effect is to let the Legislature, in passing this bill, take all the chances of this scheme breaking down, and the claim then being made, as it would undoubtedly be made, upon the Province to make good.

MR. WEGENAST: But my proposition is that the Board shall have power to levy on the employers and on any class for the protection of any other class.

THE COMMISSIONER: Yes, but you want to limit it a great deal more than it is limited in this bill.

MR. WEGENAST: No. May I read the draft which I have suggested?

"The Board may in addition to the amount actually required in each class for the year assess, levy and collect a percentage, margin or surcharge, to be set aside as a reserve or reserves either by way of providing a contingent fund in aid of industries or classes which may become depleted or extinguished, or provide a sinking fund for the capitalizing of periodical payments, or both, as to the Board may seem expedient, and in cases where it is deemed expedient may assess, levy and collect in each year a sufficient amount to provide a capitalized reserve which shall be deemed sufficient to meet the periodical payments accruing in respect of all claims adjusted during the year."

THE COMMISSIONER: With all due respect I think that is a more involved provision, and by no means more favourable to the manufacturers.

MR. WEGENAST: "It was asked on behalf of the employers that facilities should be afforded by the act for the co-operation with the Board of associations of employers corresponding with the groups into which the employers were divided for insurance purposes. Under the German system such associations not only conduct accident prevention activities, but assess and collect premiums and make the preliminary adjudication of claims for compensation. These last two functions would be exercised by the Board, but it is proposed by us that associations would be formed voluntarily for the promotion of accident prevention. It was desired that such rules as might be established by these associations might, with the sanction of the Board, be binding upon the group, and that inspectors appointed by the Associations and approved by the Board should be paid out of the group funds. It is submitted that there can be no valid objection to such an arrangement and it is greatly disappointing that such a request should have been refused."

THE COMMISSIONER: I should say it was wholly unsound to give to any such body as that powers which the legislature alone should exercise. There is nothing to prevent your voluntary associations assisting as you please, but the idea of enabling them to make the laws of this country would be absurd in this country.

MR. WEGENAST: What about the numerous cases in this country in which that is done?

THE COMMISSIONER: In which what is done?

MR. WEGENAST: Where the legislative power is deputed.

THE COMMISSIONER: Name a single case where power is deputed to pass laws?

MR. WEGENAST: Take the Board itself.

THE COMMISSIONER: There is not a word in this act about requiring facilities for accident prevention.

MR. WEGENAST: That may be. My point is that the Board has power to make rules and orders that have the effect of very drastic law.

THE COMMISSIONER: They have no power to do what you are suggesting these associations should do.

MR. WEGENAST: Your draft act gives them the power.

THE COMMISSIONER: No power whatever except for the administration of the act.

MR. WEGENAST: And for the prevention of accidents.

THE COMMISSIONER: No, there is no such intention to pass a law such as you suggest.

MR. WEGENAST: I am not asking for the power to make laws.

THE COMMISSIONER: You are asking for the power to impose upon the employers the will of your associations.

MR. WEGENAST: It is most disconcerting to find the Commissioner representing the Government refusing the co-operation of the employers.

THE COMMISSIONER: That is a most improper observation for you to make. There is nothing whatever to prevent co-operation.

MR. WEGENAST: It prevents it practically. Why should the matter be approached from any other standpoint than the most practical standpoint?

THE COMMISSIONER: You have nothing to prevent you forming voluntary associations if you want to.

MR. WEGENAST: But will they be formed?

THE COMMISSIONER: It will depend upon themselves. If you do not care to form them then they will not be formed.

MR. WEGENAST: That is the point.

THE COMMISSIONER: What is there in your suggestion that compels them?

MR. WEGENAST: We simply ask for these two facilities. and I thought I had made it clear, that the salaries of any inspectors——

THE COMMISSIONER: I will not recommend any such thing.

MR. WEGENAST: Then half of our scheme goes by the board.

THE COMMISSIONER: I think it is wholly opposed to the scheme.

MR. WEGENAST: Then the German system is very much worse.

THE COMMISSIONER: We do not want to transplant all the German system here.

MR. WEGENAST: Why should they not have the inspectors when it is calculated to reduce the rates?

THE COMMISSIONER: It might or might not.

MR. WEGENAST: Then it is a matter for the Board to decide. All these things we propose will be entirely at the mercy of the Board.

THE COMMISSIONER: We have got a Factory Act on the statute books and officers to enforce that.

MR. WEGENAST: If the manufacturers were in a position to still further reduce the number of accidents it would be a good thing.

THE COMMISSIONER: Let them do it by the ordinary means, by bringing their representations to the authorities and officers whose duty it is to see to these things.

MR. WEGENAST: And that if as a matter of practical operation that is not done? There are a hundred workmen killed during the year by reason of the absence of these associations, and that will be the result because of the objection to the principle. As I suggested before what our committee had anticipated doing was to call one after another these groups together and to impress upon them what the employers' associations in the United States and European countries were doing, and impress upon them the necessity of organizing and conducting activities for accident prevention. We have made arrangements for co-operation with the National Manufacturers Association for a campaign of safety activity, and is it too much to expect the legislature to give us the right to organize, to give us the facilities for doing this work?

THE COMMISSIONER: You have a perfect right to organize. Your whole Association is a voluntary association.

MR. WEGENAST: I quite appreciate the force of your remark.

THE COMMISSIONER: I quite agree it would be a most desirable thing to have those associations for co-operation.

MR. WEGENAST: But practically it falls to the ground.

THE COMMISSIONER: That is utterly foreign to our system and could not be adopted.

MR. WEGENAST: It is fatal, Sir William. The way I suggest it would be left to the Board.

THE COMMISSIONER: I will not recommend any such thing.

MR. BANCROFT: It would be very nice for us to have that power in our trade-unions, to impose our ideas on all the other workers.

MR. WEGENAST: The Board would not need to impose these rules on any but the members of the group, or the voluntary associations, or whatever way it might deem proper.

THE COMMISSIONER: If you haven't the moral influence —

MR. WEGENAST: If there are a dozen men killed whose lives might have been saved where shall the responsibility rest?

MR. HALL: The negligence of the employers.

#### INDUSTRIAL DISEASES.

MR. WEGENAST: "It is submitted that it is unnecessary and inadvisable at this time to legislate with respect to industrial diseases. The legislature and the Board will have its attention too fully occupied with the larger problems to deal satisfactorily with this subject, which presents special and difficult problems of its own. No discussion of such provisions has taken place in connection with the present enquiry. It is not apparent that any condition exists in the Province necessitating legislation, and it is submitted full enquiry should precede any action on the part of the legislature in attempting to deal with so complicated a subject. The employers whom I represent will be prepared to co-operate with the Government in any proposal to deal thoroughly with this subject, if due time can be given for its consideration."

THE COMMISSIONER: Are there any tanners in this Province, or lead-works in this Province?

MR. WEGENAST: I think so.

THE COMMISSIONER: Do you not think any law should provide for cases of industrial disease in such occupations as those?

MR. WEGENAST: I say there has not been apparent in this enquiry any necessity for such legislation and it has not been under discussion.

THE COMMISSIONER: That was your own fault. My present impression is I will only put in the ones that were originally in the British Act, and if anybody objects to that he only objects because he wants to object.

MR. WEGENAST: It is very easy to say that, and very hard for me to deal with it.

"The above observations deals only with some of the essential principles of the act. There are many other objections to important details of the act which we desire to make, but which it is impracticable to deal with in this memorandum. These objections are not so much in the interests of employers as in the interest of the successful operation of the act, as viewed from a practical business standpoint. With regard to these details it is submitted that an opportunity might be afforded for a discussion of the provisions of the draft act which we have submitted. We are not wedded to any form of act, but we submit that the draft contains a large number of features which should be embodied in some form in whatever act is adopted."

THE COMMISSIONER: Now is the time to mention these things. If you have any objections to the bill I want to hear them.

## ATTITUDE OF CANADIAN MANUFACTURERS.

MR. WEGENAST: "In conclusion I am specially instructed to express the deep disappointment, which the special committee of the Canadian Manufacturers Association feel, at the form in which the bill has been brought down, and their sincere regret at finding themselves in the position of having to oppose it. A large committee of men, prominent in practical business life in the country, have spent three years in studying the problem and endeavouring to find a satisfactory solution. They have kept in close touch with the membership of the Association and with the other employing bodies of the Province. The subject has been approached with open mind and with a sincere desire to assist in framing a measure which would be more than merely fair, but would be generous, to the workingman, and could be regarded with pride and enthusiasm by the people of this Province. The result has been a proposition more generous and far-reaching than any proposition ever made by any body of employers—more generous indeed than any ever adopted by any country in the world. The employers have spared no pains or expense in assisting to put this proposition in workable form. It is scarcely conceivable that any Government or any legislature would, under these circumstances, deliberately adopt a measure absolutely obnoxious to the bulk of the employers of the Province."

"The progress of this investigation in Ontario is being watched by other Provinces, which are looking to this Province for a model piece of legislation. The Committee is convinced that the bill as brought down is unworkable and bound to break down if carried through."

"If it is within the power of the Canadian Manufacturers Association to assist at this stage in working out a measure which can be approved by employers and sent to the legislature in time to be dealt with at this session, they are prepared to make every effort to do so."

"Respectfully submitted,

"F. W. WEGENAST.

"Representing: The Canadian Manufacturers Association, Builders' Exchange of Ontario, Employers Association of Toronto."

THE COMMISSIONER: We will adjourn until two o'clock, to take up the details of the bill. Anybody who has any observations or criticisms to make can then be heard.

2 p.m.:

THE COMMISSIONER: I see the representatives of the different sides are here. Mr. Wegenast has suggested that there should be a maximum limit fixed beyond which the compensation should not go. I suppose that would be applicable. As far as death is concerned I do not think it is important, if anything like the figures he has mentioned are adopted, but with regard to the man who elects to take the percentage of his wages what would be thought of a provision that in no case should the compensation exceed an amount which if capitalized would be in excess of a named sum? In that way it would avoid this terrible picture that has been presented of these enormous sums being awarded to a workman. I suppose it would be only in very exceptional cases. Either that or limit the application of the act to

persons whose salaries or wages do not exceed a stated sum. Now, \$4,000 is the maximum under the Washington Act.

MR. WEGENAST: The maximum is \$10,000 or \$15,000. That is the average. A man might conceivably get as high as \$9,000 as pointed out by Mr. Gibbons. The present worth of that might not be \$9,600, but he would get it. Take the case of a widow.

THE COMMISSIONER: I am not talking about dependants. I am talking now about a man who elects to take a pension for his life. Supposing the employer or the fund had a right to say: "We will compound that for a sum not exceeding so much," following the lines of your bill as first scaled, which he gets, and that his children get in the case of permanent disability. Then the provision of this bill is he may elect to take a percentage of wages in lieu of that. What I am asking is whether it would be reasonable to provide if he elected to take the percentage of his wages that the employer would have a right to say, I will commute that, and that the act should provide that the commutation should not exceed, or the principal sum should not exceed a stated sum.

MR. WEGENAST: A lump sum?

THE COMMISSIONER: Not to hand it to him, but a lump sum would be fixed. We would be bound to commute that. That might be less than would be the value of his annuity.

MR. WEGENAST: Of course it is entirely contrary to the proposition, and it is taking our schedules entirely out of their legitimate operation.

THE COMMISSIONER: I am asking you to assume that your view is not adopted. Assume that the principles of this bill are adopted. What do you say as to that affording relief from one of the things you urge?

MR. WEGENAST: Well, I can only say it would not afford relief. It is pretty hard to estimate what would be the effect of it.

THE COMMISSIONER: Why so?

MR. WEGENAST: It is not the Washington principle at all.

THE COMMISSIONER: I do not care about that. I am discussing it on its own merits if it has any.

MR. GIBBONS: What I was pointing out was that Mr. Wegenast's figures here this morning conveyed a wrong impression altogether, about \$4,000 being the capital amount. Mr. Hinsdale made that statement here, and he made the statement also that they invested their funds at  $5\frac{1}{2}$  per cent. Well, the widow draws \$20 a month. The interest on \$4,000 would be \$220, and therefore there would only be \$20 taken out of the capital, and if you compute that at fifty years the interest will amount to some \$13,000. Now, I cannot understand why the objection was raised at all. Supposing that the defendant died in two months then it costs the employer nothing but \$10, and if you take the average right along it will not average \$4,000 even at the Washington rate. Now, if it was a lump sum of \$2,000 in case of a personal liability or a liability by the group—if there is \$2,000 paid out to that defendant or to the injured party, that would

immediately become the property of the injured party, and if they died in a month after that time they could will it to whoever they liked. If you count that on the basis of fifty years at six per cent. you would have \$6,000 interest. Now, I think the way Mr. Wegenast was figuring was unfair.

THE COMMISSIONER: I was dealing with the case of a simple annuity for the life of a permanently injured workman.

MR. BANCROFT: This is very important to us. Under the Act as it is drafted where a workman elects to take fifty per cent. of his average weekly earnings, you ask what we think of that suggestion, that there be a stated sum for which the employer could commute the penalty, as it were, which has imposed and which might last all the man's life. For instance if a man was permanently injured for thirty years and he got sixty per cent. of his earnings that might run into quite a sum. You ask what sum should the employer pay, or would we take to a suggestion kindly that the employer be allowed to commute that for a stated capital sum not exceeding a certain amount?

THE COMMISSIONER: Yes.

MR. BANCROFT: You see, Mr. Commissioner, the whole thing is tremendously serious to us because of the fact that in the draft bill it is stated that the common law rights and the statutory rights of the workman shall be taken away. We recognize that is very plainly stated. While I am on my feet I might as well say what I have to say. Our impression of the act, although it is not Mr. Wegenast's, is that the intention is right, that the framework of the legislation is right. Of course the scales are left out, and we recognize they are very important. You start out with a collective system with an accident insurance fund to which the employers in certain schedules shall contribute, and this shall be under the jurisdiction of a Workman's Compensation Board. Outside of the industries that come under the collective system, for which we understand you make it compulsory, the industries named shall have to come under the jurisdiction of the Board and shall have to contribute. But outside of that you have told us all that it would be impossible for you to swallow our whole case, and impossible for you to swallow the manufacturers' case as it stood, and you would have to do the best you could discriminating between what Mr. Wegenast said and what we said. Now, it occurs to us in going over the act that the employees that are left out of the accident fund and that do not come under the jurisdiction of the Board direct, you have also protected, or have endeavoured to protect them, by bringing them in an indirect way under the jurisdiction of the Board. That is an employer who is not paying into the accident insurance fund has a workman injured and while the workman may not come under the accident insurance fund he cannot resort to common law. We want to understand that plainly.

THE COMMISSIONER: No, he stands in the same position as the one who comes under the Board, as this draft is drawn.

MR. BANCROFT: Now, he comes to the Board and he lays his claim, and the Board has power to award this man's claim under the act and collect it from the

employer. That is in our mind the protection you have tried to give to the workmen outside of the general application of the collective insurance.

THE COMMISSIONER: Well, beyond that there is the power in the Board to compel him to insure, and there is the power to compel him to give security.

MR. BANCROFT: Yes, and that is where Mr. Wegenast parts company, I think.

THE COMMISSIONER: He parts company frequently.

MR. BANCROFT: He recognizes that the most serious matter to us is the taking away of the common law and the statutory rights, but if we understand clearly that while you could not recommend that the collective system be started out at one fell swoop for everybody, you have protected the workmen outside of that and put them under the jurisdiction of the Board, providing that the terms of compensation are made generous, and I for one do not understand the opposition of the manufacturers or Mr. Wegenast considering the evidence they have given during the sessions of the Commission.

THE COMMISSIONER: Will you substitute for that word "generous" "fair."

MR. BANCROFT: Yes, fair compensation.

Now, that is our general idea of the framework of the act that you have brought down. Are we correct?

THE COMMISSIONER: Yes, that is the scheme of the act. I have no doubt the legislature will exclude from the operation of this law, if it becomes a law, certain industries. At least that would be my prognostication. Then with regard to them, they would not be under this liability to make compensation, but they would be under their common law liability with the modifications that I have suggested.

MR. BANCROFT: Where they exclude anyone from under the act.

THE COMMISSIONER: Supposing the legislature came to the conclusion that the farm labourer should be excluded, then he would have his rights at common law against his employer with these modifications, if the legislature adopts the recommendations I have made.

MR. BANCROFT: The modifications are the taking away of the defences under the common law.

THE COMMISSIONER: Yes, it shall not be a sufficient answer to say that when he entered the employment he took the risk of what happened to him by the negligence of the fellow-servant. It will not be an answer to say this is one of the risks inherent in the business and by taking the service you undertook that risk. Then it shall not be an answer to the action to say that you were negligent and so contributed to the accident. But it shall be competent for the court or whoever it is in assessing the damages to take into consideration in the amount of damages any negligence of which the employee has been guilty.

MR. BANCROFT: The negligence part only has relation to the amount of compensation?

THE COMMISSIONER: Yes, not to the right to recover. The right would be there but the amount might be lower because of the negligence.

MR. BANCROFT: That would depend on the history of the case.

THE COMMISSIONER: Yes, or whatever tribunal it was that had the assessing of the damages.

MR. GIBBONS: Referring back to the question you asked, the suggestion of Mr. Wegenast appeals to me as "Heads we win and tails you lose." Take the case of a fatal accident where there is a widow or dependant. Supposing that widow dies in one month or two months after. That frees them from all responsibility. Why should they be relieved from paying the amount where the dependant is living? One will counterbalance the other.

MR. WEGENAST: All these things have been taken into consideration in the calculations of the Washington people. They have considered not only that some people will drop off long before the average is reached but others will go on beyond the average. They have taken into consideration the probability of the widow marrying, and that these lives are impaired, and then with the best information obtainable they have come to the conclusion that the average compensation will be \$4,000. Whether they are correct in that I am not competent to say, but I presume they have made a fair effort to arrive at it.

MR. GIBBONS: Granting that in some individual cases the compensation will reach \$10,000, others will reach only \$1,000 or \$500. Now, following that up, the Commission in Washington made an assessment for three months which they figured ought to be necessary to carry it on, and we were told that fifteen months had elapsed without any call being made in many groups, so that it is not costing the manufacturers in Washington in a year and a half what they figured it would cost in three months.

THE COMMISSIONER: If I understand Mr. Wegenast rightly he does not object, providing the figures are in the neighbourhood of those he has put in his draft. The fight is about the compensation to the man himself, not to the dependants. Am I right in that?

MR. WEGENAST: That is as to the schedules. Then of course the schedules are entirely incompatible with the individual liability.

MR. GIBBONS: The Commissioners dealt with that. They capitalized the amount at \$4,000.

MR. WEGENAST: No, the act itself capitalized that.

MR. GIBBONS: They have found out by this time that it does not run near the figure they have assessed.

MR. WEGENAST: The insurance companies say it will run a great deal higher.

MR. GIBBONS: There is the point. If the dependants die it wipes out the liability, while under the common law if a person is awarded even \$2,000 the party receiving it can will it to whoever they like, even if they die within a month. It is taken away from those who pay it, while in the other case it is not.

THE COMMISSIONER: It is almost a guess when the jury has to award it. There are so many things to be taken into consideration.

MR. BANCROFT: In Mr. Hinsdale's report it says the pension to a lone widow is \$20 a month with a maximum of \$8,180 a widow and one child \$25, a maximum of \$9,380; a widow and two children, \$30 a month, a maximum of \$9,980.

THE COMMISSIONER: Those are not maximums fixed by the act, those are calculations.

MR. BANCROFT: They should not be so nervous about the figures as Mr. Wegenast seems to be.

MR. HALL: We heard a long argument this morning from Mr. Wegenast. I am against the proposition because I think on a percentage basis of the earnings is the better idea. The other is going to look so large in the eyes of the public and the legislature I think it would be made so small that there would be very little coming to the workingman.

THE COMMISSIONER: Supposing a man got \$4,000 or \$5,000? I do not know of any case in my experience where he has got more than that.

MR. HALL: That would be under the present Workmen's Compensation Act.

THE COMMISSIONER: Even at common law they very seldom get more than \$5,000.

MR. HALL: There was an instance in your own town I think where the man got \$13,000.

MR. LAWRENCE: There was a case in St. Thomas where a man got over \$8,000.

MR. HALL: Rogers vs. C. P. R.

MR. MACMURCHY: That was a young fireman whose spine was broken.

MR. BANCROFT: It would be very unfair to limit the amount of compensation by a capitalized sum like that if you still do away with his common law rights.

THE COMMISSIONER: Would that be so? You see it is probably a great deal more than some men would get. This act, or any act like this, may work hardship in a few cases, but the question is whether or not on the whole it is not better for the body of the workmen, that there should be a litt'l left in some few individual cases than that a fair scheme should be passed even if it involved that.

MR. BANCROFT: I may say the clause to which you refer, if you put in a percentage, we hope you will not alter that clause.

MR. WEGENAST: The great thing we urged in this scheme was to minimize the work of the Board. I am told that the Washington Board would find it impossible to do their work if they had to deal with questions of amounts of wages. They do have to to a certain extent. Take the case of a young boy who is earning say fifty cents a day. If the compensation amounted to over half, or sixty per cent, possibly, of his wages then it is scaled down to that half or sixty per cent., or whatever it is.

MR. BANCROFT: We are absolutely opposed to the flat rate.

THE COMMISSIONER: I am not suggesting a flat rate. I am just suggesting a maximum.

MR. WEGENAST: That would bring up the difficulty that the pension would stop when it reached a certain point, as it does in Quebec.

MR. BANCROFT: Quebec is not an example of workmen's compensation, surely.

MR. WEGENAST: When the pension must be reduced; you can't make something out of nothing.

THE COMMISSIONER: That is about as good an argument as Mr. Bancroft is making for continuing it during life. Surely that is the inevitable result of that argument.

MR. WEGENAST: Precisely.

THE COMMISSIONER I suppose everybody recognizes, at least I certainly do, that this Bill is more than a mere compensation to workmen Bill. It is social legislation and it is intended to provide for the workman and save the community from bearing the burden of his impairment.

MR. WEGENAST: Yes.

THE COMMISSIONER: What strikes me strongly is that all the manufacturers in this country under such legislation as this are simply tax gatherers. That is all they are.

MR. WEGENAST: No, with all respect. We have to meet the competition of the world, or at any rate of the other Provinces.

MR. HALL: The others will be on the same footing pretty soon.

MR. BANCROFT: What about the competition of Great Britain where they already have an act, with Germany and these places that have good acts?

MR. WEGENAST: We are proposing a scheme of insurance with greater benefits than any in the world.

THE COMMISSIONER: I thought this was to be model legislation.

MR. WEGENAST: If it is to be a model scale of benefits then I give up. I do not know that any labour man even would undertake to draw a model scale of benefits that should never be increased.

MR. BANCROFT: We cannot allow these statements to be made time after time. Mr. Wegenast has repeated them so many times that I must correct it. The proposals of the manufacturers as outlined by Mr. Wegenast in his draft act or in his suggestions are not the best in the world by any means. They are a minimum, not a maximum.

THE COMMISSIONER: Take the other end of it. Supposing instead of a maximum at that end the act provided, as the British Act does, that it should not apply to a workman who is receiving more than a named wage or salary? What do you think of that aspect of it?

MR. BANCROFT: We would much rather, Mr. Commissioner, that the terms of the act were as you state.

THE COMMISSIONER: What strikes me is this: Take a superintendent getting \$10,000 a year. He would be paid upon that basis.

MR. HALL: He would be a workman?

THE COMMISSIONER: Yes.

MR. HALL: I didn't think he was classed that way.

THE COMMISSIONER: He would be under this.

MR. BANCROFT: To limit it to an amount not less than £250. That is \$1,250.

THE COMMISSIONER: Supposing you took a figure that corresponded with the value of that in this country?

MR. BANCROFT: That would strike a blow at your accident insurance scheme and the grouping of the industries, because if you group an industry and tax the yearly wage-roll you must tax the whole wage-roll, according to the insurance plan. That is why it has been struck out in all modern legislation, and Great Britain will strike it out before long too. By grouping the industries and paying on the yearly wage-roll it makes it absolutely necessary to cover every employee in the industry, instead of separating them.

THE COMMISSIONER: If that is so you would have to deal with it at the other end, if it is done at all.

MR. GIBBONS: The statement of Mr. Wegenast about limiting it to \$2,000, I would like to know if that is on the average of accidents, or that any one accident shall not go above \$2,000?

MR. WEGENAST: No employer can be compelled to pay more than \$2,000. Apparently it was not quite appreciated when the act was put through. The act speaks of the capital of the rente or pension, and apparently some people are given the idea that the capital of this rente wasn't to be over \$2,000, but I understand the interpretation put upon it is the sum total shall not go beyond \$2,000. The point has not come up yet where it is necessary to decide it. It was passed in 1909.

THE COMMISSIONER: Does it mean that \$2,000 shall be put aside?

MR. MACMURCHY: To pay that into the bank.

THE COMMISSIONER: The capital and interest would be eaten up?

MR. MACMURCHY: Yes.

MR. WEGENAST: Supposing a man is entitled to \$200 a year, that goes on for ten years and that is the end of it.

MR. MACMURCHY: That is not my understanding. I have heard of some cases where they pay the \$2,000 into the bank, and the employer gets a release, and so much is paid out each year until the capital and interest is exhausted.

MR. WEGENAST: That is done also. The employer can become the payer himself.

MR. MACMURCHY: He can commute on that basis however.

MR. GIBBONS: Supposing that the defendant died inside of two years who would that \$2,000 that was paid into the bank go to then?

MR. MACMURCHY: It is the property of the people who are receiving it, living or dead.

MR. GIBBONS: In this case it would revert back?

MR. WEGENAST: One man might refuse to pay it in and the other wouldn't. Then if he had only paid one payment and the defendant died he would be no longer under a liability.

MR. GIBBONS: That is not the way I understood it. I thought he could will that to whoever he liked. They pay that in as a settlement of the claims.

MR. MACMURCHY: The \$2,000 is paid in settlement.

THE COMMISSIONER: Supposing the man does not want to pay it? Supposing he says, I am willing to keep on paying the pension, if the life drops out does he not get the benefit of that?

MR. GIBBONS: I suppose he has the option of paying \$2,000 in or keeping it up while the defendant lives?

MR. WEGENAST: No, that is not the interpretation of the act.

THE COMMISSIONER: What I am suggesting for your consideration is whether it would not be reasonable to provide that any life payment might be commuted for a sum not exceeding a stated amount.

MR. BANCROFT: Would that stated sum provide a pension equivalent to the compensation for the rest of the life?

THE COMMISSIONER: I do not know. If you take a thousand lives it is absolutely certain how long a life will last but if you take one it is the most uncertain thing you can deal with. That is what the insurance people say and no doubt it is the fact. No doubt a system like that would mean if the man lived long enough to eat up the fund and its accumulations he then would be left without anything unless he had been able to save something.

MR. BANCROFT: He would be in the very position that this legislation is intended to prevent.

THE COMMISSIONER: That might be so long after that possibly the legislation would be so far advanced that it would meet that case. Perhaps there will be an old age pension in this country some day. You see it would take a long time to eat it up, any such sum as is mentioned. While the manufacturers are not going at all to frighten me from what I think is the right course, no matter how emphatic they are in their denunciations of the principles of this bill, I would like to see a measure that commended itself as a fair measure to both branches of the public.

MR. GIBBONS: What seems to me to be the unfair part of that proposition is the fact that if the defendants did not live a year that the manufacturer would profit there, and if he lived over the term he would profit there.

THE COMMISSIONER: You are mistaken. Supposing a workman is getting a

pension of \$250 a year. If he dies in a week all that the employer pays is the proportion of the pension, so that it does not matter. The capitalized sum there would just stand in the same way. It would be the representative of the personal liability of the employer or the fund.

MR. GIBBONS: If he made a settlement for a certain sum and that was left in the hands of the Board to administer, if he lived to the age of 60 or 70 years that fund might be exhausted.

THE COMMISSIONER: I am not talking about a settlement. I am talking about—in order to meet the difficulty that is said to exist that this thing might last so that the sum would be enormous that the employer would have to pay—whether there ought not to be a maximum placed beyond which it could not go.

MR. LAWRENCE: Would it be fair to the other class of people?

THE COMMISSIONER: I do not understand.

MR. LAWRENCE: If there was a maximum amount would it be quite fair to the other men?

THE COMMISSIONER: If a reasonable amount were fixed.

MR. LAWRENCE: Take a young man twenty-five years of age who gets seriously injured. He might live a longer time than the maximum amount would provide him with compensation. It would not be fair to that person. Then he would be in a worse position or as bad a position as he is now.

THE COMMISSIONER: He has got nothing now. The question is what are we going to give him.

MR. LAWRENCE: That would leave him in as bad a position as he is now.

THE COMMISSIONER: All he can get now is three years' wages or \$1,500, whichever is the larger, except at common law.

MR. LAWRENCE: There are some workmen in that case would get \$1,500.

THE COMMISSIONER: I am not going to recommend a law to deal with exceptional cases.

MR. LAWRENCE: These are not exceptional cases.

THE COMMISSIONER: They are one as to a thousand surely, taking the mass.

MR. LAWRENCE: Well, there are a large number.

THE COMMISSIONER: You cannot make a maximum just to fit a particular case. You must make it fair to the mass of the workmen.

MR. GIBBONS: The point I was making is this, that while one man might live the long term that would run over what they have said should be the ~~air~~ take value of the accident, there would be twenty that died far short of that, and on the general aggregate the amounts would not reach the amount of capitalization.

THE COMMISSIONER: Now, that is a fair observation.

MR. GIBBONS: As I said if the defendant died in two months it would cost them only \$40, and if another man happened to live forty years it would cost something over that.

THE COMMISSIONER: They are not quarrelling with the defendant provision, as I understand it.

MR. HELLMUTH: I understand, Mr. Commissioner, that one of the principal points that you have made in regard to this indemnity to those who are totally incapacitated is that the indemnity should not cease during the life while total incapacity continues; that the person so incapacitated should not be after fifteen or twenty years thrown as a charge upon society or his own people. You want to obviate that position at all costs. Now, it seems to me the English Act does fix something that is helpful there. It fixes a maximum of the weekly payment. I am not saying the maximum there fixed should be the maximum here, but it fixes the maximum of the weekly payment that should be given to such a person. While it says it shall be fifty per cent. of the weekly wage, it shall not exceed in England £1 per week. Now, if some figure was fixed for the maximum would it not be possible for an employer to avoid this tremendous burden, that might in extraordinary cases be cast upon him, by going to an insurance company and securing an annuity that would bring in that weekly wage for a reasonable fixed sum? Cannot insurance meet that in that way? As you say, Mr. Commissioner, it would not be fair for an employer employing perhaps only a limited number of men to have this preventive burden cast upon him, because one life or two lives would not afford an average, but an insurance company would take this life amongst the average lives and give the insurance. It is difficult for us to consider it because the figures are not in the bill. It is difficult to consider what would be the fair maximum for a weekly allowance to a person totally incapacitated. I think there ought to be a maximum fixed there that it should not go over.

THE COMMISSIONER: The reason why that maximum is there is because the maximum of the wage that a man must earn is £250. You see that is all consistent with that. That figure of £1 is based upon that limitation.

MR. HELLMUTH: Now, there is a pension system in the C. P. R. I do not think I am divulging anything I should not divulge in saying this. The minimum pension is \$20 a month and the maximum pension is \$40. The idea is, as I understand their pension system, that a man gets one per cent. of his salary for each year that he was in the service since 1881, since the incorporation of the company, so that if a man was then in the company he would get 30 per cent. He can retire voluntarily or is compelled to retire under certain circumstances at 65. There is a system where \$20 is a minimum no matter what his wages are, and depending on what he may have earned, a maximum of \$40.

THE COMMISSIONER: It would be pretty hard, it seems to me, for a locomotive engineer getting \$150 or \$160 a month, through, it may be, the negligence of his employer, totally incapacitated, to be cut down to \$40.

MR. HELLMUTH: Yes, I would quite agree with you if the law only applied to those cases, but again we have to, as I might say, average the lot. We have

to pay in cases in which the man himself has been guilty of contributory negligence as it was called, or in the case of a pure accident for which nobody is responsible.

THE COMMISSIONER: Those are incidents in your business, and I think you ought to be liable for that anyway. I think the law ought to make you liable.

MR. HELLMUTH: Let us see where it would land us, even in this case. After perhaps sixty or sixty-five years of age the company would practically say good-bye to the man and have nothing further to pay. They do not do that. It is not good policy to do it. At sixty-five they give him a pension.

THE COMMISSIONER: At sixty-five he might be out of business altogether.

MR. BANCROFT: The workmen have to pay for that pension also.

MR. HELLMUTH: No.

MR. MACMURCHY: No, there is no contribution from the workmen.

MR. McCARTHY: Only in the G. T. R.

THE COMMISSIONER: That is the social side of this.

MR. HELLMUTH: I do not want to attempt to criticize the figures in the bill because the figures are not there, and therefore it is impossible to do so, but it does occur to us that it is not intended if the act is to work out satisfactorily to cast a burden upon the employer greater than he can stand. I am not either applauding or condemning the attitude of the manufacturers, but with regard to the railways I might say this, that the railways are not going to be able to become tax gatherers. They cannot raise their rates. They cannot alter their freight or passenger rates. They are all under the Railway Board.

THE COMMISSIONER: But the Railway Board, if they thought fit, could raise the rates.

MR. HELLMUTH: The whole community would be down on raising the rates. We would have the manufacturers after us.

MR. WEGENAST: What my learned friend has proposed is exactly what we have proposed in our schedule.

THE COMMISSIONER: There is common ground between you different branches of employers although you fight on details.

MR. WEGENAST: Apparently my learned friend is just at this moment waking up to the significance of the schedule, £1 a week up to a maximum of £2 a week.

MR. HELLMUTH: Quite so.

MR. WEGENAST: That is higher than the Washington schedule in some instances, and is higher than any other schedule in the world.

MR. BANCROFT: Mr. Wegenast keeps on saying that.

MR. WEGENAST: I do not suppose that Mr. Bancroft saying otherwise would make it untrue.

MR. BANCROFT: Now, Mr. Wegenast, I repeatedly stated it is a pound a week in the Old Country, and you state that is \$20 a month, and then you cite the rates of the Washington act. £1 is not equivalent in the Old Country to \$5 in this country by any means. Supposing this act was drafted to include all those who earn over \$1,250 it would not cover fifty per cent. of the workers here that they do in Great Britain.

THE COMMISSIONER: What do you think of the statement made by Mr. Wegenast that the majority of the workmen in this country get less than \$2 a day?

MR. BANCROFT: Well, Mr. Commissioner, we have been trying to prove to the manufacturers for the last two years that they gave low wages, but I never heard it admitted before, and I want to tell you that Mr. Wegenast will not hear the last of it. Of course, I know he is saying that for the purposes of argument.

MR. WEGENAST: I am speaking of the ninety per cent. of labourers which Mr. Bancroft does not represent in any way.

MR. BANCROFT: Now, we have not gone behind Mr. Wegenast's brief at any stage of the game by saying that he did not represent anybody. We have stated whom we represent, and we stand here for them. I think when he states that \$2 a day he is speaking about something he doesn't know.

THE COMMISSIONER: He spoke of the boys and girls.

MR. BANCROFT: We knew he meant the little girls in the factories, but the manufacturers or employers of this Province would not admit that if you pressed them about it. Now, we expected this, but we are not antagonistic to the manufacturers in any way. On the framework of the bill we agree, that is the collective plan of mutual insurance, but we know we would have to scrap on the rates.

THE COMMISSIONER: They want to give you scrap rates.

MR. BANCROFT: They certainly do, but here is the serious part of it to us, Mr. Commissioner. Mr. Hellmuth quotes the English act as providing the maximum, and immediately, although Mr. Wegenast considered himself antagonistic to the railways' position, he gets up and agrees with my learned friend that that is quite right, but neither of them tells you that under the English act the employees have their rights at common law and Employers' Liability. That is excluded in the draft act, and we have not made a kick, because we believed that you understood the evidence better than any one in this room at present, and when we have a draft Act placed before us that takes away our common law rights, or statutory rights, we want a proper percentage put in the schedules. When we surrender our rights it is a different proposition.

MR. WEGENAST: What I set out in my statement should not be forgotten, that the English act affords no certainty, and that the act itself recognizes that means a difference of 25 per cent.

THE COMMISSIONER: But they are gradually getting away from that. They have already made one step with reference to the insurance companies in 1907,

and I should not be surprised if there is compulsory insurance some day soon in England.

MR. WEGENAST: I have had it in mind that we might draw an Act in Ontario which would furnish a model for England as well as the other Provinces.

MR. BANCROFT: I have had a good many conversations with men about the British Act, and I suppose what they tell me is correct, as they are supposed to be authorities, that under the British act at present, the workman is under a disadvantage because there is no compulsory insurance. The workman comes before the County Judge and the insurance company's representative sits back, and provided the workman and the insurance company are agreeable the county judge decides it is all right and off it goes, and due to the fact that the insurance companies sit back on the proposition and the workman has to go to the county judge and agree or fight on a question of law, the compensation is often inadequate, and the law is not administrative in Great Britain. That is why they are going in the direction of compulsory insurance. The workers in Great Britain have been asking for it for years, and it is the only logical outcome. We are sorry, Mr. Commissioner, that you cannot see your way clear, but we know your difficulty. We know you have to consider the Government's position and we know there must be a start made somewhere. We understand that it is the intention of this bill to start out on a compulsory insurance plan, and widen its scope by giving powers to the Board. Of course the constitution of the Board is of the greatest importance to us. We think that sixty per cent. of a man's wages is none too much to give.

THE COMMISSIONER: Would Mr. Wegenast like to see a provision enabling either party to appeal from the decision of the Board in the case of individual liability? Supposing there are certain industries left out, not grouped, would you favour as far as you speak for those industries the right of appeal from the Board by either party?

MR. WEGENAST: I would not like to speak on the assumption that any were left out.

THE COMMISSIONER: I do not want you to commit yourself to the proposition, but supposing any were left out would you desire on their behalf that there should be an appeal from the Board? You mentioned that as one of the objections.

MR. WEGENAST: My objection goes deeper than that, that the Board would not be the proper body to handle that sort of thing at all.

THE COMMISSIONER: Leaving that aside, would you want an appeal from it, from your standpoint?

MR. WEGENAST: I would think it would be necessary. It would not be in accordance with our ideas of justice to put that arbitrary power into the hands of a Board to summarily decide rights involving tens of thousands of dollars.

THE COMMISSIONER: And yet your proposition on the other hand is on every case they should decide every right if they are grouped.

MR. WEGENAST: Yes, as against the fund.

THE COMMISSIONER: It does not make the slightest difference.

MR. WEGENAST: It makes every difference in the world.

MR. BANCROFT: Wasn't it Mr. Wegenast's statement at one of the meetings that the Board should have absolute authority and have absolute power and that there should be no appeal from the Board except it be on a question of law and that to the Court of Appeal for Ontario.

MR. WEGENAST: Yes, so long as it is against the fund.

THE COMMISSIONER: That is fanciful, surely.

MR. WEGENAST: Surely I can ask you to consider a deliberate statement of that kind backed up by several dozen business men whom I represent.

THE COMMISSIONER: I cannot help how many dozen are behind you. I cannot understand the proposition. The Board passes on claims amounting to \$250,000 a year in the groups, and is that not just as serious?

MR. WEGENAST: By no odds. In one case they are administering a fund.

THE COMMISSIONER: The fund does not come out of the air.

MR. WEGENAST: Take the case of an individual employer and ask what it means to him. Supposing that the \$200,000 consists of 2,000 claims, you have one hundred individual employers concerned. It means life and death to that one industry perhaps. It might paralyze each one of those men so that he would never get over it financially during his whole life. Is that not a more serious responsibility than deciding whether \$200,000 is to be taken out of a fund?

THE COMMISSIONER: Not the slightest. It is an elemental principle. The judge or the tribunal has nothing to do with the circumstances; the question is what the judgment ought to be.

MR. WEGENAST: That is true in theory, but surely it is not right that that man, even the humblest citizen of the country, should be subject to that drastic liability without having every opportunity to bring witnesses and defend himself.

THE COMMISSIONER: Who suggests that he should not have that right?

MR. WEGENAST: Then you have laid on the Board the functions of a court of justice.

THE COMMISSIONER: Do not let us be troubled with that. Some of your groups would not consist of more than ten employers. Is that not so?

MR. WEGENAST: Well, I don't know but what it may be. I would not like to say.

THE COMMISSIONER: Does that not reduce your argument almost to an absurdity?

MR. WEGENAST: No, it does not.

THE COMMISSIONER: Would it not be relatively as serious to ten employers as to one?

MR. WEGENAST: No, those ten might be large employers. It means very little to the C. P. R. because there is a sufficient pay-roll to stand it.

THE COMMISSIONER: You are putting up straw men to knock them down. Nobody suggested that any small employer should be left out. It is not on that principle at all I have suggested it.

MR. WEGENAST: It is suggested that employers are to be left out, and again I say if all the employers that I represent are included then our objections are only technical.

MR. HALL: I have to go to Winnipeg to-night, and I have a few remarks to make with regard to this bill, if you would hear me now. I did have hopes I would take it away as the unanimous consent of all concerned, but I find there has been a herring drawn across the track, with the idea, I believe, of preventing this Bill going through if there is a possible chance. I want to refer to section 15, and some remarks you made this morning in regard to it. That is giving the corporations and the men the right to agree to the compensation, or otherwise. It is in nearly all the Provincial acts, but I hope there will be no amendment to that section. I think the experience we have had in days gone by with the Grand Trunk Railway Company, of which you are aware, should settle that point.

THE COMMISSIONER: I do not think anybody has objected to that clause at all. The only question is whether it goes far enough. I intended by the bill to make it clear that an employee should not be bound by any agreement he makes about his compensation unless that is approved by the Board.

MR. HALL: That is the fear I want to bring forward. I heard some talk this morning with regard to the composition of the Board, and I would hesitate to allow an agreement of that kind to be made, because it is very easy for corporations to influence a certain proportion of their employees and get them to make an agreement of that kind, and that will ultimately result in serious difficulties and trouble to the men, in my mind. It did before in the act of the Grand Trunk, and I hope that will not be allowed to go through. I sincerely hope you will not make the recommendation.

MR. CARTER: You said this morning, Mr. Commissioner, that no agreement between the employer and the workman as to compensation will bind the workman unless it has been approved by the Board. By that am I to understand that if one of the industries which is scheduled in your groups as one of those which must contribute to the fund makes an agreement with the employees with the approval of the Board, will that industry still be liable to contribute to the fund although the workmen do not draw out of the fund in case of injury?

THE COMMISSIONER: There is no idea that they can get out of the liability to contribute. There is no separate arrangement that will exclude the operation of this act.

MR. CARTER: In other words they will not be able to make a separate arrangement. They are bound to come into it.

THE COMMISSIONER: Yes, they are bound.

MR. CARTER: If they are individually liable are they still bound by the terms of the act? Can they not then make an agreement with their men, provided it is satisfactory to the Board?

THE COMMISSIONER: No. It is in all similar acts.

MR. CARTER: You spoke of the agreement being approved by the Board.

THE COMMISSIONER: That is a different thing. Where an accident happens an employer and the workman get together and agree upon what compensation shall be paid. That is a case of individual liability. Then my idea is that that agreement should not be binding upon the employee unless it is sanctioned by the Board. The man has a right to say it is not binding upon me because the Board did not approve of it.

MR. CARTER: I take it you intend to exclude entirely private societies?

THE COMMISSIONER: Yes, of course those are all excluded.

MR. McCARTHY: The agreement referred to would be one that was made after the happening of the accident.

THE COMMISSIONER: Yes.

MR. LAWRENCE: Although it is a little foreign to the question there was a mention here about the idea of a pension with the C. P. R., that they have a maximum of 40 per cent.

MR. MACMURCHY: There is no limitation. It depends on the years they have served.

MR. LAWRENCE: I do not understand there is a maximum, although I am not an employee of the C. P. R. I am in the employ of the Michigan Central, and there is no maximum. They figure out the pension on the amount paid to the man. I know an employee myself who drew over \$60 a month, so I did not wish that idea to go if it is not correct.

MR. MACMURCHY: I mentioned it to Mr. Hellmuth because thirty per cent. of the wages at present would not come to much more than \$40.

MR. LAWRENCE: On other roads there are cases where they have been over forty years in the service. At the present time I have been very nearly thirty-four years in the service, and if nothing particular happens to me I might be able to continue for ten or fifteen years longer. In many cases there have been men employed for fifty years, and they draw one per cent. of their monthly earnings multiplied by the number of years in the service.

THE COMMISSIONER: Something like this is what I thought would be desirable: "No agreement as to compensation between a workman and his employer who is individually liable to pay the compensation shall be binding upon the employee unless it is approved by the Board." Then I think that ought not to apply where there is only a temporary liability, say for two or three weeks. "This act shall not apply to temporary disability where the disability lasts less than so many weeks." I do not know whether that should go in or not. Supposing there was a small accident happened away off

from Toronto, and the employer and the employee got together and agreed on \$20, \$30 or \$40, why should that not be binding? The thing to be guarded against is making a settlement of an important claim of the workman.

MR. GIBBON: In settling a claim such as you mention of short duration the employee might be influenced to make a settlement for a small sum for fear he would lose his job. It might be he would be entitled to further compensation, and if he did not make that agreement it might cost him his job, and therefore it would not be in the interest of the employees to permit any agreement except in the case of disability for a short period.

THE COMMISSIONER: Three or four weeks, or something like that, was what was in my mind.

MR. LAWRENCE: We had a reference to a class of men, for instance, where they had a committee, and they would get together.

THE COMMISSIONER: What I had in my mind—perhaps a man gets his finger crushed and it keeps him away for two or three weeks. Why bother the Board with a claim of that kind?

MR. HELLMUTH: If he was away up in the backwoods, or anything like that.

MR. LAWRENCE: If it could be worded so that he could not take advantage of the men.

MR. WEGENAST: One of the objects we had is shown by the case just referred to. Take the case of permanent partial disability. Apparently the bill makes no distinction between permanent disability and temporary disability.

THE COMMISSIONER: I think it does.

MR. WEGENAST: Our objection was that in the case of permanent partial disability, like the loss of a finger or the loss of a hand or the loss of an arm, the payment should not be a percentage of wages for life or a pension for life, but should be a lump sum.

THE COMMISSIONER: That is not the principle of this bill at all. The principle is if it is permanent partial disability it is treated on the same footing as permanent total disability, except the proportion of the wage is according to the impairment of the earning capacity.

MR. WEGENAST: Would you for the loss of the end of the little finger pay him ten cents a week?

THE COMMISSIONER: I don't know. It is de minimis, as it says in the law.

MR. WEGENAST: It might not be. Are you going to pay him a small sum of that kind?

THE COMMISSIONER: There is a provision that it can be commuted by the Board.

MR. WEGENAST: Our proposition was that a lump sum should be provided, but in serious cases the Board might divide that lump sum into several small sums and pay it out, or might make it a pension.

THE COMMISSIONER: The principle of this Bill is that the compensation would be awarded according to the impairment of the workman's earning capacity, and then the Board could agree with a man to pay him a lump sum in lieu of it. Section 32: "Where the disability is partial or temporary the compensation shall be a weekly payment of a sum proportionate to the impairment of the earning capacity of the workman not exceeding in any case . . . per cent. of the average weekly earnings of the workman ascertained in the manner provided by the next preceding section, and the compensation shall be payable while the disability lasts." (First draft bill.)

MR. WEGENAST: There again if that principle is applied throughout we object. We say in serious cases there should be no commutation. I thought that was settled upon.

THE COMMISSIONER: No, the rule will not be to pay any capital sum to a man at all. I think that is an important principle, but there may be many cases in which it would be most important that a man might have an opportunity of getting his capital sum. Supposing a man is working with his hands and loses one of his hands, and he gets an opportunity of starting in some business. Why should not the capital be available under proper conditions?

MR. WEGENAST: That is precisely the position we take.

THE COMMISSIONER: I would make the principle of this bill to guard against the man being ultimately a charge upon the community. If you give the amount to a man and he spends it there he is back again.

MR. WEGENAST: In the case of permanent partial disability, where a man is not totally disabled, is it not reasonable that the compensation should be *prima facie* a lump sum?

THE COMMISSIONER: No, I think *prima facie* it should be the other way. The Board as reasonable men will apply a reasonable rule in determining whether they will allow a commutation.

MR. WEGENAST: If they have the power to change that into a pension where is the harm? If they have the power to take that lump sum and apportion it into payments, to take that as the capital of a pension.

THE COMMISSIONER: The simple way is to make it that he gets his pension, and then if the Board thinks it desirable to commute that pension they can give him the capital sum.

MR. WEGENAST: I submit it is not desirable, and in any case the Board will have a great deal more work and responsibility in working it out.

MR. McCARTHY: Supposing a man wanted to go into some little business?

THE COMMISSIONER: Yes, if the Board saw that the man could be entrusted with the money.

MR. HELLMUTH: Then section 37 provides for something. Very often a man who loses an arm or leg is able to earn \$1.50 or \$1.25 a day, and all that would have to be paid is the difference.

MR. BANCROFT: We have looked down the draft bill, Mr. Commissioner, for a clause something like this. I see you have a clause about the workman waiving his rights by agreement under the act, but we asked in our original brief that no employer shall attempt to deduct wages from an employee by agreement or otherwise, such action to be regarded as a gross misdemeanor.

THE COMMISSIONER: We cannot do that. That belongs to the Dominion.

MR. BANCROFT: Could you not put something in there that the employer should be prohibited from doing it.

THE COMMISSIONER: We cannot do that. It would be unlawful. He would have no right to say to him I will deduct that out of your wages.

MR. BANCROFT: Take a big industry that is in the group with an assessment of so much a year upon the wage-roll. In the draft act there does not seem to be anything to prevent him making an agreement with his employer whereby the employer may take so much out of his wages.

THE COMMISSIONER: I think that is all covered. I intended to make that as wide as it possibly could be made. Of course you will always be up against, if one may use that expression, the power that the employer has sometimes to grade down the general wages because of this proposition by the legislature. I cannot guard against that.

MR. BANCROFT: You could put a provision in whereby an employer shall not do that.

THE COMMISSIONER: Take for instance the Massey-Harris Company. They could say to themselves: "Now, we have got a tax put upon us that amounts to two per cent. upon our net earnings, and we cannot afford to pay as much wages on account of that and we will grade them down accordingly." There is no law to prevent that.

MR. BANCROFT: That is not what we mean. That might be prevented by strikes, but what we mean is an employer going around to his workmen and the workmen agreeing after having a meeting, and so on, to contribute so much out of their wages to an insurance fund that will pay the tax on the employer. That is prevented in the State of Washington legislation direct, so serious was it in the minds of the framers of the act. They made it a criminal offence to do so.

THE COMMISSIONER: We cannot do that.

MR. BANCROFT: I think you could put a clause in there that would prevent that with regard to the wages. I refer to the methods used not by the employers but by their officials in this respect.

THE COMMISSIONER: As I understand your proposition it is to put in express terms that the employer shall not deduct from the wages of the employees any sum which he becomes liable to pay as compensation or to contribute to the accident fund, or to call upon him to assist in any way in meeting any expenditure that the employer is under in consequence of the provisions of this act, or to enable him to indemnify himself against it.

MR. BANCROFT: Exactly.

MR. LAWRENCE: I do not notice any clause in there providing for the case of insolvency.

THE COMMISSIONER: To guard against it? Will you tell me how you can pass a law to prevent you or Mr. Bancroft from becoming insolvent?

MR. LAWRENCE: No, but in the act that went through the United States Senate they had a clause providing for that.

THE COMMISSIONER: You have not observed that this bill goes a great deal further. The provision in that is in the event of an employer becoming bankrupt it is a privileged claim, but this bill gives power to the Board to compel every individual employer to insure.

MR. LAWRENCE: If it does, that is all that is necessary.

THE COMMISSIONER: In some cases they would not be called upon to do that.

MR. GANDER: While you spoke about the possibility of the Board compelling every person to insure I do not see how you propose to do it except by a yearly assessment.

THE COMMISSIONER: I am talking about individuals, not the groups. Supposing you have half a dozen men in your employment, the Board says, "Mr. Gander, are your men insured?" "No." "Well, you must insure them for so much in an approved company in so many days, or we will insure them and make you pay the premium." That is what the bill says.

MR. GANDER: While that may be so it says that assessments will be made once in a year.

THE COMMISSIONER: That is only in the ones in the groups.

MR. GANDER: Four or five months ago the labour people said they had as many or more accidents coming from the small contractors or small manufacturers.

THE COMMISSIONER: Take Mr. Gibbons as a small contractor employing two men. The Board finds he is doing that and they say to him, "Mr. Gibbons, have you got your men insured?" "No." "Well, you must insure them."

MR. GANDER: What I contend is these small contractors are only in business for three or four months, and during that three or four months there will be some accidents. How will you arrange about them when the assessment is once a year?

THE COMMISSIONER: It has nothing to do with that at all. If you cannot find him you cannot find him.

MR. GANDER: Well, in that case the workmen are just as badly off.

THE COMMISSIONER: Will you say how you can find them?

MR. GANDER: By forcing them into a group, and these labour men know who they are.

MR. BANCROFT: This gentleman says they would be just as badly off in that way. They would not. The employer who employs one or two men can be brought before the Board and the Board can tell him to insure and protect his workmen. Then the workmen are better off under that condition than they would be at present.

MR. GANDER: But this draft bill calls for assessment once a year.

THE COMMISSIONER: That is only in the groups.

MR. GIBBONS: I think the workmen will be capable of looking after themselves. If I was employed by a man who had only two employees I would think it my duty to notify the Commission that such a man was employing two men.

THE COMMISSIONER: I am told in most cases the employers in the building trades add to their prices the cost of the insurance of their workmen.

MR. GANDER: That would not occur with twenty-five per cent. of them. It is only the large ones.

THE COMMISSIONER: I do not know how you make me pay so much for what I get done, if you don't.

MR. GANDER: You understand it is not as far as we are concerned, but what we wish to bring before you is that most of the accidents in the building lines occur with the small contractors.

THE COMMISSIONER: Do you not think what Mr. Gibbons has suggested will be the case, that the workmen will be alert to report cases and see they are protected?

MR. GANDER: That is as far as the cities are concerned, but it is not out in the country towns.

THE COMMISSIONER: We cannot make it perfect right away, you know.

We have not got much farther on about this question of whether there should be a right to commute. Section 22 is taken from the British Act. "The Board may . . . . allow it to be redeemed or commuted by the payment of a lump sum of such an amount as where the incapacity if permanent would purchase an immediate annuity from a life insurance company approved by the Board, equal to seventy-five per cent. of the annual value of the weekly payment."

What would you think of giving the power to do that where it was in the group upon application of the members of the group?

MR. WEGENAST: It is entirely foreign to what we understood was the intention.

THE COMMISSIONER: What do you think of it?

MR. WEGENAST: I think it is bad. I think it would be bad for the workmen. It would be good for us.

THE COMMISSIONER: You seem to shift around. I thought you were telling me five minutes ago we ought to be able to commute.

MR. WEGENAST: No, it wasn't commutation. I would pay the lump sum. I wouldn't give a man a pension of ten cents a month for life.

THE COMMISSIONER: I do not see how it differs, except in degree.

MR. WEGENAST: That is precisely it, the question of degree. When the injury is a serious one and the disablement is total different considerations arise. There is another feature which is perhaps worthy of observation, wherever you commute you shut out the re-adjustment.

THE COMMISSIONER: What re-adjustment?

MR. WEGENAST: The intention under most of the acts, for instance, the Washington act, if the injury becomes worse, or becomes better there is re-adjustment. If it turns out to be worse than it was thought, or the man goes back to work and is able to earn as much as he was before.

THE COMMISSIONER: This bill provides for those things.

MR. WEGENAST: It is impossible when it is commuted.

THE COMMISSIONER: It cannot be commuted except at the instance of the employer, with the approval of the Board, unless your condemnation is upon the Board.

MR. WEGENAST: You will remember, Mr. Commissioner, that Mr. Dawson said that commutation of benefits should be avoided at all costs, and the Board should be exceedingly careful not to set any precedents.

THE COMMISSIONER: Well, so it will, I suppose, but you know if you are to deal with these experts, one of the objections to your current cost system was that no Board could be created that would not be subject to political influence. I think one of the gentlemen said that, and therefore it was an objection to the whole scheme.

MR. WEGENAST: We have faith enough in the Government of this country to expect that an act would be provided to avoid those difficulties.

THE COMMISSIONER: You waver in your faith considerably, I think.

MR. WEGENAST: I have wavered this morning considerably.

MR. LAWRENCE: In reading that over I am of the opinion that should not be left entirely to the employer and the Board. Should the employee not be consulted as well?

THE COMMISSIONER: He would be heard, of course.

MR. LAWRENCE: If he objects to it and the Board agrees to it then he is out of it.

MR. MACMURCHY: It is subject to the decision of the Board.

MR. LAWRENCE: That says seventy-five per cent. of the weekly payment, and the employees might not want to accept that. Do you not think it would be better to say the Board may upon the application of the employer with the consent of the employee?

THE COMMISSIONER: No, it is in the British Act and we have the benefit of their experience.

MR. LAWRENCE: There is a minimum and a maximum amount in the English Act.

THE COMMISSIONER: That does not make any difference. The theory of this is seventy-five per cent. of the actual value. This is an insurance of a man for his whole life, and lots of these men if they lived a long time would be past working. That is the idea that underlies that seventy-five per cent., I suppose.

MR. LAWRENCE: If his weekly payment was only \$5 a week, seventy-five per cent. of that is not very much for a man to live on.

MR. WEGENAST: I cannot resist making the observation that this is contrary to the principle of the whole bill, as you said.

THE COMMISSIONER: That is not so. I am afraid you must have had jaundice. It is in the power of the Board and the Board will not exercise that power unless they think it is in the interests of the workmen.

MR. WEGENAST: So is my proposition.

MR. BANCROFT: The Board has to be satisfied of the absolute security for the compensation.

THE COMMISSIONER: Yes.

MR. LAWRENCE: The point I wished to make was they might agree on a sum that was not sufficient.

THE COMMISSIONER: We have to trust somebody in this world, you know. What would be your suggestion as to section 29, Mr. Wegenast?

MR. WEGENAST: I cannot take it upon myself to make any suggestion.

THE COMMISSIONER: You had it in your bill.

MR. WEGENAST: That was my bill.

THE COMMISSIONER: Very well, I shall report that the gentleman representing the Manufacturers' Association does not desire to assist the Commission in this.

MR. WEGENAST: Then you will report wrongly, Mr. Commissioner.

THE COMMISSIONER: Very good, I don't want any more. I shall report on that. Do you remember what is in the British act, Mr. Wegenast?

MR. WEGENAST: I beg your pardon?

THE COMMISSIONER: Oh no, I don't mean you: you are under a vow of silence.

MR. MACMURCHY: £10.

MR. BANCROFT: The Washington act has \$100.

MR. MACMURCHY: That is too much. I would suggest \$60 or \$70, and that is high.

MR. GANDER: I believe there are several Friendly Societies in town and I do not think it would run much over \$50.

MR. BANCROFT: The Amalgamated Association of the Street Railway Employees' Union pays \$800.

MR. GANDER: They can pay what they like as it is their own funds, but I believe there are associations composed of such men as the Hon. S. H. Blake which say that is a fair enough amount for their funeral expenses. I believe as far as the workingman is concerned, if he spends \$100 he is going to the limit. It is a case of almost waste.

THE COMMISSIONER: Then clause (b) section 29. "Where the widow of an invalid husband is the sole dependent a monthly payment of \$—"

MR. BANCROFT: That is just a widow. For life?

THE COMMISSIONER: If she does not get married.

MR. BANCROFT: I should say \$25 a month.

MR. MACMURCHY: I would not like to make a suggestion on that. There are so many circumstances to be taken into consideration there. \$25 seems very high.

MR. McCARTHY: Does that mean minimum compensation?

THE COMMISSIONER: That is the amount in all cases?

MR. McCARTHY: No matter what the financial standing of the widow may be.

THE COMMISSIONER: That is the idea, I think.

MR. McCARTHY: There will be no power in the Board to vary that?

THE COMMISSIONER: As that is drawn I would say not.

Then clause (c). "Where the dependants are a widow or an invalid husband and one or more children, a monthly payment of \$ with an additional monthly payment of \$ for each child under the age of years, not exceeding in the whole \$ " How much for each child?

MR. BANCROFT: I should think it ought to be \$6 a month anyway. We had so much faith in yourself, Sir William, we had intended leaving it to you.

THE COMMISSIONER: I would rather have your views. Under what age? I think the Washington act is 16.

MR. MACMURCHY: I was going to suggest 16.

THE COMMISSIONER: But not exceeding in the whole how much? I mean monthly?

MR. BANCROFT: It ought to be \$6 a month.

THE COMMISSIONER: When should it stop?

MR. BANCROFT: I should think it ought to continue till 18.

THE COMMISSIONER: I think that is a little too long. The child ought to do for itself at 16. That is the highest I know of.

MR. McCARTHY: Are the payments to be made direct to the children?

THE COMMISSIONER: No, a monthly payment of so much for each. The first provides for the widow or invalid husband. You will find later on that the Board may deal with that fund for the benefit of the infants. If it is not wide enough we can fix it.

"Where the Board is of opinion that for any reason it is necessary or desirable that any payment in respect of a child should not be paid directly to its parents or either of them the Board may direct that it shall not be so paid but shall be paid to such person or applied in such manner as the Board may deem best for the advantage of the child." (Section 41.)

That perhaps ought to be enlarged to cover the case where there is no parent.

MR. McCARTHY: Yes.

MR. BANCROFT: I would suggest 18.

MR. GANDER: I think 16 is the limit.

MR. MACMURCHY: 15 or 16.

THE COMMISSIONER: And the aggregate?

MR. MACMURCHY: The trouble here is there are no earnings at all to be taken into consideration. I would say \$40 would be an outside amount.

MR. BANCROFT: Supposing there were six children. In the Washington act for a widow and one child it is \$25 a month, and two children \$30, and three children \$35.

THE COMMISSIONER: And after that nothing. It is \$35 in Washington. If it is on the same scale as the other it would probably be \$40, according to Mr. Bancroft's view. I have in my mind a draft bill based upon a different principle. I am told \$20 a month to the widow or invalid husband, and \$5 a month for each child, not to exceed in the whole \$35. and where the dependants are children, \$10 a month for each child under the age of fourteen, the total amount not to exceed \$35. That is where there is no parent.

MR. MACMURCHY: Would you think there should be a distinction between boys and girls? That is not usually done.

THE COMMISSIONER: I do not think so. If you gave more for the girl than the boy then the woman would be sorry she hadn't girls.

MR. BANCROFT: I would say \$45. The families are large in Ontario.

MR. MACMURCHY: \$40 was what I spoke of.

THE COMMISSIONER: Then what for each child? This document I have before me says \$10 where there is no parent, not to exceed in the whole \$35.

MR. MACMURCHY: As far as the children are concerned they will need as much if not more without the mother.

MR. WEGENAST: If I may break the silence I may say that was an advance on the Washington act.

THE COMMISSIONER: I thought it was just the same. Do you not think, Mr. Wegenast, you should get off that high pedestal and get down to business?

MR. WEGENAST: No, Sir William, that is the position I am obliged to take.

THE COMMISSIONER: Does this draft express your views?

MR. WEGENAST: The whole act taken together. The reason I cannot say any more is because it is not taken with the context.

MR. BANCROFT: The position that Mr. Wegenast has taken is an astonishing one to us. He says their Act is in. Do we understand that the manufacturers in this Province have put in your hands an act that you should recommend to the legislature?

THE COMMISSIONER: No; that is their views.

MR. BANCROFT: We might as well draw an act.

THE COMMISSIONER: I would like you to do it, but you might be in the same position as Mr. Wegenast. He is very much disgruntled because his act is so terribly departed from.

Now, in the Washington act, \$75 is the funeral allowance. If a widow or widower is left the monthly payment is \$20, and \$5 for each child under the age of sixteen until the child attains the age of 16. The monthly payment under this paragraph is not to exceed \$35. Then there is the provision that comes afterwards if the woman marries she is to get twelve times the monthly allowance, and the children continue. If the workman leaves no wife or husband but a child or children under the age of 16 a monthly payment of \$10 for each child under the age of 16, not exceeding in the whole \$35.

MR. WEGENAST: I must be mistaken about that. I think what I was thinking of was the payment in case of a husband not an invalid. There we venture to extend the schedule under the Washington act.

THE COMMISSIONER: No, your invalid widower, as it is called here, is \$20.

MR. WEGENAST: Yes, but a widow not an invalid.

THE COMMISSIONER: I suppose these figures should compare in the same relation to the other figures, Mr. Bancroft. You have suggested 18 as the time and \$45 as the maximum, and \$6 a week for each child a month. If the Washington act has \$10 a month for each child your idea would be \$6 for each child on the same principle.

MR. BANCROFT: You mean \$12?

THE COMMISSIONER: Yes, not exceeding in the whole whatever that would come to, about \$48.

MR. MACMURCHY: I suppose the amount in (d) should not be more than the amount in (c), but somewhat less.

MR. BANCROFT: In the other case, in (d) it should be \$15.

MR. MACMURCHY: On that basis (d) would be about \$10.

THE COMMISSIONER: No, on his basis it would be \$18, assuming the Washington act is right.

MR. MACMURCHY: I am suggesting the limit in (d) would not be greater than \$10 was what I suggested in (c).

THE COMMISSIONER: Mr. Bancroft suggested \$15. What about (e)?

MR. BANCROFT: We suggest \$25 for the widower.

THE COMMISSIONER: I should have thought it would be more serious for a woman to lose her husband.

MR. LAWRENCE: It might be a father or mother. I submit it should not be less than \$25.

THE COMMISSIONER: Then (f).

"Where the sole dependants are persons other than those mentioned in the foregoing clauses a sum reasonable and proportionate to the injury to such dependants to be determined by the Board, but not exceeding 50 per cent. of the monthly payment to a dependent widow."

That is taken from the British act.

Then the permanent disability one. We are getting off the fighting ground, the fighting ground. Where the workman is unmarried manufacturers suggest \$20 a month. Where the workman is rendered helpless and requires constant attendance they propose to double it, \$40.

MR. McCARTHY: That is still unmarried?

THE COMMISSIONER: I suppose that would apply to both. It would not make much difference if he was married or unmarried.

MR. WEGENAST: Our idea was that the wife ought to stay at home and take care of him and she could not earn anything.

THE COMMISSIONER: Where the workman had at the time of the injury a wife or an invalid husband a monthly payment during their joint lives of \$15, to be reduced to \$20 upon the death of either of them, and thereafter \$20 and \$5 for each child not exceeding in the whole \$35. The same is the same.

MR. MACMURCHY: What is (d)?

THE COMMISSIONER: According to their proposition \$35. (e) was \$10 a month for the husband and \$5 a month for each child under 14, the total not to exceed \$25 a month. The last one (f), it was \$10 for each child not exceeding a maximum of \$25. The age is 14 in Mr. Wegenast's proposition.

MR. BANCROFT: We have pointed out right along we wanted the compensation for disability, permanent or partial, to be decided according to the capacity.

THE COMMISSIONER: This would give the workman the option of taking either this schedule or the other.

MR. BANCROFT: We do not like the flat rate. The other one is the important part to us, clause 3.

THE COMMISSIONER: I suppose we may take it you want one hundred per cent.

MR. BANCROFT: No, sixty-six and two-thirds is what we want, Mr. Commissioner.

MR. MACMURCHY: Are you adopting these suggestions? Do you desire any suggestions, Mr. Commissioner?

THE COMMISSIONER: Certainly.

MR. BANCROFT: After further conference would it be possible for us to send them in?

THE COMMISSIONER: Certainly. Of course from the manufacturers' point of view it might be an objection to this because if the man was getting less than upon whatever percentage he would be entitled to under 3, he would, of course, choose the flat rate, that is the minimum rate. As Mr. Wegenast pointed out he intended it to be the maximum.

MR. BANCROFT: That is why we look upon 3 as so important.

THE COMMISSIONER: It is important to keep it out, if it should be kept out, from the standpoint of the manufacturer also. Now, that is the whole of the proposition of the manufacturers down to (f) of sub-section 2.

MR. BANCROFT: It would be a tremendous disappointment to us if clause 3 is not put in.

THE COMMISSIONER: It is a staggering blow to Mr. Wegenast that it is in.

MR. LAWRENCE: It is useless to a large number of the employees without 3.

THE COMMISSIONER: Of course it would mean if a man was getting \$90 or \$100 or \$120 a month, supposing it was half that he was entitled to, as under the British Act, instead of that he would get \$20.

MR. BANCROFT: If clause 3 is taken out then the other clause taking away the common law rights should be taken out also, because a man that is getting a big salary should have a right to sue if he thinks he is not getting enough.

THE COMMISSIONER: Your idea would be then that it should be an elective system, that the workman could claim under the Act or outside of it.

MR. BANCROFT: If the legislature decides there is to be a minimum compensation, as suggested by the manufacturers, without clause 3, then certainly all the common law rights should be left with the workman, and the liability rights, to sue for as much as he likes. That would be taking away from him more than he is getting, and it would be worse than ever.

THE COMMISSIONER: That elective system would practically be destructive of this grouping principle.

MR. BANCROFT: Which?

THE COMMISSIONER: To allow a man to elect not to take the compensation but to take this other right.

MR. BANCROFT: Yes, but at the same time it would be a hardship on the workmen to leave out clause 3 and put the compensation in at the minimum, and prevent him from getting any more.

THE COMMISSIONER: Supposing the Legislature said, We are willing to leave that there and we will strike out the provision that the workmen shall not have any other right than under this Act, that would be destructive of the scheme of the act. The main feature of it is to have this grouping. If you had fifty or one hundred employees saying we will not come under this, where would the employer be?

MR. BANCROFT: I do not understand that.

THE COMMISSIONER: Supposing 3 was 2, and a provision that the workmen give up their common law and Employers' Liability rights. Assume that was struck out also, then it would be destructive of the principle of the bill. It would be useless.

MR. BANCROFT: That clause is all-important. We have stated our ideas that it should be upon the earning capacity.

THE COMMISSIONER: I wish you gentlemen would consider the question of whether you think it would be reasonable to make any provision, to make a subsection, to say that the compensation under it should in no case exceed a stated capital sum which the weekly payment would represent. For the sake of illustration, supposing there was a section there stating in no case shall the amount of compensation exceed the capitalization of the payment at whatever rate of interest you choose to say here, exceed \$4,000 or \$5,000 or \$6,000, whichever you choose to fill in.

MR. LAWRENCE: You are referring to the industries grouped as well as the individual?

THE COMMISSIONER: Yes, it is applicable to everybody. In other words a manufacturer might say, "Well, I am not going to take any chances on what you are going to get there, I will have to pay you 60 per cent. of your wages as long as you live. I want to pay a sum, whatever that will represent capitalized, not exceeding whatever it may be."

MR. BANCROFT: The British Act allows them to purchase an annuity.

THE COMMISSIONER: There is a provision in this draft act taken from the British act.

MR. BANCROFT: If they purchase an annuity why should you set seventy-five per cent.? Why should he not get the full value?

THE COMMISSIONER: Well, the only reason I can suggest for that is that it takes into account the possibility of the workman reaching an age when his injury would not have deprived him of anything.

MR. BANCROFT: Depreciation of property?

MR. MACMURCHY: Depreciation of earning power.

THE COMMISSIONER: I suppose the ordinary man after seventy, especially if he is labouring with his hands as an ordinary labourer, would not be fit for very much work. Some are. Now, a provision like this uncontrolled will give him a pension if he lives after that possibly till he is ninety or one hundred. That is the only reason I can suggest for that. Perhaps on further examination I might find something else.

MR. BANCROFT: I think that was the original reason.

MR. McCARTHY: I suppose the accident might hasten his death.

THE COMMISSIONER: Mr. Hinsdale told us that that was one of the safeties of their accident fund. They made provision for that having regard to the impairment, but I do not know that that is sound.

MR. GIBBONS: In Washington in capitalizing those accidents they took the sum of \$4,000. In some cases it shows they run as high as \$10,000 but those that fall short of the \$4,000 make up the difference, and if you say that a man shall only be compensated to such an amount, \$5,000 or \$6,000, then those that fall short and only get \$100, and so on, make the compensation very small, because where the compensation only lasts a year or two offsets those that last for a long term. That is the reason that I do not see why it should be allowed to expire at a certain time just when the defendant would be thrown upon the community. They get the benefit of those who die after a year or a month, as I have pointed out.

THE COMMISSIONER: I do not know whether the statistics are available but I doubt even at common law in five per cent. of the cases they recover even \$5,000.

MR. GIBBONS: The general average in Washington shows it would not exceed \$1,000, and Mr. Wegenast says the insurance companies say that is a small amount, but Mr. Hinsdale's report shows it was ample.

THE COMMISSIONER: He thinks so.

MR. WEGENAST: Of course neither Mr. Hinsdale nor anybody else could show it was ample. Only experience will show that.

THE COMMISSIONER: They can tell to a certainty taking a thousand lives how many deaths they may expect.

MR. WEGENAST: Yes, but not the widows marrying.

THE COMMISSIONER: No, but that is all in your favour.

MR. WEGENAST: But they have reckoned with all that.

THE COMMISSIONER: I should think there would be very soon started a society for the promotion of marriage.

MR. LAWRENCE: I believe on account of the uncertainty of life of any person there should not be any lump sum named. I do not know how you could

do it in order to cover all the cases. It might do for a short life. If one person it to be at a disadvantage over it it is worse than if you benefited a dozen.

THE COMMISSIONER: I do not agree with that. It is the old policy that it is better for ninety-nine guilty persons to escape than that one innocent person should be convicted. It won't stand. You must be careful about this. I might be willing if I were dictator to give you a great deal more than the Legislature might be willing to give. Now, you have to reckon with the Legislature. You have to reckon with a powerful body that is strong financially, politically and every other way, and do not run the risk of proposing a scheme that may strike the public and the members of the Legislature as unreasonable, and have the whole thing thrown out. Wisdom would counsel I think your asking a great deal less as a beginning than you think you would be justly entitled to. That has been my view.

MR. LAWRENCE: We do not want to ask anything less than we are getting now. In some cases they are getting \$14,000 and \$15,000.

THE COMMISSIONER: Those are exceptional cases.

MR. WEGENAST: May I, at the risk of repeating, point out when you take a pension of a certain amount, say, \$20, we find on the best actuarial calculation it will take a certain amount, say \$4,000, to produce that pension. Then the problem narrows down to getting such a monthly amount as will come within a reasonable minimum. Now, the \$20 pension apparently means a capitalized average amount of \$4,000.

THE COMMISSIONER: But it would not be reasonable, Mr. Wegenast, to ask the workmen to give up the rights they have got now for what a learned judge called less than a mess of pottage.

MR. WEGENAST: No, but an average of \$4,000 is scarcely that under existing circumstances. What does the workman get?

THE COMMISSIONER: I do not think you answer the argument Mr. Gibbons put forward, that while it is true in some cases you might have to pay a very large sum, in a great many cases, in most cases, you would pay a great deal less than the sum that has been spoken of.

MR. WEGENAST: But that is all averaged up in the \$4,000. I am assuming the figures to be correct.

THE COMMISSIONER: I think Mr. Gibbons is right when he says that under the Washington Act more than \$4,000 could be got.

MR. GIBBONS: \$9,000 could be got.

MR. BANCROFT: \$10,080 could be got.

MR. WEGENAST: It depends on how long a man lives. If a man lived for sixty years after an injury he would get a tremendous amount, but what I want to point out is that it is a question of fixing a monthly amount which will come within the average. Once you fix your average capitalization at \$4,000 then you cannot put in any more than it will bear.

THE COMMISSIONER: But in the scheme which is proposed to treat every man on the same level is fundamentally wrong.

MR. MACMURCHY: Otherwise he might get more when he is dead than living.

MR. WEGENAST: We are basing a standard on the number of dependants, and so on.

THE COMMISSIONER: There is no trouble about the defendant part of it. Those who represent the workingmen and you are not far apart on that. It is a question where a man lives, that is where the sticker comes. It is simple in the other case. He leaves a widow perhaps and she gets it during widowhood. The defendants only get in money value what they might reasonably have expected from the continuance in life of the person who is dead, but would it not shock the conscience when you come to put this in operation if you find that a man who was only earning \$1 or \$1.50 a day gets as much as a man who was earning \$120 a month.

MR. WEGENAST: Yes, and my draft act provided a clause under which his compensation would be reduced.

THE COMMISSIONER: You are still on the reduction.

MR. BANCROFT: Mr. Wegenast reduces it to zero.

MR. WEGENAST: Surely there can be no question as to the generosity—I do not like the word "generosity"—but the fairness of the Washington schedule.

THE COMMISSIONER: Well, if the hypothesis with which you start is you would bear the risk of all accidents happening in an industry, then is it not most illogical to say that you would fix a flat rate wholly regardless of the injury that is done to the individual?

MR. WEGENAST: I think there is a great deal of force in that argument, but what we are concerned with, and I am afraid, if I may say so with respect, is that this phase has not been considered as it should be—I mean the work which the Commission will be up against when they come to administer this Act. I am speaking of the experience of the Washington Commission.

THE COMMISSIONER: I am told the Washington Commission does it all by correspondence.

MR. WEGENAST: Quite so. A good deal is by correspondence, but imagine the difficulty the Commission would have in determining in each case not only the extent of the injury but the amount of the man's earnings. Now, that question under our proposition would only arise where it was shown it was a boy or a man earning only a very limited amount.

THE COMMISSIONER: The proposition is it would be difficult to ascertain whether you would not be giving the man less than he is entitled to.

MR. WEGENAST: The proposition is that the scheme should be workable and perhaps it is expedient to give way on the principle simply adopted as a theory for the sake of having the thing practically workable.

MR. BANCROFT: We never find it hard to find out what a man is getting.

THE COMMISSIONER: What about this German system you are so wedded to? Has that these limitations?

MR. WEGENAST: There have been limitations from the beginning similar to those of the English Act on the class of persons who come under the Act. That is those who receive over a certain wage do not come under the Act.

THE COMMISSIONER: But having reached there these payments continue during the existence of the disability?

MR. WEGENAST: Yes.

THE COMMISSIONER: If it is permanent disability it lasts for life.

MR. BANCROFT: Yes, up to 66 2-3 per cent. of the wages.

MR. WEGENAST: My memory is not fresh enough to say.

THE COMMISSIONER: I think that is so. That makes quite a difference.

MR. McCARTHY: If you retain sub-section 3 of section 29 I should think there should be some limitations as to the total amount, otherwise the result would be obvious. For instance, for the sake of argument, supposing you put in 50 per cent., and supposing a man's wages amounted to \$100 a month. You would have to figure out his physical condition and his age, and he would figure out if he would be in a better position taking his 50 per cent. under sub-section 3, or the lump sum which would in ten years, say, amount to \$10,000, or whether he would be in a better position if he took the smaller amounts provided for in the previous sub-sections.

THE COMMISSIONER: Would you give a third election, that he could take a lump sum?

MR. McCARTHY: No, I would suggest a provision in sub-section 3 if he did take it that that would never amount to more than a certain fixed sum. Then the employer would know he could never become a greater charge on the concern than that sum.

THE COMMISSIONER: If you had that would it not necessarily have to be a large sum, if you are going to have every employee under the Act? Take the case of the ones you would be most concerned in, such as locomotive engineers. What do they get?

MR. McCARTHY: On big runs it amounts to as much as \$200 a month.

THE COMMISSIONER: Supposing that man was permanently disabled, and fifty per cent. of his wages, \$100 a month capitalized? Supposing he was thirty years old. What would be the probable duration of that man's life? I suppose it would be about 40 years. I do not know what an annuity of \$100 a month for forty years would be.

MR. WEGENAST: It would be \$48,000.

THE COMMISSIONER: You have to get the present value. It would be somewhere 40 L.

between \$20,000 and \$30,000 I suppose. Supposing you had a sum of \$4,000 or \$5,000 for that man, would it not be a hardship?

MR. McCARTHY: I presume it would be, but on the other hand, Mr. Commissioner, you are dealing with a class of men employed by big concerns.

THE COMMISSIONER: You would kill as many or permanently disable as many.

MR. McCARTHY: Sometimes we cannot help it. Then I would suggest why should the workman be the only person to elect? Supposing the employer had the right of election also, then in the case of a man earning less than the fixed amount in the previous sub-sections, the result there would be obvious, the employer would always come in and elect to pay him a percentage of his wages.

THE COMMISSIONER: I suppose that is based upon the principle of a minimum wage, that that is the least a man or woman could live on, \$20 a month for a widow is pretty small.

MR. McCARTHY: That is the difficulty we see in sub-section 3.

MR. WEGENAST: Our proposition would get away from that difficulty.

THE COMMISSIONER: It is the way you get away from it that is the trouble. If you could get away from it without doing injustice all right, but I have not seen a way yet.

MR. WEGENAST: One element is we must get away from the individual liability and average it. In the case of a large railway corporation I suppose it would average it.

THE COMMISSIONER: You need not be troubled about the individual liability. Assume that this covers all.

MR. WEGENAST: Then we are willing to propose this schedule without any limitation. The life of the workmen furnishes a sufficient limitation.

THE COMMISSIONER: All you want to pay under this is these flat rates to a man that is permanently disabled.

MR. WEGENAST: But they average up so high.

THE COMMISSIONER: That does not help the man that is permanently disabled.

MR. WEGENAST: Are there not other features to consider? If that man is a single man and gets \$20 a month he gets a livelihood, he will never starve.

THE COMMISSIONER: I would not like to work for that.

MR. WEGENAST: It is not a matter of earning it.

THE COMMISSIONER: Who could live on \$240?

MR. WEGENAST: In the case of workmen such as is mentioned where the wages are high, under the British act they would not be brought under the Act anyway, and it is not unreasonable to suppose that those men would insure themselves. This is not a life insurance scheme, it is a scheme to keep the workmen from want and dependency.

MR. BANCROFT: Which would not be brought under the English act?

MR. WEGENAST: Not a man getting \$200 a month.

MR. BANCROFT: \$25 a week in the Old Country is \$100 a month. That is pretty nearly as good as \$200. You would have to make a sum of \$2,500 to make it similar to the English act.

MR. WEGENAST: In the West the ordinary day labourer is twice as high. That is considered adequate there.

THE COMMISSIONER: If that is the only kind of argument, we might say he ought to have been satisfied with his common law rights. That is not the question.

MR. GIBBONS: Mr. Wegenast is assuming that every man is going to live to an old age, and he is trying to scare the manufacturers with that proposition. The chances are if a man meets with an accident it shortens his life, and there is where the trouble comes in as I see it. They want to limit the amount payable to a man that is totally disabled to a certain amount. That is in keeping with the current cost plan because the interest on the money paid in is not taken into consideration. In Washington \$4,000 is the minimum set aside and invested at  $5\frac{1}{2}$  per cent. which will carry that up to \$9,000, taking the time it is spread over. Now, they would have to pay \$9,000 in some cases, but with capitalizing the amount and paying it in the interest carries it.

MR. McCARTHY: In fixing the maximum amount under sub-section 3 the proper way would be to see what would be a decent living amount or an amount that a man could live on after he was injured. Some engineers might be earning \$125, and some as high as \$200, and they both might be injured in exactly the same way. Why should the one who is getting \$200 get more than the man who is getting \$125? Their wants are just the same.

THE COMMISSIONER: I suppose each one probably would have adjusted his household to his salary, and it would be pretty hard to make a man who had adjusted it to \$200 a month come down to \$125.

MR. WEGENAST: But the \$200 man might not be married and the other married with a large family.

THE COMMISSIONER: How many employees do you calculate, Mr. Wegenast, there are in the Province that would come under this act if the farming community and the shops are left out?

MR. WEGENAST: We calculated roughly, excluding the farmers and domestic servants, there would be between 400,000 and 450,000 employees. We are including the retail shops. We took some small villages and some towns that we know and made an actual census of them, every shop in the town, and one or two cities, and then took an average for the other cities and towns of the Province. It was the best we could do. We knew pretty accurately in the city of Toronto, and we figured out there were between 400,000 and 450,000 employees, apart from the domestic servants and farm labourers.

THE COMMISSIONER: Do you think it would be at all proper to say to the workmen: This is all you can get under this act and you must take it and give up everything else you are entitled to?

MR. WEGENAST: The average man would not surely be giving up anything. You have expressed yourself on this enquiry that there are very few cases.

THE COMMISSIONER: But there are cases. You certainly would have no right to say to the body of the workmen: We take away your common law right and your right under the Employers' Liability, modified as no doubt the Legislature will modify it, or probably they will, for I have no right to say they will no doubt modify it—you have no right to say we will take it all away and you must take this.

MR. WEGENAST: I think it is a fair way to approach it. Supposing a workman were killed and they brought an action against the Street Railway. What would they recover after all on the basis of the English common law? It appears to be about three years' wages.

THE COMMISSIONER: I do not know that any law will place a new obligation against an existing one against his will. I am speaking about the employee.

MR. WEGENAST: What about the employer? You are forcing him under it.

THE COMMISSIONER: Something he ought to have been under long ago.

MR. BANCROFT: The Toronto Railway for some time have not only paid compensation but they have paid full compensation to their employees, and they will be giving up a great deal of that to come under this act.

MR. WEGENAST: I am speaking of a man going home from work being run over by a street car.

THE COMMISSIONER: If he is killed by a farmer and you have a farmer jury he will not get much.

MR. WEGENAST: The English law had a rough and ready standard which, I understand, is his salary for three years, and it is absolutely unthinkable that a man should receive instead of that common law scale of damages a scale based on thirty or forty years.

THE COMMISSIONER: That is a mile or two behind the age. Everybody admits that. It is the basis of this whole discussion, that the present law is an inadequate provision for the workman and ought to be changed.

MR. WEGENAST: That carried you no further—

THE COMMISSIONER: Yes, because you are speaking of the present law.

MR. WEGENAST: I am speaking of what a life is worth so far as it can be valued.

THE COMMISSIONER: There is no trouble about a life. We have no difficulties except handling the question about the living man.

MR. BANCROFT: He says the question is what a life is worth. Surely a workman has a right to say what his life is worth. His earning capacity will determine what his life is worth from an economic standpoint.

MR. WEGENAST: The common law for the last fifty years has had a rough and ready standard. From the time of King Alfred there has been a sort of schedule of commutation for a human life.

MR. BANCROFT: Mr. Wegenast is going to get us into an awful hole. He is going back to King Alfred. Professor Thorold Rogers says about six hundred years ago the amount of time that a man had to work in Great Britain to make a living was about twelve weeks in the year. He could earn enough to keep him and his family for the whole year in that time. A man cannot do that to-day. The whole industrial world has changed.

MR. GIBBONS: Mr. Wegenast does not want to bring to the front that the man gets the amount awarded him in a lump sum, and he can invest that at 6 per cent. If it is \$1,500 he can draw his \$90 interest. Now, if he lives thirty years you can figure out the amount of money it brings in. In the other case he only gets so much a month.

MR. BANCROFT: On the minimum basis the value of a man's life or a woman's life can only be determined as regards workmen's compensation by the earning capacity of the individual. That is the only economic basis.

THE COMMISSIONER: There is no trouble, except in some small details, about death.

MR. GIBBONS: The point I want to make is that that interest is retained by the Commission and used for the benefit of those who are paying the compensation instead of the employee getting the interest in excess.

THE COMMISSIONER: But you are losing sight of the fact that these reserves would be created over and above the compensation, and those reserves amount to a considerable sum. I think they are a quarter of a million in Washington. That comes out of the employer.

MR. GIBBONS: If he had to pay a lump sum under the common law it would come out of him, and the employee would receive the benefit, and in this case it goes to the fund. Then in the case where a man dies the fund is not impaired to any extent at all.

MR. McCARTHY: I suppose sub-section 3 would not prevent the agreement spoken of before between the employer and the workman. Both the C. P. R. and the Grand Trunk give these pensions voluntarily. Supposing a man was permanently disabled and he had his option under sub-section 3 or the preceding sub-section, and he elects to take a percentage of his wages, there would be nothing to prevent. Of course naturally the company will say if you do that there will be no pension.

THE COMMISSIONER: I think the idea is not to allow any agreement unless the Board approves of it. There is a section which is in the British act as well, section 36. "In fixing the amount of a weekly payment regard shall be had to any payment, allowance or benefit which the workman may receive from his employer during the period of his incapacity and in case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or

is able to earn, in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances appears just."

MR. McCARTHY: Would the Board have any right to interfere with the workman's right to claim that percentage?

THE COMMISSIONER: Supposing he was entitled to \$40 a month and under the pension he was getting \$20, the \$20 would be deducted.

MR. CARTER: Has the Board power to vary these amounts?

THE COMMISSIONER: No. Section 36 means that must be deducted from what he otherwise would be entitled to get. Supposing the employer had allowed him \$20 a month, that would be deducted.

MR. LAWRENCE: You do not come on the fund until you get to a certain age.

MR. MACMURCHY: I do not see the connection between section 36 and this act, because one speaks of a monthly payment and the other a weekly payment.

THE COMMISSIONER: I changed that in a good many places to "weekly or other periodical payment." You see if a man elected to have his monthly payment—

MR. CARTER: Does section 29 not take it out of the Board's hands?

THE COMMISSIONER: The statute itself says there it shall be deducted from the compensation. The Board does not do it. The Board will settle if there is a dispute as to the amount.

MR. McCARTHY: I would suggest that some limitation be placed on sub-section 3, simply for this reason, even if a man is a large wage earner the accident may happen through his fault or the fault of the employer or the joint fault. If an accident were to happen to any of us to-morrow we certainly would have to reduce our scale of living. It is quite true the man who is making \$200 a month is living on a higher scale, but have we not to face that in the case of accident, and if he is given a fair amount to live on would justice not be done?

THE COMMISSIONER: Does that not overlook this consideration. Take the case of an injured man who would be entitled to recover. He does not recover all he would get. He gets only 50 per cent. or 60 per cent., or whatever it is. If you were going to give him his full wages it would be different, but here you only give him a percentage of his wages. Supposing there was a liability at common law and the man was permanently incapacitated, practically what he would get would be a capital sum equal to an annuity based upon his earnings for the remainder of his life.

MR. McCARTHY: You have to take into consideration the fact that he might die. I mean a jury assessing the amount would be instructed in that way.

THE COMMISSIONER: This is giving him only a percentage of that during his life. I do not often discuss it upon the theory of employers' liability that that is the proper measure of the liability of the employer, because I should hope I am not wrong in thinking that the Legislature will modify the common law in the direction I have indicated.

MR. McCARTHY: I would prefer to see this act cover everything if some satisfactory solution could be arrived at. It is far better than striking out sub-section 3 and letting the workmen go back to their common law remedies. It would be far better if we could leave everything under this act.

THE COMMISSIONER: Would there be any use of you gentlemen representing the workmen's side of it and you other gentlemen getting together to see if you could agree on anything to get rid of this difficulty?

MR. McCARTHY: You know if it is left to a jury it would be more satisfactory from the railways' standpoint to let them go back to the common law, because as a rule a jury does not allow an extravagant amount.

THE COMMISSIONER: The great difficulty about that is that one jury will allow one sum and another jury another sum; that is unfair.

MR. McCARTHY: As a rule I have never known juries to allow an extravagant amount even where there has been total disability.

THE COMMISSIONER: It has given as high as \$13,000.

MR. MACMURCHY: That was a very unusual accident.

MR. McCARTHY: I think that was a case where a man had an arm and a leg off, and they allowed him \$6,000.

THE COMMISSIONER: That was a compromise, I think.

MR. BEST: They allowed a fireman \$10,000 in Manitoba.

MR. LAWRENCE: The case I mentioned a while ago was the case of an engineer. It was not the company that he was working for paid the claim. It was where the Michigan Central crossed the Père Marquette, and the man was working for the Père Marquette Company and he threw the derail in front of the train and they went in the ditch, and this engineer was scalded very badly. It was two years before the settlement was made. It did not go to trial. They paid him \$8,000 and some hundreds, and costs.

THE COMMISSIONER: That was a large amount.

MR. LAWRENCE: I think the man was out of service for three years or so, better, and he is to-day running a locomotive on the Michigan Central.

THE COMMISSIONER: He got too much, as it turned out.

MR. LAWRENCE: They admitted he should have it, and he got it in a short time. The man was about 42 or 43 years of age, and if that \$8,000 was given to him that would have kept him during his natural life, and at the end of his life probably the \$8,000 would still be there for his dependants.

THE COMMISSIONER: A strange thing with juries is, they will give a widow sometimes for a fatal accident more than he would have made in twenty or thirty years hard-working. They will give her the income of a farm or two farms.

MR. LAWRENCE: They take into consideration the suffering and inconvenience as well as the earning capacity.

THE COMMISSIONER: Now, I would suggest to you gentlemen who represent the workingmen to see if you cannot meet with Mr. MacMurchy and see if you cannot agree on some maximum capital sum and then we can start with that. You cannot get perfection all at once, and if it is found that it works injustice the Legislature will be prompt, I have no doubt, to make a remedy.

MR. GIBBONS: They get the benefit of the minimum and then they want to fix the maximum.

MR. MACMURCHY: You have a minimum in the preceding section.

MR. GIBBONS: If a man dies and there are no dependants there is no compensation.

The workmen take this view. You have had all the evidence and you have taken into consideration the acts of the other countries, and they think you will do justice to all parties.

THE COMMISSIONER: But I am not the one you have to reckon with. I am only a step in the enquiry, and if you have a bill that can be criticized adversely it may put this thing back for years. I would strongly counsel, if it is possible, to try and come to terms with your adversary.

MR. GIBBONS: If you make a maximum that may run up to \$10,000 it will scare the legislature, for they won't look at the minimum at all, which may be only \$20.

THE COMMISSIONER: I would think if \$6,000 or \$5,000 even should be the maximum the ordinary member would say that is a very liberal thing. I think that is what you would find from the majority, as far as I am able to judge them.

MR. BANCROFT: Taking the percentage of wages to be what?

THE COMMISSIONER: Whatever it is. Supposing it is 50 per cent., whatever capital sum that would be equal to.

MR. BANCROFT: In the great majority of cases it might not exceed a certain sum, and if that is so why state the sum?

THE COMMISSIONER: Because in those cases it is said it is an unreasonable tax upon the employer.

MR. GIBBONS: But the average will not be.

THE COMMISSIONER: I do not know how that would work out in that aspect of the case.

MR. GIBBONS: If the State of Washington has made a calculation of \$4,000 that may be about right. I do not believe it will amount to that, taking everything into consideration, if it is on the capital value.

THE COMMISSIONER: It is much harder to limit a privilege once granted than it is to add something.

MR. McCARTHY: \$6,000 is the amount I had in my mind.

THE COMMISSIONER: I should think that amount of \$10,000 that the man got in

Winnipeg would be extravagant. What is the compensation in most countries for the loss of a leg?

MR. WEGENAST: In Washington it is \$1,500.

THE COMMISSIONER: That is a cheap leg.

The objection I have to taking a man's body to pieces is it makes no difference how important it is to a man to have his leg. The loss of a leg to one man may be ten times as much disadvantage as to another man.

MR. WEGENAST: In Massachusetts it is 50 per cent. of wages for one hundred and seventy-five weeks, half wages for three and a half years.

THE COMMISSIONER: I think that is most illogical.

MR. GIBBONS: He gets it in a lump sum, and if he dies the group gets it.

MR. WEGENAST: Our proposition was the \$1,500 should be paid to the man in case of what we call a major injury, and he could invest it, and if he was the kind of man to drink it up the Board could keep it.

THE COMMISSIONER: You did not give him for total disability more than \$1,500, did you?

MR. WEGENAST: Yes, as high as \$40 a month, if he is absolutely helpless, and that may of course run away up.

THE COMMISSIONER: I may read a little passage here from what Mr. Emmet, the Superintendent of the Insurance Department of New York, says, dealing with a bill something like this, only that it is an optional bill. This is his answer:

"In the first place the Senate Committee bill provides for the creation of an industrial compensation Poard, with judicial power to hear and determine all cases in dispute, and with authority to approve every agreement of settlement entered into between the employer and his employee. The act provides that no agreement for settlement shall be binding until the same is filed in the office of the industrial compensation board and approved by it, and that the payment of any sum less than that required under the provisions of the act shall not be a discharge of the employer's liability for the compensation. It is difficult to imagine that it will be possible for any insurance company or for any employer to deal unjustly with injured employees or their dependants under such conditions.

"Your attention is also directed to an act passed by the Legislature this year and approved by the Governor, which provides that a certificate of authority granted by the Superinfendent of Insurance to a foreign insurance corporation shall not remain in force for a longer period than one year, and that 'whenever in the jndgment of the Superintendent of Insurance it will best promote the interests of the people of this State he may revoke the certificate of authority of the foreign corporation to do business in this State prior to its expiration.' This act places an effective weapon in the hands of the Superintendent of Insurance of this State: for at any time that the Insurance Department finds that a foreign corporation which is licensed to transact business in this State, does not accord proper treatment to the injured employees, or does not conform with the provisions of the compensation act as introduced by your committee, it will be the duty

of the Department to revoke the certificate of authority. It may be asserted that the Superintendent of Insurance temporarily charged with the administration of the law will not exercise the right to revoke licenses of corporations, if he should be inclined to be either too friendly to the insurance interests or too indifferent to the interests of the people. A sufficient answer to that is that there is adequate power vested by the people in the Governor and in the legislature of this State to cause the removal of an incompetent or indifferent official charged with the administration of the insurance law.

" It should be remembered that the industrial compensation board, which will probably have representatives of employers and employees as constituted under your proposed act, will be in close touch with injured employees, and will be in a position to judge the actions of insurance companies in their treatment of employees, and will bring to the attention of the Superintendent of Insurance such facts as will require peremptory action on his part when necessary.

" As to domestic companies incorporated under our laws and domiciled within this State, the insurance department should have no difficulty in dealing effectively with them in enforcing just treatment of their assured and injured workmen who have a right to enforce their claims under the insurance contracts. There is a bill now pending in the legislature which requires frequent examinations of such companies. Through such examinations, the department is able to observe their treatment of compensation claims, and if found derelict in their duty, publicity is the strongest weapon in the hands of this department. Adverse criticism in official reports published by this department is an effective remedy in restraining unlawful or unethical settlements with injured employees. In addition thereto, it must be remembered that, if the department should find, upon an examination, that such domestic corporations are transacting business in violation of law or in a manner which appears to be hazardous to policy-holders, creditors or the public, a further remedy is afforded by section 63 of the insurance law, which permits the liquidation of such insurance corporations upon application to the court.

" The history of this department shows that in the past it has not hesitated to apply for orders of liquidation in cases where it was justified in doing so under the above section, and it will not hesitate to make such application in the future when the circumstances demand it.

" So much for the powers which will, if this bill be passed, rest in the State to prevent injustice to workingmen if any such should be attempted by the companies which now carry on the business of employers' liability insurance in New York State, and so much for the manner in which, in case of need, these powers will be exercised. But beyond this, no one who is acquainted with the present measure has any doubt whatsoever that its recognition of insurance by mutual employers' associations, and insurance by means of a State administered mutual fund as alternatives to insurance by stock companies, will place the stock companies in a position where, unless they can demonstrate their claims and make good their promises of being able to give more efficient service than is provided by the other alternative methods, they will inevitably have to retire from the field, in the face of the competition which these alternative methods ensure. The

fact that in other States where these alternative systems of insurance have been pitted against each other, casualty companies have given no ground for criticism in their attitude toward the prompt payment of claims indicates, I should think, pretty plainly what will happen here in this respect in the event of the passage of your bill." (Letter to Senator Ramsperger, dated Albany, N.Y., March 14, 1913.)

MR. WEGENAST: Might I suggest, Mr. Commissioner, that you look over an article in the Survey, I think the second last number, on the situation in New York State? I will try to send it to you. I would submit we here are two or three years ahead of the people in New York in the consideration of this subject.

THE COMMISSIONER: That depends on how far we go in this bill.

MR. WEGENAST: We have no quarrel with what you state the principle of the bill to be.

MR. MACMURCHY: We are quite willing, speaking for my learned friend, Mr. McCarthy, and myself, to meet with the representatives of the railwaymen to see if we cannot reach a figure.

THE COMMISSIONER: It will do no harm even if you do not agree.

MR. McCARTHY: The amount I mentioned simply came out of my own head. I have had no opportunity of discussing it with the company.

MR. LAWRENCE: I would not think meeting together unless all the classes of labour were represented would do much good. It is something that affects them all.

THE COMMISSIONER: Of course there will be plenty of time, probably, before this bill is before the House for discussion if you desire to have it.

MR. McCARTHY: There are a lot of men in the railway whose wages are graded down to a very much lower amount. We have to provide a maximum, as far as I can see.

MR. WEGENAST: We entirely disagree with going over the schedule. I think my learned friends have still something to learn in regard to the real principle on which that schedule is based.

THE COMMISSIONER: This is your irreducible maximum, is it?

MR. WEGENAST: Yes, and I should have thought we would not have been called upon to answer for the sins of others.

THE COMMISSIONER: If the Lord does not call on you to answer for more than that I do not think you will have many sins to answer for.

What I shall probably do if I cannot satisfy myself in regard to it is, I will draw a clause to meet what Mr. McCarthy has suggested and submit it with the bill, and leave the legislature to fill in the amount if they decide it is a proper provision.

MR. WEGENAST: I should object to Mr. McCarthy's proposition. It is entirely in our favour but it is inconsistent with the principle of the schedules. Of course that is not nearly so bad as taking these schedules from their context and using them as a basis for individual liability.

THE COMMISSIONER: You will get back to that individual liability that you have nothing to do with at all except as a citizen.

MR. WEGENAST: Then I speak as a citizen.

THE COMMISSIONER: When a man complains about the other fellow being hurt I lose confidence in him. What are you making so much disturbance over?

MR. WEGENAST: It would be easier to discuss it if the blanks were filled in.

MR. BANCROFT: There is one thing I think that was overlooked. In the clause regarding compensation for permanent disability the payments are for life. Now, in the suggestion of Mr. McCarthy it makes it a maximum which does not mean life. It makes it a different proposition.

THE COMMISSIONER: Yes, it would mean practically that if a man's wages exceeded the amount capitalized with the interest upon it, whenever that fund was exhausted he would have no allowance.

MR. BANCROFT: In some cases it will only mean ten years' payment to the workman. He mentioned a sum of \$6,000. There are men getting \$200, and supposing it was only fifty per cent., that would be \$100 a month, and that would reduce it to about eight years. Then does it mean the sum will have to be deposited with the Board?

THE COMMISSIONER: That depends on whether the Board requires it. In the case of those contributing to the accident fund the Board has a right to levy whatever it thinks is necessary to keep the fund sufficient. In the case of the individual liability the individual may be required to insure or pay up the amount.

MR. BANCROFT: There is no necessity for a maximum if the Board is going to assess the employer or anybody else to keep up the payments for life.

THE COMMISSIONER: That would not be it at all.

MR. BANCROFT: We think Mr. McCarthy's proposition strikes a blow at the whole thing. We do not want a flat payment for the pension so much, but it strikes at the root of the whole matter. What is the use of throwing a man on the public when he gets old?

THE COMMISSIONER: If he got the money he could buy a small annuity for his life. Supposing a man got \$6,000 at the age of thirty-five or forty, instead of eating that up or its being eaten up he can go to an insurance company and say: "I want to buy an annuity for my life." It would give him less, of course.

MR. LAWRENCE: Would he get the \$6,000 in a lump sum?

THE COMMISSIONER: I should think there would be nothing inconsistent in the principle of the act in allowing him to substitute an annuity that the capital sum would purchase from an insurance company.

MR. MACMURCHY: The \$6,000 would be his.

THE COMMISSIONER: Not that he could take and spend. It would be set apart for him.

MR. MACMURCHY: It would be his property, invested for his benefit.

MR. BANCROFT: You might as well leave the clause as it is and make it for his life.

THE COMMISSIONER: It would be a less payment.

MR. GIBBONS: As I understand Mr. McCarthy's proposition the amount which that man would receive would be limited to \$6,000. There is a vast difference.

THE COMMISSIONER: Yes. It would be whenever that amount would be exhausted.

MR. BANCROFT: It would be eight years in one case and ten in another.

MR. GIBBONS: The small payment of probably only \$500 in the case of a man being totally disabled would off-set the one that might run up to \$9,000. It is the general average I think the Legislature should consider, not one case that might run into a large amount.

THE COMMISSIONER: If you went to an insurance company to insure four hundred and fifty workmen, they would take the probable duration of the life of each one of them and charge you accordingly.

MR. GIBBONS: They would average the whole lot.

THE COMMISSIONER: They would take from you what it would cost to insure each one individually.

MR. LAWRENCE: There are a number of men outside, machinists, firemen, and conductors, who draw from \$100 a month up. Then in that case it would be fifty per cent. of their monthly earnings, and in this case it would only last ten years. Lots of these men are young men and it seems to me that would kill the effect of the whole bill, because the bill as I understand it is intended to provide compensation for a man's natural life after he is injured.

MR. McCARTHY: His natural working life.

MR. LAWRENCE: No, it is to provide for his natural life so he will not be dependent upon charity for his living.

MR. McCARTHY: He might meet with no accident and yet be on the charity of the public.

THE COMMISSIONER: A modification of Mr. McCarthy's suggestion might be adopted. If you put that sum of \$6,000 with the interest that would be earned upon it after deducting the payments that were made, so that he would get the benefit of the interest from it it might be better. You could give him credit for the interest and charge him with the payments.

MR. LAWRENCE: Till the time the principal and interest were exhausted.

THE COMMISSIONER: You might think of that, Mr. McCarthy.

MR. McCARTHY: Of course in mentioning the sum I was thinking of the fact that most men who earn big wages of \$200 or \$250 a month usually carry accident insurance, where men who earn less do not carry insurance, and while it is quite true that that would not be equal to 50 per cent. of the

high wage for the rest of the man's life, still it forms an adequate compensation, or something to work on as a basis for discussion between us as to what the maximum should be if sub-section 3 is allowed to remain there.

THE COMMISSIONER: I suppose if a scheme of this kind were adopted they would devise a scheme by which they would insure.

MR. McCARTHY: They will have to if they want to live.

THE COMMISSIONER: Supposing it was unlimited as it is in the bill, and the employer thought it was too large a burden, he might insure against everything beyond the \$4,000, or whatever he thought was a proper sum.

MR. LAWRENCE: One of these men I mentioned might get injured when he was twenty-one years of age, or twenty-five, and it would be quite a serious thing for him. There was a young man last night, twenty-three years of age, running as a conductor, a married man, and if he should get injured he probably might live for thirty years. He is making \$100 a month. If he got only fifty per cent. of his wages until he got \$6,000 it is altogether likely he would be a charge upon the public.

MR. WEGENAST: Would it not be enough if he got the schedule of benefits laid down in our draft act, \$20 to \$35, or \$40 a month?

THE COMMISSIONER: A man who is earning \$200 a month? He is a man who up to the date you have disabled him has been getting perhaps \$200 a month. He cannot earn a dollar after that, and you want him to be content with \$20 a month?

MR. WEGENAST: Look at what it amounts to.

THE COMMISSIONER: You give him one tenth of what he was earning.

MR. WEGENAST: The money has to come from somewhere.

THE COMMISSIONER: It seems to me all this comes out of the general public except in a very few cases.

MR. GIBBONS: Supposing the amount is limited, after he has drawn for eight years then he doesn't draw anything more. If he lives ten years more what is he going to live on?

MR. McCARTHY: I have never known a case where a man was absolutely disabled, where he could not earn something, and Mr. MacMurchy says he only knows of one in his experience.

MR. LAWRENCE: Then why hang out for this maximum amount?

MR. McCARTHY: Perhaps he would not try.

MR. LAWRENCE: According to the chairman of the Ohio Commission 44 per cent. of the accidents are due to the risk of the business.

THE COMMISSIONER: How many are due to the carelessness of the employee?

MR. LAWRENCE: 28.

THE COMMISSIONER: That is a pretty large percentage. more than a quarter.

MR. LAWRENCE: 10 per cent. more than is due to the employer.

THE COMMISSIONER: Then in that case the employee does not recover at present.

MR. LAWRENCE: 9.4 per cent. are due to the combined negligence.

THE COMMISSIONER: It would be 37 per cent. in which the workmen would recover at common law.

MR. LAWRENCE: Not necessarily so because in a number of accidents the workmen are not negligent at all.

THE COMMISSIONER: Taking your figures that would mean probably 37 per cent. would be compensated.

MR. LAWRENCE: Probably 44 per cent. under the common law.

THE COMMISSIONER: Oh no. No workman recovers at all where he is negligent.

MR. LAWRENCE: Some of those recover. It probably is not the fault of both, and the one that is not at fault may be the one that got injured, and he can recover.

THE COMMISSIONER: That is included in these figures. It means the employees that are injured; 18 per cent. are due to the employer, and 44 are incident to the business.

MR. LAWRENCE: I understand a man gets compensation if he is not negligent himself.

THE COMMISSIONER: No, only in certain limited cases. At common law if it is the negligence of a fellow-servant he gets nothing. In workmen's compensation it is somebody entrusted with authority, like a foreman. The law is perfectly plain. Of course the railways stand upon a different footing.

MR. LAWRENCE: That is the class I am speaking of.

THE COMMISSIONER: There is no doubt about that.

## APPENDIX II.

### MR. P. T. SHERMAN'S BRIEF.

I was formerly Commissioner of Labour and ex-officio Chief Factory Inspector of the State of New York, and approach this subject from the standpoint of the factory inspector and with particular emphasis upon accident prevention and better industrial relations, as well as from the standpoint of the lawyer and economist.

The existing law of negligence (technically called the law of tort) is as between employers and their workmen generally unsatisfactory. It engenders class feelings of mutual hostility. It is slow, uncertain, and wastefully expensive in operation. It is unjust: (1) Because its rule of assumption of risks is wrong. To the extent that the unavoidable risks of the employment are the causes of injuries, the business of the employer and not the injured workman should bear the loss therefrom. (2) Because the tort law does not carry out its theories in practice. Wrongful claims as often as not prevail; and rightful claims as often as not are defeated. In fact, the very idea that the responsibility for the causation of each of the mass of work accidents occurring can be correctly ascertained is absurd; and the further idea that responsibility can be ascertained and abstract justice done in each case by the slow and blundering wheels of judicial machinery is doubly absurd.

Therefore to do anything like justice in practice it is necessary to resort to some simple rule of *average* justice, and to substitute it for the law of tort as between employers and their workmen. Such a rule is the compensation law, which holds employers responsible for half of the accidental work injuries in the mass, or for half the wage loss from each injury in the particular, and accordingly makes each employer liable for half the damages in the way of wage loss from every ordinary work accident to his workmen. That rule, with various modifications, has been adopted pretty generally throughout the civilized world (America, however, is as yet only in a stage of transition to it); and it has been found in actual practice to be more *just* both to employers and to workmen than the older law which it has replaced.

But there is another reason besides justice for the change. It is the prevailing opinion of European industrial experts that to relegate liability for injuries caused by employers' real torts to the *penal* law, and to so frame the *civil* law as to hold each employer and his workmen jointly and equally responsible for all ordinary work accidents in the mass, and consequently to make the employer pay half the wage loss and each injured workman suffer half the wage loss from every ordinary work accident, certainly and without chance of escape by the gamble of a law suit, is the best known regulation to reduce accidents in organized employments.

To be most effective for accident prevention the scale of compensation should follow the theory just stated, and be approximately 50 per cent. of the wage loss, which should be proportionately increased where workmen contribute to the insurance or where limitations on the pension payments are short or low. Some of the European laws give low flat rates of compensation without relation to wages; but they are more properly to be regarded as measures for poor relief; and admittedly they have no relation to justice and no effect in the way of accident prevention. Others of those laws combine the two purposes.

The compensation law, therefore, is both a measure of average private justice (modified from abstract and exact justice so as to be prompt, certain and

economic in application), and a public regulation for accident prevention. Such compensation laws as do not fulfill both these purposes (e.g., the laws of Norway, Washington and Ohio) are defective and in some respects very harmful.

Now as to insurance. Insurance is no more an essential feature of the compensation law than it is of the tort law. Where insurance is required in a compensation law, that requirement is simply an ancillary method of effectuating the purpose of the liability thereby imposed upon the employer.

But there is a specific danger under the compensation law that insurance may thwart the purpose of that law as a regulation for accident prevention. If the employer with a high risk is enabled to insure his liability at the same rate as a competitor with a distinctly lower risk; or if an employer with a low risk is compelled to pay for his insurance the same rate as a competitor with a distinctly higher risk, the effect of the compensation liability, as an incentive to the employer to study out methods and to incur expense to decrease his risks in order to cut down his rate for insurance will be defeated. The cost of his insurance is the civil penalty each employer pays for maintaining the hazards of his business; and to be effective it must be closely proportionate to those hazards.

Therefore insurance rates must be differentiated fairly according to comparative risks, as determined (1) by experience, and (2) by physical and moral conditions. Such conditions can be ascertained only by expert inspection. Therefore such inspection is a requisite to proper rate making; and in turn the provision of such inspection service is a most beneficial attribute of proper insurance. Insurance schemes like those of Norway and Ohio which eliminate inspection are, therefore, seriously defective.

Finally, insurance must be sound. Employers should not pay for insurance and then have it happen either that they are subjected to further and unexpected charges, or that their injured workmen do not receive their compensation from the insurance.

Therefore, we have two problems which are logically absolutely distinct. The first problem is to frame a just and beneficial compensation law. The second problem is to determine how far and how insurance should be required in order to effectuate the purposes of the compensation law. Great care must be exercised not to confuse these two problems; otherwise you are apt to sacrifice much of the good to be derived from a proper compensation law by muddling it in a harmful experiment in social insurance.

Whether insurance should be compulsory or optional under the compensation law, is, in my opinion, a question that should be determined by experience. It should be made compulsory only if and where reasonably necessary in order to assure to injured workmen the payment of their compensation. In no event, therefore, should those concerns that are amply able to carry their own insurance be required to buy insurance or to contribute to a state scheme, for that would be pure economic waste.

In my opinion the best system of insurance must develop through competition and experience.

Where subjected to the test of competition (in The Netherlands, Italy, Sweden, France, and New Zealand) state managed insurance has demonstrated its inferiority to stock company and voluntary mutual insurance. It may have a use, but it certainly is not a factor in accident prevention, and it is not economic.

Monopolistic state insurance eliminates the expenses of competition and effects a small further saving through the free use in administration of established govern-

mental machinery. This is the sole merit of the Norwegian law. But against that form of insurance law are the following objections:

(1) Although the conditions in Norway are most favorable, state insurance there has not actually resulted in particularly cheap insurance. The Norwegian state office started off with rates unduly low. A deficiency was soon incurred and a row resulted. Since then the rates have been steadily jacked up, until now they are comparatively as high on the average as the English rates (although the English rates cover all the cost, whereas the Norwegian rates do not cover the expenses of administration which are paid out of general taxation), and for the better classes of risks the Norwegian rates are much higher than the English.

(2) The Norwegian system has resulted in complete official indifference to a proper discrimination in rates according to hazards. All experts agree that the effect of such a practice on the accident rate is bad, and in an industrial country would be serious. The Norwegian officials refuse to discriminate in rates between different establishments on the ground that if they did they would be subject to accusations of and to appeals for favoritism. And they could not discriminate properly without such an addition to their force as would make the expense of their scheme unbearable.

(3) The Norwegian system places employers at the mercy of political officials in the matter of assignment to trade classes, and consequently as to the rate at which they shall be taxed. Since the variations in rates between different classes are most material, this is a power which if abused would be seriously harmful and oppressive.

(4) The allowance of claims and the adjustment of awards is absolutely in the discretion of political officers. Employers have nothing to say about the management of the fund or the allowance of claims against it. They merely foot the bills. European experience indicates that this practice results in extreme laxity in precautions against fraud and exaggerations, and in a tendency on the part of officials to misuse their powers to distribute political favors or charitable relief at employers' expense.

Without going further into details, this method of insurance may be fairly described as a crude scheme to avoid the difficulties of adjusting and securing private rights and liabilities between employers and employees by turning the whole matter of compensation over to a political bureau with power to tax employers and to distribute the proceeds among employees about as it pleases. If this be good practice in regard to compensation, why should it not be good practice in regard to life and fire insurance, and in regard to all other private rights and liabilities?

The Washington law is somewhat like the Norwegian law, except that the state does not itself guarantee the payment of the compensation, but workmen must look to the funds. All employers must insure with the State Board. Employers are divided into trade classes, and those in each class are taxed for a special fund out of which compensation is to be paid to all workmen injured in that trade. If a class fund is exhausted the employers in that trade class are subject to assessment to make good the deficiency. The rates for each class are fixed by statute, but the officials are empowered to increase the rate for unusually dangerous conditions, but not to reduce rates for unusually good conditions or for improvements. And no provision is made for inspection. This law is grossly unjust to employers and particularly to the better classes of employers—and for this reason:

The compensation law in its simple form—as in England and in the majority of foreign countries—makes the employer an *insurer* of his workmen in limited

amounts. That liability subjects the average employer to a serious peril of a ruinous loss without fault, unless at a reasonable rate he can reinsure and distribute his risk. Now, what the Washington law does is to make each employer not only an insurer of his own workmen, but also an insurer of all the workmen of all his competitors in the same trade, thus multiplying his risk, and it then taxes him a heavy premium as if for insurance, but does not insure him, does not indemnify him, does not distribute his risk. Take the case of the Dupont Powder Co., which is in the same class with two smaller concerns, and in the first year of the Washington law was taxed 10 per cent. on its pay-roll, or \$14,400, as against some \$2,400 from its own competitors together. One of those other concerns blew up and killed eight persons. The amount of the liability to their dependents, so far as I can find out, is not yet settled, but it might have been \$32,000. And whatever the excess of that liability over the sum of the original 10 per cent. investments—be it \$15,200 or less—85 per cent. of it is to be assessed back upon the Dupont Company. So the Dupont Company for its \$14,400 assessment did not procure indemnity, but remained liable for 85 per cent. of any deficiency in compensation that might become due by the fund to all workmen in powder mills in the State of Washington. To procure indemnity such as the English employer gets when he buys insurance the Dupont Company must still go out into the open market and buy real insurance, under the same conditions as—but for a much larger risk, and therefor at a higher cost than—before the adoption of this fanciful scheme. Whatever may be said in criticism of the state insurance schemes of Europe, at least none of them are as bad as this.

The Ohio law is very similar to the Washington law. The State guarantees nothing, but there is only one fund for all injuries.

Both the Washington and the Ohio laws have been made attractive to employers by their exceptionally low rates (although, through lack of discrimination, their rates are grossly excessive in some cases). But those are merely initial experimental rates for the first year, and cannot be maintained. Neither the Ohio nor the Washington Board has published a report, in the form and details required of private insurance companies, nor in sufficient detail to lead to any deductions—except the deduction that such public reports and statements as are issued are indicative of mismanagement. Under neither law has there been sufficient experience to justify any conclusions as to the sufficiency of rates or the cost of the scheme. Unduly low rates at first, resulting in deficiencies and in unduly high rates later, have been the common experience with foreign state insurance offices; and the Washington and Ohio Boards are simply following in the path of those unsuccessful foreign essays in the way of cheap rates. Insurance simply cannot be sold below cost without laying up trouble and loss for the future.

In Germany, Austria, Hungary, and Luxemburg the state does not manage the insurance, but absolutely prescribes its form, by requiring employers to join certain mutual insurance associations. In Germany the industrial associations are formed on trade lines. In Austria they are organized territorially. Of these two forms the German is undoubtedly far preferable.

The British compensation law makes the employer directly liable for compensation to his injured workmen, and permits him to insure it or not as he chooses—and how he chooses. The laws of Russia, Spain and Denmark are similar. Another common type of compensation law simply goes one step further than the English law, and requires the employer to insure the payment of the compensation in some one of several specified ways—stock companies, mutual associations, joint benefit funds and state insurance offices being the prevailing alterna-

tives. The distinctive feature of these laws is that there is no monopoly of insurance, but each employer is free to choose insurance as he may deem best, and is not by law placed at the mercy of a political board or of a badly run mutual association. He may bargain for rates among competing insurers, may change his insurance where it is unsatisfactory, can secure a reduced rate in return for improvements, may join a mutual association if conditions suit him, by agreement with his workmen may establish a mutual benefit scheme of insurance, or (where his risks are sufficiently distributed or where he furnishes security) may carry his own insurance. Under this system, in Great Britain, for example, there are no political abuses; malingering, the bane of state insurance, is kept in check; there has developed a system of rate differentiation based upon expert inspections that has been a powerful factor in reducing the hazards of industry; and insurance rates are relatively as low as anywhere else, in spite of the fact that in Germany and the state insurance countries the state pays a large share of the expenses of administering the insurance.

In my opinion, when it comes to adapt a compensation law to conditions in this country, the choice of a model lies between some one of these last described types of law and the German law. Studying that choice in detail my opinion is overwhelmingly and emphatically in favor of the English type. I will now explain these two systems more in detail and my reasons for preferring the English system. But before doing so I would like to premise that the sentiment on the part of some employers in this country in favour of the German law seems not to be based on any of its merits, but to be induced rather by its principal demerit—namely, the practice of conducting insurance on the deferred assessment basis. In my opinion it would be a great mistake to think of following the German precedent in that respect. No other country where insurance is required permits that method. It was allowed in Germany only as a political concession to the employers of the last generation, by which they were permitted to shift a large part of the cost of compensating their workmen upon a later generation. It has involved German industries in a dangerous economic experiment that has not yet passed its crucial test. For us to think of following the German law in that detail would be, in my opinion, foolhardy.

I will now present the arguments in favor of the choice of the British system as the model for us to follow.

The English law is comparatively simple and its operations are readily comprehended. The German law, on the contrary, is extremely complex, and it is difficult to acquire a correct understanding of the sum of its essential details. In explaining the two laws, therefore, it will be necessary to dwell at greater length upon the German law, so as to elucidate its weaknesses and dangers, and the difficulties in the way of adapting any part of it to American conditions. We can then compare intelligently the respective merits and demerits of the two systems of compensation law.

The British Workmen's Compensation Act, 1906, applies to wage-earners in practically all employments. It replaces the Act of 1897, which applied to certain enumerated industries only, and the Act of 1900, which applied to agricultural employments. This Act imposes upon the employer a direct liability to compensate his employees for accidental injuries arising out of and in the course of their employment. Some enumerated occupational diseases are treated as injuries, and must be compensated for accordingly. The scale of compensation is approximately 50 per cent. of the estimated wage loss from injury, beginning at the end of the first week, ~~and~~ under conditions reverting back to the date of injury.

The statute does not relieve the employer from liability for full damages at common law, or from liability for limited damages under an earlier statute, but those liabilities are incurred only where the employer or a vice-principal has been guilty of serious and certain fault, and are practically negligible.

The employer may insure or not, at his option. If he does insure, the insurance does not relieve him from his individual liability.

Disputes may be settled by arbitration—either by a standing board voluntarily organized by an employer and his employees or otherwise—or by a judge of the proper county court, sitting as arbitrator and under summary procedure.

An employer and his workmen may by agreement substitute a scheme of mutual benefit insurance in place of the law, provided that the benefits to the workmen thereunder are equivalent to their benefits under the law, plus their contributions (if any).

The German "Workmen's Insurance Law" (codified in 1911), is divided into three branches:

The Sickness Insurance Law.

The Accident Insurance Law.

The Invalidity Insurance Law.

This system of social insurance legislation was in large part a development of old-established usages and institutions. Workmen's sickness insurance associations were quite general throughout large parts of Germany, and the Sickness Insurance Law simply made such insurance universal and compulsory, and required employers' contributions. The requirement of employers' contributions is based upon a pre-existing *legal liability* of employers in many occupations to care for their sick employees, a liability similar to that which exists in our maritime law. Similarly, the Accident Insurance Law is, to a degree, a development and amendment of the pre-existing Employers' Liability Law.

The sickness insurance is the basis of the entire system. Although it provides for the care of the sick for twenty-six weeks only, yet it disburses annually more than double the sum disbursed by the accident insurance; in 1909, it disbursed 333,000,000 marks as against 161,000,000 marks disbursed by the accident associations. It takes care of injured workmen for the first thirteen weeks after accidents without expense to the accident insurance; and, under certain conditions, for further periods at the expense of the accident insurance. It thus relieves the accident insurance of nearly all care and expense relative to injuries lasting less than thirteen weeks.

These three branches of the Workmen's Insurance Law, are so intimately correlated and interdependent that you cannot extract the Accident Insurance Law by itself and then expect it to work satisfactorily. Both in theory and in practice, it is an organic part of a system and not an independent unit.

This code of laws is elaborately formulated (in over 1,800 sections), is carefully framed and fitted to suit the peculiar usages and conditions in Germany, is founded upon a system of close control by Government over the conduct of individuals, and has been unusually well administered. In many respects it has been highly successful, and as a whole deserves admiration and respectful consideration. But there are increasing doubts about its permanent success, and very serious difficulties and objections to applying it or any integral part of it to the radically different conditions existing in our country.

The accident insurance branch of the Workmen's Insurance Law as originally proposed by Bismarck was to have been a bureaucratic state-insurance law,

to be maintained by the *taxation* of employers and workmen. Under the criticism of jurists and industrial experts, however, it became, before its enactment in 1884, a collective employers' liability law, secured by insurance in highly autonomous employers' trade mutual insurance associations, subject to state regulation. Workmen's contributions were omitted, except as received indirectly through the sickness insurance; and the German *Accident Insurance Law* now rests and always has rested upon a juridical principle of employers' liability for compensation as a substitute for employers' liability for damages in tort. That liability is the basis of the law; the insurance is only an ancillary method of effectuating the purpose of the liability.

The Accident Insurance Law is sub-divided into three branches:

- The Industrial Accident Insurance Law.
- The Agricultural Accident Insurance Law.
- The Navigation Accident Insurance Law.

These three laws do not cover wage-earners in all employments.

It is unnecessary to discuss the Navigation Accident Law. As to the Agricultural Accident Law, it is sufficient to note here that German experience shows that insurance of agricultural labour presents a problem so radically different from that of insuring industrial labour, and therefore the German law devotes a distinct code of about 130 sections to it. The disposition of the American admirers of the German law seems to be to follow exclusively the Industrial Accident Law and to apply it generally to all employments. Therefore it is appropriate to elucidate particularly that branch of the accident law, so that we may understand the machinery and conditions requisite to its successful operation and may judge of its suitability for application to non-industrial employments.

With special provisions covering public employments, the Industrial Accident Insurance Law places the liability for compensation upon employers' trade mutual insurance associations, there being generally a separate association of all employers in each trade or group of allied trades throughout the empire, or in each of some large territorial divisions. Membership in the proper association is compulsory. These associations are highly autonomous. Some of them are divided into almost equally autonomous "sections," the sections being substantially voluntary divisions of the associations. There are 66 associations, comprising 593 sections.

Some have "branch institutes." These organizations are established in some trades to take care of the small irresponsible employers, who are likely to run up liabilities against the associations without adequate return. Members of branch institutes are charged premiums high enough to maintain "capitalized value reserves," and have little or no voice in the management of the associations.

Subject to Governmental control and regulation, the associations or sections: (a) have framed their own constitutions and make their own by-laws; (b) fix the insurance rates charged to their members; (c) make and enforce safety regulations. Workmen have some representation in the conferences for the adoption of safety regulations.

Except in the "Engineering and Excavating Association" and in the "Branch Institutes," the funds to pay the liabilities of the associations are raised upon the *deferred assessment basis*, without reserves to cover outstanding liabilities, but with provisions for small reserves to provide for emergencies and periods of depression.

Payments are made through the Post Office.

Benefits begin at the end of the thirteenth week after injury, and consist of periodical payments amounting to 66% per cent. of the wage loss upon wages up

to \$428 and upon one-third of any excess. There are also some complex provisions for medical care, to be explained later.

The procedure after an accident is about as follows: In the first place the police investigate all injuries. The injured workmen are cared for during the first thirteen weeks by their sickness insurance associations, and thereafter—if still disabled—receive pensions and necessary medical care from their employer's accident insurance association. That association makes an *ex parte* investigation (to which witnesses may be subpoenaed, etc.), decides what it deems to be due the injured workman, and makes an offer of award. If that offer is unsatisfactory to the workman, he may appeal to the local insurance office (formerly to a Board of Arbitration), and from the decision of such office a second appeal lies to the highest insurance office of the Empire or of the State. Under certain conditions, the accident association may revise its award, and from that revised award a new series of appeals lies.

Some objections to and difficulties with the German Industrial Accident Insurance Law are:

(1) The correct marshalling of all employers and their organization into trade associations is a difficult task, and entails not only much initial trouble and expense, but also continuing disputes and litigation. All classifications by trades are necessarily arbitrary, and it is frequently a doubtful question in which of several associations a particular establishment rightly belongs, and between such associations there are often serious differences of rates. The matter of assignment to an association and of transfer from one association to another rests in the discretion of the Insurance Office; consequently, there arise many disputes about assignments and appeals for transfers, and the officials are subject to political influences in regard thereto. Transfers entail serious difficulties and considerable injustice in the adjustment of outstanding liabilities as between the associations.

(2) The practice of the majority of the associations of omitting to maintain reserves to cover outstanding liabilities—the reserves maintained being sufficient merely for emergencies and periods of depression—and of levying assessments sufficient only to meet payments falling due during the current year, incurs such serious economic danger and has so many inherent disadvantages that Germany alone has ventured to permit it. Its disadvantages and the objections to it are as follows:

(a) While it starts off with pleasingly low rates, it must eventually result in unduly high rates. The universal satisfaction at first felt with the German law was consequently ephemeral. That condition is passing. There are now some loud complaints from employers; and their dissatisfaction will increase as rates continue to rise, as they must for many years to come. The rates in Germany to-day average about treble what they were in the beginning. It is calculated that they will not reach their stable maximum for some twenty years more. How much higher they will then be, no one knows, but the majority guess is that they will again double.

(b) This practice conceals the real cost of insurance. No one knows what is the true cost of, as distinguished from the current price charged for, insuring compensation in any given trade in Germany to-day.

(c) This practice once embarked upon, the law cannot be changed without serious embarrassments, for there will be heavy liabilities to be liquidated. The figures for the *industrial* associations alone are not available; but the outstanding capitalized liabilities of all the German accident associations in 1910 were estimated at \$271,900,000, their reserves at \$75,930,000, and their deficiencies at \$195,970,000. Our hazards and rates of wages being approximately double those

of Germany, we can estimate the probable deficiencies under an application of this practice in America at about four times those of Germany, relatively to the number of workmen affected. Under the English law, on the other hand, there are no deficiencies to be liquidated, and that law could be radically changed tomorrow if deemed desirable, without disturbing existing insurance liabilities.

(d) This practice handicaps new establishments by compelling them to assume the liability for and to pay a material proportion of the losses of their pre-established competitors. And it imposes upon successful establishments the burden of liability for pensions for injuries incurred in establishments of defunct and insolvent competitors. It is obvious that if a large proportion of establishments in any trade should shut down, the financial liability thereby shifted upon the survivors would be ruinous. In this respect the dangers and defects of the German industrial accident insurance are analogous to those of voluntary mutual life insurance.

(e) Finally, this practice is subject to the danger that the accumulated liabilities of the associations, which are in effect mortgages on the various branches of industry, may become so burdensome in a period of general and prolonged depression and contraction as to crush the industries of the country or state affected in competition with the industries of other countries not similarly burdened. To meet the increasing cost of overhead charges for past indebtedness in a period of continued prosperity, rising prices and expanding industry, is comparatively easy; to liquidate a heavy indebtedness carried over from the past under opposite conditions, is an entirely different matter.

(3) This law compels insurance where insurance is unnecessary, and thus imposes a useless expense merely to round out a paper scheme. Railroads and large companies with many separate establishments having their assets and risks well distributed may properly meet their compensation liabilities as current expenses, and have no need of insurance. To force them into a mutual scheme is an imposition upon them.

(4) The arbitration provisions of this law result in far more litigation than the judicial procedure provided for in the English law; and the process of adjustment with the insurance associations is more irritating to workmen than the direct negotiations with the employers or their insurers, which are the primary mode of settlement in England.

Litigation under the German and English systems compared: In Germany, in 1909, there were 422,076 cases wherein compensation was awarded by the associations, of which 76,352 (18.9 per cent.) were appealed, and of these appealed cases 22,794 (5.4 per cent.) were again appealed to the highest insurance offices. In Great Britain, in 1909, there were 335,953 new compensation cases. In all 8,254 cases (2½ per cent.) went to court under the compensation law (besides 298 cases under the tort law). Of the compensation cases, the majority were settled by simple orders, etc., and only 4,105 (1¼ per cent.) were tried. Of these latter cases, only 135 were appealed to the Court of Appeals (the majority upon the construction of the clause, "arising out of and in the course of" the employment); 25 of which, however, were withdrawn. Two cases only went to the House of Lords.

Both the German and British experience under their compensation laws compares favorably with their previous experience under the tort law—in spite of the fact that by the change from the law of tort to the law of compensation, the total number of cases in which injured workmen are entitled to relief, and about

which consequently litigation may legitimately arise, has been multiplied—in England at least—about nine or ten times.

The foregoing figures show how ridiculous are the frequent accusations of the critics of the English compensation law that it "has resulted in enormous litigation" and "fills the law reports with cases of statutory construction." They also show how unjustifiable is the belief, entertained by many of our advocates of compensation laws, that the substitution of official boards of arbitration or of administrative officers in the place of Courts of Justice would reduce litigation. Issues of law and fact would still arise, and would have to be tried very much in the old way, or injustice, abuse and general harm would result. To abandon the existing judicial machinery for a novel substitute, with its procedure, practice, precedents, etc., yet to be worked out, would be a perfectly useless change from one kind of courts to another kind of courts, and would result simply in a duplication of expense. It should be borne in mind that the method of arbitration proposed is compulsory, by standing boards of political appointees, and would give none of the satisfaction of voluntary arbitration.

(5) The adjustment and final determination of awards by administrative officers has led in Germany to many abuses complained of, with some exaggerations perhaps, by Herr Friedensburg,<sup>1</sup> and later by Dr. Bernhard.<sup>2</sup> All the facts available indicate that the administration of the insurance law has been powerfully influenced by a desire to exercise liberality towards the unfortunate and has been governed by the spirit of benevolence rather than of law. Experience everywhere demonstrates that such a policy produces demoralizing effects and carries with it grave dangers of fraud and of abuse. With us, such questions as are involved in the making and review of awards always have been determined judicially, that is by Courts of Justice. And every lesson of experience is against depriving the parties affected of their *rights* to judicial determination of such questions if desired; for administrative boards do not furnish adequate guaranty of impartiality or of strict adherence to law.<sup>3</sup> The contention in mitigation, that the perversion of a law of private rights to purposes of public charity reduces the volume of necessary poor relief, is not supported by figures.

In Germany, this tendency to administer public charity out of private funds is to some extent checked by the powers of the employers' associations. The prevailing idea of American imitators of the German law is to raise the insurance funds by taxation. Such funds would be public funds; it is further their idea that the original awards against the funds should be made by political officers. Under such conditions, the rights of the employers' associations, in and to the funds or otherwise, would be far different and far less effectually safeguarded than in Germany.

(6) There are serious political dangers incident to the control of the associations, of their funds and of the rate making. In the first place, the public functionaries having the regulation of the insurance have the individual employers at their mercy; they may mould the constitutions and by-laws of the associations so as to favor their friends and ruin their enemies; in assignments to associations

<sup>1</sup>"The Practical Results of Working Men's Insurance in Germany," Ferdinand Friedensburg. Translation, The Workmen's Compensation Service and Information Bureau, N.Y., 1911.

<sup>2</sup>"The Future of Social Policy in Germany," Ludwig Bernhard, Prof. of Pol. Science, University of Berlin, "Stahl und Eisen," Apr. 18, 1912.

<sup>3</sup>Henry W. Farnam and Ernst Freund, in "Survey," N. Y., May 4, 1912, pp. 243, 245.

they can dispense favors; by their control over rate making they can likewise dispense favors and mar the whole scheme for accident prevention. In the second place, assuming that the public officials exercise their powers of control properly, there still remains the certainty of bitter political struggles between the private classes affected for the control of the associations, such control carrying with it the control of the common funds and of the rate making. This is best illustrated in Germany by the use that the socialists have made of their control of the sickness insurance associations as means for the propaganda of socialism, and the consequent struggle on the part of employers (aided by a minority of the workmen) to secure equal representation in the management of those associations even at the expense of higher contributions. Even among the employers all is not harmonious, the different classes are constantly wire-pulling for control. The German policy has been to form the associations of as harmonious elements as possible; and as between the smaller and greater employers so to frame their constitutions as to give control to the latter. Will American polities permit the adoption of that policy? If not, the smaller will outvote the greater employers and unjustly impose the bulk of the cost upon them. Whichever horn of the dilemma we might elect, an industrial civil war would almost inevitably result.

In addition to the foregoing objections inherent in the German law is the further objection that it does not fit our local conditions.

(1) It is suited to a people who are accustomed to paternalistic governmental control of all their actions. It is impossible to explain or for the average American mind to comprehend the multitude and minuteness of the practices of this kind incident to the administration of the German law. The following examples will serve to illustrate: Injured workmen are obliged to submit themselves to hospital or surgical treatment about as their employers' associations may prescribe subject to some check from governmental regulation. Employers are obliged to submit their private books and papers to the inquisitorial inspection of their competitors—if officials of their associations—and of public officials, almost without check.

(2) It depends for its success upon an elaborate system of police registration and surveillance, for which there is no substitute here. What the police do in Germany in the way of investigating accidents and injuries, identifying parties, checking frauds, exaggerations, etc., etc., would have to be done here by some equal force of equal efficiency, or the German scheme would miscarry.

(3) Its low cost of administration is due in part to the free use of the Post Office in making payments. In our states we would have to organize a large, separate force for that purpose.

(4) It has succeeded only through almost perfect administration of the governmental functions, and an unvarying imperial policy; whereas our administration is looser, and is apt to change its policy with changing party administrations.

(5) It is suitable only for a stable and homogeneous industrial population and stable industrial conditions; our industrial population is fluid and made extraordinarily complex by immigration. Our small employers are constantly changing their industrial status, changing from the condition of employees to that of employers and vice versa, and changing their businesses.

(6) Germany is large enough, probably, to furnish an adequate distribution of risks in each trade association, without which distribution insurance as to employers is a mockery and a misnomer, and worse than no insurance at all. Probably no state in the United States is large enough to do that in all trades,

and consequently, if the German schemes were followed, there would be many trade associations in which there would be too few establishments with too small aggregate assets to provide anything like adequate risk distribution. Truly unfortunate would be the plight of a responsible employer with a good business who should be forced into a blind pool with a few comparatively irresponsible competitors and saddled with a joint liability for the risks of all. A good illustration of this has already occurred under the Washington law, resulting from what is known as the Chehalis disaster.<sup>4</sup>

(7) The German scheme is suited to a state where employments generally are carried on continuously within the jurisdiction. In each of our states and in the Canadian Provinces there are many employers whose employees work irregularly part of the time within and part of the time without the state; their premium rates consequently would have to be adjusted so as to apply to each pay-roll only for the part of the time employed within the state. It would be a very difficult task to apportion the pay-rolls accordingly: there would be many disputes, and many conflicts between the courts of different jurisdictions in applying their different laws to transient and interstate employments.

There remain to be considered a few difficulties and pitfalls in the way of an adaptation of the German Industrial Accident Insurance Law:

(1) As stated above, that law is intimately correlated with the sickness insurance law, which disposes of all injuries lasting less than fourteen weeks, without trouble or expense to the accident insurance associations. Without the sickness insurance, we would have to extend the accident insurance so as to compensate for injuries lasting over, say, two weeks. Such insurance would be concerned with a very much larger proportion of injuries than the German law—about 50 per cent. instead of 22 per cent., and would cover the class of short time injuries in regard to which impositions are greatest and the ratio of expenses of administration is highest. That difference would make all the experience of the German insurance as to cost, practice, etc., etc., inapplicable, so that in effect we would have to proceed without experience to guide us. It is vain to consider devising off-hand a system of sickness insurance to serve as a basis for a system of accident insurance. With our unstable and immigrant working population, sickness insurance is a problem infinitely more complex than work-accident compensation, and a problem such as no foreign country has ever solved.

(2) The industrial accident insurance law is designed and fitted to apply only to industrial employments (manufacture, transportation and construction). The entire accident insurance law does not cover all employments or even wage-earners in all employments and it is not appropriate therefor. Consequently if we are seriously to imitate the German example we must prepare distinct and appropriate codes for industries, for agriculture, for maritime employments, for commercial employments, etc., respectively, and must accurately and in detail define the scope of these different codes as conditions actually require. Nothing could be more contrary to the spirit of their asserted model than the crude schemes that have been proposed in America as adaptations of this German law, and applied sweepingly to all employments.

(3) The formation and organization of the compulsory trade mutual insurance associations is a problem that cannot be solved satisfactorily simply by prescribing what trades shall form separate associations, and then compelling em-

<sup>4</sup>Cf. "A Novelty in Legislation," by Will G. Graves, of the Washington Bar, Spokane, 1911.

ployers to associate accordingly and to work out their salvation as best they can under the dictatorial supervision of state officials. Germany did not leap in the dark like that. Before the German law was enacted the administrative regulations were fairly outlined and agreed to, and the trade associations and their constitutions were tentatively formed or projected. Care was exercised to form the associations as far as possible of harmonious elements. The great Krupps works were made practically a distinct association. The policy adopted tended to give control of the associations to the captains of industry; the small employers, so far from being given equal voting power with their larger associates, in some associations have been relegated to "branch institutes," in the management of which they have practically no voice at all. In fact, there are about a thousand details relating to the administration and regulation of the associations which in some way must be determined and settled before this complex scheme can be put into successful operation. There is no indication that the American advocates of the German model have given these things the slightest consideration.

(4) In order correctly to follow the precedent of the industrial accident insurance law, it is necessary to distinguish carefully between compulsory mutual insurance and state insurance and to avoid taxation and bureaucratic management as distinguished from bureaucratic regulation and governmental assistance. The German industrial employer is liable to his association for assessments to pay a quasi-contractual liability, he is not taxed; the mutual associations' funds are private not public funds, are managed by the associations, and not by public officials, although subject to public regulation; the funds are disbursed by the associations, and not by public officials—although the Post Office assists. These distinctions are vital. And yet many in America think that they are imitating the German industrial accident law, when they propose to resort to the exercise of the power of taxation to raise the insurance funds, and when they confide to public officials the management and disbursement of the funds. They are, in fact, varying from essential features of their model, and imitating in part either the Agricultural Accident Insurance Law of Germany, or the Norwegian law. It is not within the province of this article to present the objections to the Agricultural Accident Insurance Law; it is sufficient to say that the merits of the Industrial Accident Law of Germany cannot truthfully be claimed for it.

(5) In this connection it should not be ignored that mutual insurance if self-managed has peculiar dangers of its own, which are familiar to us in this country from our experiences with mutual life and fire insurance. While many of the German mutual associations have been successful, some have been unsuccessful, and have involved in their losses many employers who have had no part in the mistakes or mismanagement which have brought about the bad results. It must also be understood that the German system of self-managed mutual insurance entails on members a large amount of unremunerated service which takes them away from their regular occupations and engages them in a new and technical business. Such service is and must be compulsory.

Now, to turn to the alternative—the English precedent.

The English workmen's compensation law applied to industrial employments would be the simplest and least experimental first step in the direction of wider social insurance. It would entail no departure from our political principles and only a slight change in our juridical principles—a change which many of us believe to be not fundamental.

It would remedy the one industrial evil which particularly calls for immediate relief—the injustice of our liability laws.

It would not interfere with the accustomed usages and liberties of our people.

It would adhere to our time honored practice of judicial determination of issues affecting private rights and liabilities.

It would avoid absolutely all the dangers and abuses of bureaucracy inherent in systems like the German.

It would avoid the political struggles over the control of trade associations and the management and disposition of mutual funds, inherent in the German system.

It is consistent with voluntary mutual insurance, where desired, and permits of a comparative test of all sound and proper methods of insurance.

It would be a prudent experiment, adapted to further development or amendment; whereas the German system, once embarked upon, can never be departed from without the embarrassments of liquidating a heavy outstanding indebtedness.

Against the English law certain objections are currently insisted upon by some well-known publicists who give the German law unlimited endorsement. These objections will be discussed seriatim.

First, as to cost: The critics referred to measure the cost of compensation by the rates of insurance. That leads into grievous error.

The English insurance rates cover the total cost. The German rates do not cover the cost of insurance—much of it is deferred. The published German rates do not cover the expenses of management; these are extra, and are assessed separately.

In addition to the cost to *employers* in Germany, there is a heavy cost to the *public*—and the cost to the public of an adaptation of the German law would be higher in America. That cost would consist of: (1) The cost of a field and office force to supervise and regulate the associations, their rate-making, and the collection, investment and disbursement of their funds. (2) The cost of a great system of official boards of arbitration, with offices, clerks, etc. (3) The cost of a force to disburse payments and to exercise surveillance over claims and pensioners. The total cost of these three forces, if adequate for their duties, would be an amount which the public would not tolerate; and if adequate forces are not provided the whole scheme would miscarry.

The argument is frequently advanced that because the German rates of insurance are lower than the rates charged for insurance of compensation under the recent law of New Jersey, and because the cost of management of insurance in private companies under our tort laws amounts sometimes to 65 per cent. of premiums, while the accredited cost of management in the German associations is only about 15 per cent., therefore, insurance under the German method would be cheaper than insurance in stock companies of the direct liability for compensation.

These arguments are quibbles. Taking them up in order:

The German rates are no indication of what our rates would be under the German method, because: (1) our hazard is at least twice as great as the German hazard; (2) our insurance would cover all injuries lasting over two weeks instead of those only which last over thirteen weeks, i.e., about 50 per cent. instead of 22 per cent. of injuries; (3) our expenses of management would be about three times greater than the German. The comparison consequently between the German and the New Jersey rates furnishes no indication of the relative cost of insurance under a scheme like the German and under a direct liability like the English. The best indicator of the relative cost of the two systems of insurance is to compare the German with the English rates. Such a comparison shows that the English rates

average a little lower than the German rates, *although the latter have not yet reached the stage where they cover the cost.* Looking further into the German rates, it is to be noted that the rates in Germany for some comparatively non-hazardous trades are inordinately high; for example, the rate for tanneries is in England 0.75, in Germany 8.23. Such startling rates in Germany indicate that there exist serious dangers in the German method of insurance.

As to the cost of management of insurance under the various systems: Cost under our tort liability is no indication of what the cost would be under a direct liability for compensation; it is consequently wholly deceptive to compare that cost with the cost under the German system. The cost of management under a settled direct liability compensation law in England is about 36 per cent.; in Germany, it is claimed, it is about 15 per cent., ignoring the cost of the free assistance from governmental agencies, etc. Nevertheless insurance in England is to be had as cheaply as in Germany. The cost of administering insurance in America under an adaptation of the German law would be about three times as great as the cost in Germany, because here the scheme would lack the free assistance of the Post Office and of an all-pervading police force, and because it would have to deal with the short-time injuries, with which the German accident insurance is little concerned, and in regard to which the expenses of management are relatively highest.

Consequently it is difficult to form any estimate of the cost of compensation insurance in America, particularly under an adaptation of the German system. Foreign experience gives us every reason to believe that the cost in America of a system of insurance in imitation of the German would be infinitely greater than the cost in Germany, and much greater, in the long run, than under an adaptation of the English law.

Second: It is objected to the English law that it does not tend to reduce accidents, and that the German law does. It is almost certain, although not demonstrable, that both laws do tend generally to reduce accidents. Why then this invidious distinction? Because in England the volume and ratio of accidents have increased, while in Germany it is the opinion of experts that the law reduces accidents. But the volume and ratio of accidents have correspondingly increased in Germany; and it is the opinion of experts that the English law likewise reduces accidents. Apply the same test to both laws and they measure about the same.

A report, in 1904, of a Parliamentary Committee appointed to investigate the workings of the Compensation Act of 1897, in which it was stated that the Committee could not see that that law had had any effect in accident reduction, is often cited against the English law. But expert industrial opinion is contra; and the doubtful finding by that Committee is explained by the dictum of German experts that the effect of their law in the line of accident prevention could not be seen in statistics until it had been in operation fifteen years. A later British Departmental Committee on Accidents has reported as follows (to quote the summary in the Annual Report of the Chief Inspector of Factories for 1910): "They find that while the accident risk probably remained almost constant in the decade 1897-1907, any increase due to extended use of machinery and greater pressure being counteracted by improved inspection and by the greater care resulting from the Workmen's Compensation Act, it has decreased since 1907, owing to the causes above named and to the experience of employers in the efficient guarding of machinery. They regard the increase of reported accidents up to 1907 as due almost entirely to improvement in reporting, which since that date has been less marked, so that the effect of lessened risk has shown itself in the statistics."

Strong testimony in favor of the efficiency of the direct liability law of Great Britain in the way of accident prevention may be found in the brief of Mr. John Calder, a leading industrial expert, filed with the Congressional Employers' Liability Commission,<sup>5</sup> and in the testimony of Mr. Gill, M.P., and Mr. Clynes, M.P., before the New York Employers' Liability Commission.<sup>6</sup>

Third: It is objected to the English form of compensation law that it provides no security to injured workmen for the payment of their compensation. It is to be noted that this criticism is not included in the sweeping arraignment of the English law by Mr. Miles M. Dawson, in his brief filed with the Congressional Commission on Employers' Liability (1911); and the significance of this omission is that in actual experience in England there has been almost no loss from the omission of any requirement of security.<sup>7</sup> Looking at the subject practically, it is obviously far more needful to require of employers security for their contingent liabilities for damages under our existing American negligence laws, than it is to require security for the contingent liabilities for compensation under the English law—and yet we have never thought it necessary to do so. Why then merely because one liability is substituted for another should the addition of a requirement for security be deemed essential? It is true that accrued liabilities for long continuing pension payments under the compensation law, subject the beneficiaries to the risk of their respective employers continuing solvent during such periods; but it is easy to require security for accrued liabilities without requiring general insurance in advance. It is also possible that dummy corporations may be restored to defeat the liability (a practice more probable in America than in England); but in that event a particular remedy can be adopted to meet that particular evil. It is also probable that in America compulsory security may prove to be advisable in some industries. It would be absurd, however, to subject all industries to unnecessary bureaucratic domination or to launch the state in an uncertain and expensive actuarial experiment merely to forestall the possibility of an abuse that has not arisen in actual practice.

Fourth: It is objected to the English form of compensation law that it starts with a maximum strain upon industries. The meaning of this is that, upon the adoption of such a law employers, if they insure, must start in abruptly to pay premiums sufficiently high to establish reserves to cover the capitalized values of liabilities accruing during the period paid for—which premiums will undoubtedly be so much higher than the premiums for insuring the liability for negligence as to cause some embarrassment at first; whereas under the German system only payments due during the first year need be provided for by the first year's assessment-premiums, and the future payments upon accrued pension liabilities may be left to be provided for by future assessments, and the increase in premiums is thereby made gradual. But there are serious objections hereinbefore explained, to the German method; it is too much like issuing bonds to pay for current expenses. It is to be noted that British industries have passed through the period of initial strain without material embarrassment, and now have the advantage of solvent insurance. It is also to be noted that all other countries, Germany excepted, have elected to meet the initial strain of the increased liability at once, without attempting to defer it.

<sup>5</sup>Report of Hearings, Pt. 2, p. 768.

<sup>6</sup>Minutes of Evidence, 1910, pp. 81, 89.

<sup>7</sup>See testimony of Mr. Gill, M.P., before N. Y. Employers' Liability Commission. Minutes of Evidence, 1910, p. 81.

Fifth. It is objected to the English law that it causes discrimination against the employment of the aged and defective. This is an evil of disputed proportions. That it exists at all is more generally denied.<sup>8</sup> It is more reasonable, however, to suppose that employers do so discriminate considerably, not only because the aged are more liable to injury (as appears from German statistics), but also and more particularly because accidents to elderly persons often lead to permanent disabilities, caused not so much by the injuries as by old age, and obligate the employers to pay what are in effect old age pensions in addition to compensation for injuries. It is difficult to form an estimate of the extent of this discrimination, because there is, independently of this cause, a universal preference for younger men in taking on new workmen, particularly in the more hazardous industries. If the objection is to be deemed material it may readily be avoided by minor amendment to permit old men, etc., to contract for a sliding scale of compensation, dependent upon age or certified infirmity, as is now being advocated in England. It cannot be avoided by adopting the German Industrial Accident Insurance Law, because that law by itself would cause about as much discrimination as does the direct liability in England. It is the Disability Insurance Law and not the Accident Insurance Law that in Germany stills complaint of this discrimination.

Sixth: It is objected to the English law that it is not conducive to workmen's efficiency. It is commonly believed that during the past half century the average physique of the English working classes has degenerated, whereas the physical well being and efficiency of the German working classes have increased. Some of the panegyrists of the German law attribute this improvement in Germany to the Workmen's Insurance Law, and this real or supposed degeneration in England to its compensation law. There is only a modicum of truth in the former conclusion, in the latter, none.

While the German Workmen's Insurance Law has undoubtedly exerted a material influence in improving the contentment and well-being of the working classes and thereby in promoting workmen's efficiency, it does not follow that this result is due to the distinctive features of the Industrial Accident Insurance Law, so that the effect of the German system as a whole would have been any less beneficial had the direct liability for accidents been adopted instead of compulsory mutual insurance. It is a tremendous exaggeration to attribute the growth in German efficiency so exclusively to the Workmen's Insurance Law since widespread vocational training, compulsory military service, an iron discipline and early and wise child labor regulations are considered by many to have been the principal factors in bringing about that result. Moreover it is a vital mistake to attribute German industrial efficiency too much to the workmen. German managerial and technical efficiency were famous before the workmen's insurance laws, and are undoubtedly the ultimate cause of Germany's general efficiency and prosperity. The more one studies the subject, the less becomes one's admiration for the German Workmen's Insurance Law in comparison with admiration for the administrative efficiency that has made those cumbrous statutes operate successfully.

Seventh: It is objected to the English law that it does not provide for the medical care of the injured. A comparison of the different policies of the German, French and English laws will aid to an understanding of this subject.

<sup>8</sup>See testimony of Mr. Gill, M.P., before N. Y. Employers' Liability Commission, Minutes of Evidence, 1910, p. 76.

Under the German law, the employers' associations are obligated to provide medical care, etc., for injured workmen; but the control of the whole matter—including control of the patients—is given almost absolutely to the employers, subject to moderate state regulation. The employers' associations seem to have exercised their powers diplomatically, and the practice, except for some incidental abuses, has worked well, and has produced good results in the way of cures.

In France, the employer is liable for the cost of medical care, but the injured employee has the choice of a physician. This gives rise to many abuses, is excessively expensive, and produces the worst results in the way of cures, etc.

The English law places no obligation upon the employer to furnish medical care, trusting that his self-interest to effect cures as soon as possible will induce him, or his insurer, to furnish proper medical care wherever necessary. The consensus of opinion seems to be that generally it has resulted as expected; but it does not cause due medical care to be given as universally as does the German law; and it has been construed to permit the expense of hospital care to be deducted from compensation benefits, which, in general, is wrong.

The choice lies between the English and the German practices. It seems safer to follow at first the English practice, with some modifications.

Eighth. It is objected to the English law that it has caused general dissatisfaction, whereas the German law, it is contended, is generally satisfactory. In discussing this proposition, it should be borne in mind that the comparison is between the English Workmen's Compensation Act and the German Accident Insurance Law, and not between the English Old Age Pension, Sicknes Insurance and Workmen's Compensation Laws on the one hand, and the entire German Workmen's Insurance Law on the other hand. While as a whole and in many of its details the German system is the more perfect and the more generally satisfactory, yet the degree of satisfaction given by the accident laws of the two countries respectively is about equal.

The German Industrial Accident Insurance Law was at first extremely satisfactory to employers, on account of its low rates; but that cause of satisfaction has ceased, and as rates continue to rise dissatisfaction among employers is increasing. On the other hand, the sudden and heavy increase in insurance rates caused by the adoption of the Compensation Act of 1897 in England at first made that law obnoxious to employers; but they have gradually got used to it, and now satisfaction with it is general, at least among industrial employers. No English employer with a well-equipped and well-conducted establishment would prefer the German law.

The attitude of labor towards these laws is complicated by socialism. In Germany non-socialistic labor has generally been fairly satisfied, and the accident law has produced better relations between them and their employers. The Socialists, on the other hand, were at first bitterly hostile to the insurance legislation, but have since become fairly satisfied with the sickness insurance. With regard to accident insurance, however, they remain dissatisfied, and demand a part in the management of the associations and benefits equivalent to 100 per cent. compensation regardless of fault. In England, labor generally has been satisfied with the compensation law. Recent declarations of British Labor Congresses against that law have been coincident with Socialist control of those bodies. It is to be noted that the English Socialists have not declared for the German law, but for a statutory sick pay law, awards to be made by political officers, and compensation based on the present basis, with additional provisions for medical care, etc.

The impressions created upon American observers by the two laws respectively

are not conclusive. All have been impressed by the completeness of the German system, and by the general excellence of its administration. When it comes to the Accident Insurance Law and particularly to the question of its applicability to our conditions, opinion is divided. The preponderance of expert opinion is undoubtedly in favor of caution and of a trial of the English system.

We should not be over impressed by the encomiums on their law from German officials. Naturally they are prejudiced in its favor; and they are the last persons who should be expected to cry aloud its weaknesses. The criticisms of such men as Friedensburg and Bernhard are sufficient to show that all is not satisfaction and perfection in Germany. That there is no like official chorus of praise for the British law is due solely to the fact that in Great Britain there is no established bureaucracy connected with the administration of its law.

From the foregoing the conclusion is obvious. For us to adopt substantially any integral part of the German Workmen's Insurance Law would be a leap in the dark; it would be making the welfare of our people the playfield of impulsive experiment, and would entail a radical change in our political principles and in our social and industrial habits and customs. Both the British and the German laws, although in different ways and to different degrees, are products of gradual development. Even if our ideal be a system of broader and more perfect insurance than that provided by the British law, yet prudence dictates a course of gradual approach. The safest and most surely beneficial first step on that course would be the adoption of an adaptation of the earlier form of the British law.

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### APPENDIX III.

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#### MR. WEGENAST IN ANSWER TO MR. WOLFE.

##### ANALYSIS OF MEMORANDUM.

A careful perusal of Mr. Wolfe's memorandum fails to reveal any definite object or conclusion. It is largely a criticism at large of certain features of the proposals placed before you on behalf of the Canadian Manufacturers Association. The intended conclusions may, however, be gathered to some extent by conjoining with the memorandum Mr. Wolfe's verbal comments in presenting it. At the risk of imputing a definiteness of aim which may be purely hypothetical, these conclusions may be stated in their negative form as follows:

- (a) State insurance should be avoided as far as possible.
- (b) The current cost method of computing premium rates is unsound and undesirable.

or in their positive form:

- (a) A sphere of activity in workmen's compensation insurance should be preserved for private liability insurance concerns.
- (b) Premium rates should be computed on the capitalised plan.

I remark in passing that these conclusions are much more difficult to support in the positive form than in the negative. The negative argument involves only criticism and argument; the positive requiring constructive demonstration.

Before dealing with the Memorandum on the basis of the above analysis it may be well, adopting the style of the Memorandum, to deal with its contents by running commentary.

Pages 1 to 10 present a sketch and comparison of some features of the systems of England, Germany, and the State of Massachusetts and the system proposed for the State of Iowa. The bulk of these pages consists of statements of facts, but in connection with these facts certain comments are made and inferences suggested.

1. In the first part of the Memorandum an analysis is attempted of the different legislative methods of dealing with the problems of workmen's compensation. Reference is made to the systems of England, Germany, and the State of Massachusetts. The comparison, however, ignores or evades the real fundamental distinction between these different systems, which is based upon the *incidence of the initial liability*. In the English system the obligation is thrown upon the individual employer. The workman looks to his employer for compensation. In the German system the liability is thrown upon groups of employers representing the different industries. The workman looks to the group of employers for his compensation. The respective results of the two systems practically all flow from this fundamental difference. In the English system insurance is incidental. In the German system it is inherent and automatic; in other words, it is not necessary for the individual employer to insure because there is nothing to insure against. The two principles are, of course, incompatible. The system of Massachusetts represents an anomalous attempt to combine the two principles. The initial liability is thrown upon the employer, but this liability may be shifted to the insurance institution established by the State or to a private insurance institution by the payment of insurance premiums regulated by the state. As originally devised the system was intended to include all employers under the state institutions, but a subsequent amendment placed private insurance institutions on the same basis as the state institution in allowing them to assume the obligation to make compensation. The system is anomalous in that it enables the employer to shift his obligations to a private insurance institution, the danger being of course that such private insurance institutions, even under close state supervision, cannot afford the guarantee of solvency and permanency which is a fair exchange for the relinquishment of the workman's claims against the individual employer.

2. On page 2 it is said that the English system "would seem to be the method affording the maximum amount of personal freedom with the minimum amount of State interference."

From this it would be inferred that the preservation of personal freedom and the avoidance of State interference was an end in itself, or at least a prime consideration—a political doctrine usually associated with the name of the "Manchester School" in England. I pause to remark only that this doctrine has not found universal acceptance, and that in any event the whole idea of workmen's compensation is in violation of it. Without denying the doctrine it may be observed that neither employers nor workmen would be liable to complain, nor do they complain, of loss of personal freedom under such a system as that in the State of Washington where the workmen are sure of their compensation and the employers, though compelled to pay a small premium, are relieved from the risk of loss.

Mr. Wolfe's remark would also indicate that he considers the English system a superior one. This is of course later in the Memorandum impliedly, and in his verbal remarks expressly, negatived.

3. On page 4 reference is made to the experience of Germany in extending the individual liability of the employer, and it is said (page 5) "After several years of experience with that law, however, it was generally admitted that the experiment was not a success."

In this statement Mr. Wolfe admits the inadequacy of any attempt to secure compensation for workmen by the extension of the individual liability of the employer. The earlier legislation in Germany was, as a matter of fact and history, very similar in theory and effect to the so-called Workmen's Compensation Acts in England and some of the United States. It entirely failed of its object because it merely created a statutory obligation as between the employer and his workmen, leaving workmen and employers respectively to shift as best they could for enforcement and protection. The conclusion to be drawn from the failure of the prior German laws and the corresponding laws in other European jurisdictions is that no system based upon the individual liability of the employer can afford a successful solution of the problem of workmen's compensation.

4. The inference is apparently to be drawn from the statements on pages 4, 5, and 6 that a system based on the principles of the German system must be the result of peculiar pre-existing conditions and of gradual growth and development.

It may be true that the solution devised in Germany was suggested to some extent by the existence of the *Berufsgenossenschaften*, but it is also true that the number of these was comparatively limited, and that in many, if not the majority of the industries, it was necessary to create associations *de novo*. The establishment of a workmen's compensation system based on employers' associations was undertaken only after many years of academic discussion, and then upon well formulated plans laid before the Chancellor Bismarck on behalf of the employers of the Empire. Indeed, the form of the English Act cannot be attributed solely to the lack of associations of a similar character, and it is to be remembered that the English Act contemplated, and in fact expressly provided for the organization of, such associations. This was an expectation based on a misconception of the principles underlying the German system and a failure to anticipate the results of a departure from these principles, but the expectation was there and the principle of individual liability with voluntary insurance was never intended as the objective of the English system.

The incontrovertible superiority of the collective liability systems as demonstrated by logic and experience cannot be summarily disposed of by the assertion that the Province of Ontario lacks the necessary facilities and the ability to supply them. The Government of this Province has successfully dealt with other undertakings requiring ingenuity and courage. It would be disparaging to the people and the Government of the Province to assume an incapacity to apply any principle regarded as desirable whether its success had been conclusively demonstrated in other jurisdictions or not. Fortunately, though it may detract from the credit of originality, there is at least one example of the successful application of the collective liability principle in a jurisdiction having no more facilities, and much less experience than the Province of Ontario. I refer to the State of Washington. It may be sufficient at this point, without discussing the system on its merits, to say that the experience of that State points to the most successful application of the collective liability principle yet achieved in any jurisdiction in the world.

An analogy is suggested between workmen's compensation and the operation of railways, and it is suggested that the lack of bureaucratic element in Anglo-Saxon systems of government renders Government administration in either case more difficult than in Germany.

Without pressing the suggestion that the analogy between workmen's compensation and the operation of railways is somewhat remote, and without dealing with the merits of the question whether Government operation of railways is feasible or desirable, it may safely be asserted that whatever may be the condition in the United States, there is no large body of public opinion in this Province opposed on principle to public operation of railways or other public utilities, and there are at least a number of examples in this country of a most successful application of the principle.

Adverting to the inference as to the necessity of bureaucratic government for successful administration by or on behalf of the public in such matters as railways or compensation systems I desire to submit that no case has been made out for any such necessity, the remarks quoted by Mr. Wolfe to the contrary notwithstanding. The State of Washington has not found such methods necessary. It is no more bureaucratic to assess each year the cost of accidents than it is to assess the cost of municipal government. The State of Massachusetts provides a State insurance institution, but it is not suggested that this is bureaucratic. In Germany the German system is considered the reverse of bureaucratic.

6. Pages 6, 7, and 8 refer to some of the variations in the schedules of benefits in the different systems, and on page 10 Mr. Wolfe states that he has "referred at great length to this provision for it indicates a fundamental difference between the points of view of the German employee and his brother workman in this country."

It is not quite apparent in what respect this difference is "fundamental," but two inferences are perhaps intended to be drawn—first, that in the United States and Canada workmen would desire a more generous scale of benefits; and second, that workmen in this country would object to the supervision necessary in administering a periodical payment compensation system. The latter is perhaps more than an inference, for it is stated that "the supervision and paternalistic watchfulness which the German Government, acting through the mutual associations, exercises over the injured workman would be repugnant to our workmen and would not be tolerated. Such, for instance, is the provision that if the association provide proper employment for the workman, and he refuses to accept it, his compensation stops at once."

This is one of the characteristically vague ideas advanced by opponents of the German system. The answer to it can be best expressed in the interrogative form. What would Mr. Wolfe suggest instead? Would he pay compensation in a lump sum? If not, would he go on paying compensation after the workman had recovered? Would he take no notice of the fact that a workman had been offered remunerative employment? Should the workman receive a compensation pension in addition to his earnings after he has recovered? The only logical answer that can be given is that the payment should be in a lump sum, but this has been negatived by Mr. Wolfe in his verbal remarks. It would be pure speculation to select any one of the horns of the dilemma for Mr. Wolfe as an alternative to the supervision which he deprecates.

With regard to the differences in the scales of benefits it may be admitted that there is room for difference of view as to whether a compensation pension should be based absolutely upon the diminution of earning capacity or whether it should be for stated amounts, more or less arbitrarily fixed. Again, there is room for difference of opinion as to whether the compensation should last until the death of the injured workman or his widow, or should be cut off after a stated period. Mr.

Wolfe makes extended reference to the method of valuations adopted by German insurance associations in the effort to systematize their work. Some such method, crude or refined, must be adopted in any system of adjusting claims even where the result is left to a jury. In the State of Washington compensation in cases of total disability is arbitrarily fixed by the Act, but there is nothing fundamental in the difference between this and the methods of valuations in other systems.

Attention cannot be too emphatically called, however, to the fact that the scale of benefits under the Washington Act is more generous than that of any other system in the world, and at a cost, it may be noted in passing, apparently less than most of the other systems—certainly only a fraction of the cost under such a system as Mr. Wolfe proposes.

7. On pages 10 to 28 Mr. Wolfe deals with the cost of the German system and discusses incidentally the current cost plan of computing premium rates. This latter branch will be referred to in succeeding pages, but certain comments should be made upon the subject of cost.

It may be observed, *in limine*, that no workmen's compensation system can make something out of nothing. The problem is simply the distribution of the money paid by the employer without too great a deduction for administration expenses, and of course another consideration is the avoidance of paying undeserving claims. The question what benefits should be paid to workmen and what burden should thereby be thrown upon employers is a question of policy to be settled apart from the question of administrative expense. One of the devices, however, of the opponents of the German system is to manipulate the figures of the cost of the system so as to emphasize the "burden" upon the employer. Granted that this burden is heavy, what would it be under a system of liability insurance conferring corresponding benefits? According to the analysis of Messrs. Schwedtman and Emery, "Accident Prevention and Relief," page 46, of the total expenditure on workmen's compensation in Germany 12.8 per cent. is required for administrative expenses. This, I understand, includes the contribution of the Government. If it does not the percentage would be slightly increased. It has been suggested that the diffusion of the work of administration amongst the many autonomous employers' associations makes the administrative cost higher than it would be under a more capitalized system; and the experience under the Washington Act for the first year of its operation appears to bear out the claim. Whatever may be the respective pecuniary advantages of the German plan of diffusion and the Washington plan of centralization any difference between them becomes absolutely insignificant beside the tremendous disparity shown by the individual liability systems. In Canada, in 1911, as shown by the report of the Insurance Commissioner, 44 per cent. of the money collected by liability insurance companies was actually paid out in compensation and 49 per cent. was written off as "loss" against the year's business. Of the amount paid out by liability companies a considerable proportion would consist of expenses of litigation, and from the money actually received by lawyers on behalf of workmen-clients further reductions would be made.

Similar conditions exist not only in the United States but also in England under the so-called Workmen's Compensation Act. The condition is, in fact, inseparable from the circuity of liability involved in an individual liability system.

If the burden upon the German employers is too heavy the remedy is certainly not to be found in a reversion to an individual liability system. If the scale of benefits under the German system is too generous for this Province the alternative is certainly not an individual liability system.

8. Mr. Wolfe states (page 10) that "The relative cost to the employers of any country which attempted to install the German type at the present time is a matter about which nothing is known." This would appear to relegate anything further which might be said to the realm of pure speculation. Notwithstanding, Mr. Wolfe undertakes to compare some of the rates gathered from the reports of the German system with the projected rates under the Massachusetts system, which latter are of course merely estimates.

9. On pages 13 and 14 Mr. Wolfe cites some "German rates from the Amtliche Nachrichten des Reichs-Versicherungsamts, 1908, for the Kingdom of Hanover," taken apparently from the translation of the 24th Annual Report of the United States Commissioner of Labour (page 1063). The tariffs of five of the German Agricultural Associations for the years 1909 and 1911 are given in the Report, and Mr. Wolfe has selected one of them and compared some of the rates with some of the proposed rates for the Massachusetts system. I have not had access to the Massachusetts rates, but I strongly surmise that Mr. Wolfe's rates are taken from a general schedule covering not the building trades but intended to cover all persons in the occupations specified. Thus when Mr. Wolfe speaks of "coppersmiths" his rate no doubt includes coppersmiths working in shops and not necessarily building coppersmiths. When he speaks of "wood turners" in Massachusetts he doubtless refers to wood turners working in shops, but he compares these wood turners selected from a large group including masons, concrete workers, glass grinders, etc., all directly connected with the building trades. The various classes appearing under the head of "occupation" in Mr. Wolfe's list are, in their opposition to the German rate cited by Mr. Wolfe, really sub-classes under the head of building trades, the methods of sub-classification in the German association being much more elaborate and refined than those of liability companies in Canada and the United States. It is absolutely misleading to compare the rates of these sub-classes with rates under the same class-name representing or including different phases of the occupation in America. The most glaring example of this mis-comparison is the rate cited by Mr. Wolfe under the head of "wood-working with the use of circular saws, band saws, planing machines, boring machines and grooving machines (with power)". The rather misleading rendering of the American translator appears to have led Mr. Wolfe into a curious error. The occupation referred to by Class A I. of the Hanover schedule is that of operating small, portable, sawing, planing and boring machines driven by a gasoline motor (*Motorenbetreib*) and employed upon buildings in the course of erection. The operation of these machines combines the hazards of woodworking machinery with the dangers ordinarily attendant upon building operations and the risk of an explosion of gasoline. The rate for persons engaged in operating these machines, 12.50 per cent., is compared by Mr. Wolfe, apparently, with the proposed rate under the Massachusetts system for the ordinary operation of wood-working machinery in factories, namely, \$3.00. Further comment upon the accuracy of the comparison in the memorandum is unnecessary.

As a matter of fact the proposed Massachusetts rate is a fair example of the rate under a liability system. The average German rate for a much more generous scale of benefits is given by Bulletin No. 90 of the United States Bureau of Labour under the general head of "Cabinet making (power)" for the year 1908 as 1.93 per cent.; and on page 24 of the memorandum Mr. Wolfe himself gives the average rate for the wood-working industry as being .61 per cent. in 1886 and 2.03 per cent. in 1908. The rate shown by one year's operation of the Washington system under the head of "Wood-working" is .79 per cent.

I have not the "Amtliche Nachrichten des Reichs-Versicherungsamts" for the year 1908, but the volume for 1911 gives (at page 608) a tariff of rates of the Hanover Building Association which would apparently correspond to the rates cited by Mr. Wolfe. A full translation of this tariff is given below:

### PREMIUM TARIFF

For the Insurance Institution of the Building Industry Association of Hanover. Valid for the years 1912-1914.

Current Number.	RISKS.	Proportion of Wages to be estimated as Premiums.	For each Half Mark or Fraction of Half Mark.
	CLASS A.		
1	Architects, Superintendents .....		
2	Field drainers.....	0.30	0.15
3	Buffers.....		
	CLASS B.		
4	Cabinet makers .....		
5	Potters.....	0.50	0.25
	CLASS C.		
6	Joiners, Turners .....		
7	Paperhanglers, erection, removal and repairing of eavestroughing }	0.70	0.35
	CLASS D.		
8	Stucco workers and plasterers .....		
9	Stove erecting .....	0.90	0.45
	CLASS E.		
10	Coppersmiths .....		
11	Workers in rough wood .....	1.20	0.60
	CLASS F.		
12	Stone mason, floor tile layer, paving .....		
13	Earth workers .....		
14	Glaziers.....	1.30	0.65
15	Painters, painters and kalsominers .....		
	CLASS G.		
16	Tiler.....	1.30	0.85
	CLASS H.		
17	Stone cutters, stone carvers .....	1.80	0.90
	CLASS J.		
18	Cement mixer.....	2.00	1.00

PREMIUM TARIFF—*Continued.*

Current Number.	RISKS.	Proportion of Wages to be estimated as Premiums.	For each half Mark or fraction of half Mark.
	CLASS K.		
19	Framers .....		
20	Building blacksmith.....}	2.10	1.05
	CLASS L.		
21	Tinsmiths .....		
22	Tinsmiths, gas and water fitters, heating engineer .....		
23	Scaffolders .....	2.30	1.15
	CLASS M.		
24	Lime burners.....	2.50	1.25
	CLASS N.		
25	Window cleaners and facade cleaners .....	2.60	1.30
	CLASS V.		
36	Construction of wooden mills.....		
37	Plumbing.....}	4.80	2.40
	CLASS W.		
38	Roofers (tiling, slating, shingling, thatching, tar-papering and cementing).....		
39	Lightning conductor installation and repair .....	5.20	2.60
	CLASS X.		
40	Preparing wood work for building, running stationary engines and power engines .....	5.40	2.70
	CLASS Y		
41	Well diggers.....	6.80	3.40
	CLASS Z.		
42	Erection and repair of factory and similar chimneys .....		
43	Scaffolding .....	8.80	4.40
	CLASS A1.		
44	Woodworking with the use of circular and band saws, planing, boring and grooving machinery (motor power) .....	12.50	6.25
	CLASS B1.		
45	Threshing machines .....	13.90	6.95
	CLASS C1.		
46	Demolition of buildings.....	15.00	7.50

It will be noted from a glance at this schedule that while the rate given in the 24th Report for architects is 1.50 per cent., the current rate in the Hanover Association is .30 per cent. The rate for cabinet makers is given in the report as 1.50 per cent., the rate in the schedule is .70 per cent. The rate for decorators is given as 2.00 per cent., the rate in the schedule is .70 per cent. The rate for copper-smiths is given as 2.40 per cent., the rate in the schedule is 1.20 per cent. The rate for painters is given as 2.80 per cent., the rate in the schedule is 1.30 per cent. The same discrepancy continues throughout. Assuming the figures in the 24th Report to be correct it is apparent that a remarkable drop has taken place in the rates. They have been practically cut in two, showing incidentally the difficulty after twenty-five years' experience, in capitalizing correctly, and confirming the passage from Schwedtman and Emery quoted below. Incidentally also this situation reveals an "injustice" as glaring in the capitalization plan as any Mr. Wolfe can possibly find in the current cost plan. The employers of the past have evidently been obliged to pay a rate which is too high and which has piled up reserves for the advantage of the present employers. But even under the older rates cited by Mr. Wolfe, in every case where the comparison is fair the German rate is lower than the proposed Massachusetts rate. The new rates of the Hanover Association are less than half the proposed Massachusetts rates.

Mr. Wolfe refers to the fact that a large proportion of the injuries do not last beyond the thirteenth week and thus do not fall upon the accident funds. But the proportion of accidents numerically must not be confounded with the proportion of cost. Almost half the injuries numerically do not last beyond the first week. But taking these off does not diminish the cost by one-half. I have no statistics immediately available to show the proportion of cost represented by the injuries up to the thirteenth week, but the analysis of Messrs. Schwedtman and Emery appears to indicate that it is in the neighborhood of twenty-five per cent. Any allowance in favour of the Massachusetts rates on this score is more than compensated by the superiority of the German scale of benefits.

10. On page 15 some figures are gleaned from a magazine article showing the amount contributed per workman by one of the steel industries of Germany. The total amount is \$12.12. On the basis of an average yearly wage of \$600 this would involve a total rate of about 2 per cent. On the basis of an average yearly wage of \$300 the rate would be 4 per cent. Further comment upon this is unnecessary.

11. Page 15 and the following pages contain many characteristic expressions based upon unfounded assumptions, with respect to the current cost plan of insurance. For instance: "It seems hard to believe that any group of manufacturers will be willing to adopt a system so filled with inequalities as to work grave injustice. . . . But we might be willing to gloss over this apparent inequality if the current cost system eventually produced satisfactory results. Such, however, is not the case. The solvent, persistent employer is discriminated against. . . . Does it seem equitable or just to burden the new establishment with the accrued liabilities of organizations in which it has no interest? . . ." These passages and some of Mr. Wolfe's verbal remarks proceed upon the assumption that it is unfair to compel an employer starting in business at the present time to pay a higher rate than other employers paid in the beginning of the system twenty-five years ago.

The assumption that it is necessary at all hazards to maintain a parity between the employers who were in business twenty-five years ago and those who begin business at the present time is so ill-founded as to require no answer. Nor can there be anything more than a sentimental objection to having new beginners pay part

of the liability in respect of accidents which happened previous to their commencing business unless indeed it would be necessary to impose upon the new beginner a rate materially higher than would be necessary under another plan of computation. The mere fact of new beginners paying for accidents of the past constitutes no real objection and is indeed incidental to the very idea of insurance. Insurance premiums are not ear-marked. The burden of the large fires in Ottawa in 1900 and Toronto in 1904 fell not only upon the insurers in these and previous years throughout the country, but fell more heavily upon insurers, including new insurers, for some years after, in fact nearly up to the present time.

Any sentimental objections to the current cost plan on the ground of its deferring for some years the liability are entirely outweighed by the fact that the rate under the current cost plan can never reach a figure materially higher than the capitalized rate, but on the contrary is almost certain never to reach anything like as high a figure. Demonstration of this will be deferred to a later page.

Any sentimental objection which might be urged against having new beginners in business pay part of the liability in respect of accidents which happened previous to their commencing business is fully met by the consideration that the industries of the present, and society at large, are maintaining and will continue for a generation to maintain, the persons rendered indigent by the industrial accidents of the past. It is true that this relief is not direct and systematic as under a workmen's compensation system. It is carried on through the agency of public institutions and public and private benevolence, but it is done in some fashion. The workman and his family do not starve. Not only is there no injustice in imposing the new order by a sliding scale as the old order gradually recedes, but it would be inequitable if the present in addition to bearing the burdens of the past were required to bear the capitalized burden of the future.

Another aspect of the question giving at the same time the views of the German employer and a concise sketch of the operation of the German plan is given by Messrs. Schwedtman and Emery on page 40 of "Accident Prevention and Relief":

"One more feature of the German system needs to be explained before we go into details. It is the lack of providing for deferred payments in the accident insurance system. On this subject the sentiment among employers is almost universal. They claim that even with its acknowledged faults this feature of their system is much superior to the methods used elsewhere of attempting to cover such deferred payments. They say that neither twenty-five years ago when Germany started, nor now, are there statistics available upon such a base, with reasonable certainty, the future cost of accident compensation. They feel that it would be a most serious mistake to tie up the billions of dollars required to cover any reasonable estimate of deferred payments, and think that the withdrawal of such sums would do much more harm to German industrial development, which now needs all the available cash in the country, than any harm that can possibly come to future industries which necessarily will have to start under a heavier financial burden due to constantly increasing insurance premiums. They feel that such heavier burden is more than outweighed by the strenuous pioneer work which had to be done by the German industries at the beginning and which must be done even now. However, deferred payments are not altogether disregarded. All Employers' Associations are establishing reserve funds at increasing percentages. Of last year's premiums 9 per cent. was laid aside for reserve to cover deferred payments. Furthermore, some employers associations—for instance, the Excavating Contractors' Association—covered the whole of the deferred payments because the nature of their work and their membership are not as permanent and steady as those of other crafts."

12. The references of Mr. Wolfe on pages 21 and 22 to the analogy between assessment life insurance and the current cost plan of accident insurance require no logical refutation so far as the German system is concerned, because in every practical phase they are refuted by Mr. Wolfe's own figures when compared with rates for liability insurance in this country and the United States. The one outstanding feature is the smallness of the rate after twenty-five years of operation. On pages 82 and 83 of my brief as published in the Interim Report I have given some specimen rates of liability insurance. Notwithstanding the much higher scale of benefits the German rates quoted by Mr. Wolfe are in practically every case lower than the liability company rates. Thus in quarries the rate in England is 6.25 per cent., in British Columbia 4.03 per cent., in Quebec 6.25 per cent., in New York 7.50 per cent., in New Jersey 5 to 6.50 per cent., while the rate in Germany as shown in Mr. Wolfe's citation was 2.60 per cent. It will be interesting to know what is the proposed rate for quarrying in Massachusetts. I give below a schedule showing the rates not only for the years 1886 and 1908 but also for the intervening years:

## WORKMEN'S COMPENSATION COMMISSION.

649

## COST OF COMPENSATION IN GERMAN ASSOCIATIONS PER \$100 WAGES.

Occupation	1886	1887	1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904	1905	1906	1907	1908	
1. Mining .....	.89	1.51	1.69	1.63	1.67	1.92	2.15	2.22	2.26	2.13	1.93	1.96	1.95	1.87	2.24	2.60	2.84	2.90	3.05	2.82	2.59	2.60		
2. Quarrying .....	.88	1.28	1.70	1.92	1.74	1.83	2.07	1.92	2.88	2.16	2.11	2.04	1.80	1.76	1.83	2.41	2.76	2.81	2.98	3.06	2.82	2.83	2.86	
3. Fine Mechanical Products .....	.31	.39	.52	.38	.42	.49	.53	.58	.52	.50	.48	.46	.50	.53	.68	.06	.77	.74	.75	.70	.65	.70		
4-11. Iron and Steel .....	.36	.79	.94	.91	.98	1.07	1.20	1.24	1.23	2.25	1.17	1.04	1.06	1.08	1.14	1.56	1.76	1.79	1.77	1.74	1.66	1.60	1.76	
12-13. Metal Working .....	.16	.34	.43	.42	.40	.44	.47	.47	.47	.44	.44	.45	.47	.51	.68	.79	.79	.82	.83	.84	.84	.84	.99	
14. Musical Instruments .....	.16	.35	.38	.37	.42	.46	.54	.57	.53	.55	.51	.47	.53	.57	.60	.73	.79	.80	.81	.83	.79	.83		
15. Glass .....	.20	.40	.42	.49	.52	.55	.61	.60	.61	.64	.61	.59	.64	.65	.63	.79	.81	.87	.88	.90	.87	.83	.89	
16. Pottery .....	.09	.23	.29	.27	.31	.37	.42	.44	.43	.40	.38	.41	.40	.46	.59	.83	.65	.63	.61	.62	.63	.71		
17. Brick and Tile Making .....	.28	.53	.64	.65	.72	.89	.86	1.09	1.17	1.14	1.08	.94	.89	.92	.99	1.41	1.52	1.35	1.40	1.64	1.54	1.44	1.72	
18. Chemicals .....	.61	1.20	1.22	1.22	1.17	1.30	1.61	1.37	1.40	1.55	1.45	1.41	1.33	1.34	1.34	1.36	1.43	1.77	1.80	1.82	1.78	1.72	1.79	
19. Gas and Water Works .....	.40	.75	.89	.88	.92	1.00	1.05	1.05	1.09	1.16	1.12	1.03	1.03	1.02	1.04	1.05	1.23	1.32	1.36	1.39	1.35	1.33	1.27	1.31
20. Linen .....	.25	.42	.52	.48	.52	.54	.61	.66	.54	.81	.65	.65	.68	.74	.75	.95	1.05	1.05	1.04	1.01	1.01	.98	1.00	
23-26. Textiles .....	.21	.38	.39	.39	.43	.47	.50	.49	.52	.50	.49	.49	.52	.54	.56	.75	.77	.76	.77	.80	.79	.74	.80	
27. Silk .....	.11	.15	.20	.18	.16	.20	.19	.19	.21	.17	.17	.18	.18	.19	.20	.27	.25	.26	.29	.29	.26	.26	.29	
28. Paper Making .....	.53	1.20	1.43	1.43	1.49	1.49	1.58	1.71	1.75	1.83	1.82	1.75	1.69	1.77	1.82	1.87	2.39	2.64	2.62	2.53	2.53	2.41	2.28	2.32
29. Paper Products .....	.16	.31	.38	.38	.40	.38	.43	.43	.46	.44	.43	.46	.48	.49	.58	.58	.59	.58	.50	.61	.60	.62		
30. Leather .....	.21	.43	.50	.58	.63	.70	.72	.76	.78	.76	.73	.75	.82	.86	1.13	1.22	1.19	1.27	1.27	1.28	1.25	1.34		
31-24. Woodworking .....	.61	.86	1.03	1.06	1.17	1.27	1.44	1.51	1.58	1.67	1.59	1.48	1.49	1.47	1.51	1.91	1.91	1.98	2.03	1.97	1.97	1.94	1.95	2.03
35. Flour Milling .....	.47	1.04	1.57	2.42	1.90	1.95	2.04	2.16	2.31	2.40	2.47	2.36	2.54	2.69	2.83	3.70	3.86	3.03	4.15	2.25	4.33	4.12	4.21	

COST OF COMPENSATION IN GERMAN ASSOCIATIONS PER \$100 WAGES.

This schedule is taken from the source of Mr. Wolfe's information, the 21st Report of the United States Bureau of Labour, and completely refutes the statement made by Mr. Wolfe on the basis of these figures that "the cost each year for the various industries has been steadily mounting." Mr. Wolfe gives the figures for the first and the last of the years referred to in the 21st Report, and from a comparison of these deduces the percentage by which the cost has been "steadily mounting." The fact is, as Mr. Wolfe must have seen from the figures, that in the majority of the classes the maximum was reached long before 1908, in some cases as early as ten years after the inception of the system. Thus in the second of the classes, quarrying, where the present rate is 2.60 per cent. the rate in 1894 was 2.88 per cent. and for five succeeding years steadily declined reaching as low as 1.76 per cent. It has never since been as high as in 1894. This illustrates the fallacy in Mr. Wolfe's presentation of figures which represent a rise from 1886 to 1908 in the rate for quarrying of 324 per cent., whereas in reality the whole rise occurred in the first ten years.

It must be remembered that these percentages are not premium rates, but represent an average over the whole *Berufsgenossenschaften*, which includes many groups. An analysis of the rates of some of these groups is given in Bulletin No. 90 of the Bureau of Labour, at pages 118-183, and an examination of these group rates will give a more definite idea of the development of the rates. Some selections from these rates are given on page 68 of my brief (page 112 of the Interim Report) which is appended hereto. It will be noted that in at least one group, sewing machine factories, the rate in 1908 was lower than the initial rate in 1886, the peak having been reached in 1894. For the paperhanging group the peak was reached in the sixth year, 1891. And while in six of the groups cited the 1908 rate is the highest, there has even in these groups been very little rise for some years.

## RATES IN GERMANY—INSURANCE OF EMPLOYERS IN MUTUAL FUNDS.

	1886	1887	1888	1889	1890	1891	1892	1893	1894	1895	1896	1897	1898	1899	1900	1901	1902	1903	1904	1905	1906	1907	1908	
Agricultural Machinery Works .....	.32	.70	.82	.71	.80	1.12	1.32	1.19	1.21	1.23	1.14	.96	1.05	1.23	1.36	1.69	2.03	2.07	1.99	2.02	1.87	1.84	2.11	
Beer Bottling and Shipping Concerns .....	1.73	1.83	2.81	1.52	1.66	1.62	2.09	1.64	1.66	1.60	1.60	1.19	1.28	1.34	1.37	1.53	1.80	1.77	1.73	1.71	1.70	1.77	1.89	
Carpentry (general contract) .....	.49	1.10	1.39	1.33	1.45	1.56	1.90	2.46	2.80	3.07	2.80	2.42	2.29	2.00	1.91	2.42	2.47	2.37	2.29	2.18	2.03	2.14	2.32	
Carpet Factories .....	.26	.42	.47	.44	.55	.57	.61	.60	.69	.60	.62	.60	.60	.66	.71	.94	.98	1.00	1.04	1.08	1.08	1.04	1.12	
Carriage Factories .....	.32	.70	.83	.71	.80	.50	.59	.60	.61	.62	.57	.48	.52	.86	.95	1.19	1.42	1.45	1.20	1.21	1.12	1.11	.84	
Dyeing Establishments (power) .....	.39	.64	.70	.67	.64	.66	.71	.70	.81	.70	.73	.70	.70	.77	.83	1.10	1.14	1.17	1.17	1.27	1.32	1.31	1.28	1.36
Flour Mills (steam power) .....	1.20	1.22	1.51	1.61	1.75	1.74	1.86	1.95	2.07	2.25	2.29	2.20	2.23	2.31	2.54	3.14	3.31	3.38	3.53	3.57	3.64	3.43	3.66	
Furniture Factories (wood) .....	1.13	1.30	.77	.75	.82	.90	1.02	1.84	1.99	2.03	1.95	1.69	1.50	1.51	1.72	1.96	2.14	2.07	1.95	2.00	1.91	1.89	1.93	
Metal Pressing, Stamping, etc. ....	.35	.46	.53	.47	.46	.52	.58	.55	.52	.50	.47	.44	.44	1.38	.41	.53	.64	.66	.77	.80	.82	.83	.88	
Paint Factories (color factories) .....	.37	.94	1.22	1.28	1.32	1.39	1.45	1.47	1.38	1.39	1.30	1.28	1.20	1.13	1.16	1.16	1.45	1.58	1.61	1.71	1.72	1.68	1.62	1.70
Paperhanging .....	.39	.88	.93	.89	.97	1.04	1.27	.41	.47	.51	.47	.40	.38	.40	.38	.48	.49	.47	.46	.44	.41	.43	.48	
Powder Factories (black) .....	.75	1.88	2.44	2.57	2.64	2.78	2.90	2.93	3.84	3.87	3.61	3.27	3.06	3.11	3.20	4.00	4.34	4.44	4.44	4.05	4.09	4.00	3.84	4.04
Railways (steam) .....	.39	.79	1.26	1.38	1.49	1.52	1.68	1.80	1.72	1.56	1.43	1.26	1.30	1.34	1.42	1.63	1.81	1.89	1.83	1.84	1.82	1.76	1.82	
Saw Mills .....	1.59	1.82	2.79	2.70	2.97	3.23	3.68	3.06	3.31	3.38	3.26	2.82	3.01	3.02	3.44	3.92	4.28	4.32	4.07	4.19	3.99	3.95	4.19	
Sewing Machine Factories .....	.44	.33	.45	.41	.33	.36	.41	.46	.52	.45	.41	.39	.24	.26	.27	.33	.38	.40	.39	.39	.37	.33	.35	
Shipbuilding Plants .....	.47	1.05	1.24	1.06	1.19	1.12	1.32	1.49	1.52	1.54	1.42	1.20	1.31	1.60	1.77	2.20	2.64	2.69	2.59	2.63	2.43	2.40	2.74	

13. It is not necessary to deal with the comments on pages 24 and 25 tending to make it appear that the body of German opinion was unfavorable to the system of accident compensation. The matter is fully covered by the text books, and it is quite unnecessary to do anything more than cite generally Messrs. Schwedtman and Emery's work, from which scores of pages could be quoted showing the actual views of German employers.

14. Pages 25, 26, and 27 contain some further references to the "paternalistic" or bureaucratic nature of the German system and the far-fetched analogy of the operation of railways is again invoked. If it is necessary to deal with this again it may be said:

(a) The German system is not bureaucratic but highly democratic, and autonomous, and the complaint made by its severest critics is that it is not centralized or bureaucratic enough.

(b) No one has suggested for the Province of Ontario a duplication of the German system. What is asked for is the adoption of the principle of collective liability. It is believed that under all the circumstances such a system can be better and more economically administered in the Province through a government commission than through autonomous employers' associations.

(c) The Massachusetts system which Mr. Wolfe recommends is more bureaucratic than the German system. What is proposed for Ontario is a system like that of Massachusetts as originally adopted—that is leaving the whole matter in charge of the State institution instead of leaving employers the option of remaining outside and taking insurance in a private company.

15. Mr. Wolfe speaks with great concern (pp. 28, 29 and 30) upon the "catastrophe hazard," that is the danger of a heavy assessment upon employers by reason of a catastrophe in one establishment. Any such danger is, of course, in inverse ratio to the size of the class. It should be observed that the greatest danger is in the case of a single establishment standing alone. As soon as two establishments combine the danger is lessened for each. It is no doubt desirable to have groups as large as is consistent with proper classification, but the example cited by Mr. Wolfe shows that the danger of smaller classes is readily over-estimated. The reference to the Chehalis accident in Washington is in fact characteristic of Mr. Wolfe's style of argument throughout. Ignoring the fact that the largest member of the group has failed to pay its fee, he states that the fund in that class was exhausted by a very heavy loss due to an explosion by which eight girls were killed. The fact is that the largest member of the group, contesting the constitutionality of the Act, refused to pay its premium. If the State succeeds in its action against this member, the rate, in spite of the catastrophe, will be about five per cent., a rate not merely reasonable but in fact quite low—much lower than any rate I know of in any liability company for a similar hazard.

16. In regard to Mr. Boyd's criticism of Mr. Boyd's figures on page 31 of the Memorandum, it may be observed that the \$8,560,000 includes moneys paid in respect of accidents of previous years. If any credit is to be given for future losses, then the sum must be debited with past losses. Assuming the figures to be correct, Mr. Boyd's deductions are entirely correct except on the further assumption that the sum \$23,524,000 represents a large increase of business, when the amount to be credited in respect of future loss would be greater than the amount debited in respect of past losses.

I have in my brief (p. 61; p. 105 of the Interim Report) given corresponding figures for Canada. The figures given in the report of the Iowa Commission afford

further graphic commentary upon the efficiency of liability insurance (Rep. Iowa Com. p. 98). The figures for the year 1910, which are representative of those of previous years show that of \$29,666,490 premiums collected and \$23,633,363 of premiums in force only \$12,374,342 was paid to policy-holders. The cost of adjustment was \$2,605,840, agents' commission took \$7,305,359, and "other expenses" \$5,738,209, these two items together constituting over sixty per cent. of the earned premiums and over forty-five per cent. of the premiums collected. The amount paid to policy-holders was less than thirty-seven per cent. of the earned premiums, and this percentage will be considerably decreased by allowing for the deferred liabilities which increase from year to year with the increase of business. And the amount "paid to policy-holders" suffers further large reductions before it reaches the pockets of the workmen.

17. The most remarkable feature of Mr. Wolfe's Memorandum is that while in its main purpose it is an argument against "State insurance" it winds up by the recommendation of a State insurance system. The method of argument adopted is to ascribe to the term "State insurance" certain attributes and results, and by inference and denunciation to condemn the hypothetical idea set up. Assuming this argument to have been successful, Mr. Wolfe states: "I am of opinion that the methods now being followed in Germany, Ohio, and Washington are ill-adapted to the needs of Canada or any of the United States. I am of opinion that the maximum benefit can be derived from the adoption of a type similar to that in use in the commonwealth of Massachusetts," etc. And this in face of the fact that the Massachusetts system is as purely a State insurance system as that of Ohio or that of Washington, and is more purely a State system than that of Germany. The principal difference between the system of Massachusetts and Ohio on the one hand and those of Germany and Washington on the other is that the latter are exclusive while the former are not. Mr. Wolfe's position appears to be this: he admits the necessity of setting up an institution under the control of the State. In fact he recommends the system of Massachusetts and has recommended a similar system for the State of Iowa. He insists, however, that such an institution must not have the field of compensation insurance to itself. To put it in positive terms, Mr. Wolfe's contention is that private insurance institutions, and in particular employers' liability insurance companies, must be allowed to remain in business in competition with the State institution. Or, as Mr. Wolfe would probably prefer to put it, the employer must be left free to insure where he chooses.

#### EMPLOYERS' LIABILITY INSURANCE.

This brings me to what is undoubtedly the main point which Mr. Wolfe wishes to have established, namely, that employers' liability insurance companies must be allowed to remain in business in connection with the workmen's compensation law. I have already remarked upon the difficulty of establishing this proposition in its positive form. Mr. Wolfe postulates and assumes rather than argues it. I have dealt in my brief (pp. 57-62; pp. 101-106 of the Interim Report) with the difficulties and disadvantages of this form of insurance. I will only summarize them here:

(a) The retention of the liability companies involves the throwing of the initial liability for compensation upon the individual employers instead of the industries as represented by groups of employers.

(b) Employers' liability insurance is for the benefit of the employer, and no system of subrogations or preferences can place the workman in a satisfactory position as against the insurance company.

(c) Such insurance affords no assurance satisfactory either to the employer or the workman, of a solvent fund to which the injured workman can have recourse, and upon which he may depend, for continued compensation payments.

(d) Any system of liability insurance renders difficult the maintenance of a periodical payment or pension scheme of benefits and inevitably encourages lump sum payments whereby the liability may be written off.

(e) Liability insurance is a source of constant friction between employers and workmen, the interest of the company being inherently adverse to both.

(f) Liability insurance is the means of diverting a large percentage of the money paid out by the employer from reaching the injured workman. As a means of administering compensation the expense is out of all proportion to the service rendered.

(g) Liability insurance militates against the employment of older and partially incapacitated workmen, and in other respects impedes the freedom of employers and workmen.

(h) On the other hand liability insurance companies are inherently impotent to produce direct results in the matter of accident prevention, each company's activities being dispersed over a large number of industries and each company's resources for enforcing prevention being merely to cancel policies.

(i) Liability insurance involves great injustice and inequalities in premium rates owing to the lack of proper classification, the impossibility of scientific rating and the differences of policy amongst the various companies in the matter of paying claims.

(j) Under a system of liability insurance it is imperative that an attempt be made to capitalize compensation claims, a matter which is highly difficult, and, in the absence of long experience, practically impossible under a periodical payment or pension system.

(k) Liability insurance throws upon the Government the responsibility of superintending the reserve of insurance companies without any possibility of approximate accuracy in ascertaining the proper amount of such reserves.

(l) Liability insurance renders impossible the adoption of the current cost plan of assessing premiums with its advantages in the matter of simplicity of operation, tendency to induce accident prevention, and avoidance of economic shock.

What are the countervailing advantages which Mr. Wolfe can claim for his proposal for competition by private concerns with the State institution? The only way in which a private insurance company could be of any use, or could in fact exist at all is by giving a lower rate than the State institution. How could it give a lower rate? Only three lines of economy are open, in the administration of expenses, in the payment of claims and in the selection of risks. Can Mr. Wolfe claim that the total of administration expenses would be higher under a single State institution than under a State institution and a number of private institutions? Not a shred of fact or experience could be adduced in support of such a contention, and on its face it is absurd except on the assumption of wholesale waste in the State system, an assumption for which supporting facts are again lacking, while every indication from past experience is entirely opposed.

In the matter of paying claims any economy exercised by an insurance must be at the expense of the workman, the very person whom the whole system is designed to benefit. If it were to be the function of an insurance institution as it is now that of liability insurance companies to stand between the employer and the workman, and resist the claims of the latter, economy in paying claims would be

commendable—at all events from the standpoint of the employer—but the attitude of employers generally is that the workman should get all the compensation he is reasonably entitled to so long as none of the money is wasted. The only legitimate field for economy as against the workmen would be in resisting fraudulent claims. Is a private insurance company in a better position to do this than a Government Commission armed with the powers of a court? What superior facilities have private insurance companies—or could they have—for detecting and resisting fraud and malingering. Is there less malingering and fraud in England than in Germany? The dispersion of the business and the experience amongst a large number of companies would foster rather than hinder impositions. Under a system of specialized mutual insurance, such as would be evolved by the method of grouping proposed, each industry would be able to guard effectively against its own peculiar forms of imposition and with the sanction of Government power to reduce to a minimum this evil which must undoubtedly be guarded against.

The only other field of economy in liability insurance is in the selection of risks. The company which accepted only the best risks, employers who were careful in the matter of safeguarding and enforcement of rules—could carry such risks at a lower rate than if these risks were diluted with less careful employers. And this, the advocates of private insurance claim, would tend to make employers raise their standard of safety in order to get into the better companies and secure the lower rates. Some of the advocates of an individual liability law have in fact assented to the proposition that a State insurance system is necessary *to carry those risks which cannot find insurance elsewhere*. This suggestion can scarcely be dealt with seriously. No one has suggested in the Province of Ontario that private companies should be allowed to take the cream of the business, leaving the provincial system to deal with the rest. There is no doubt that under a system allowing private companies to compete with the State institution the private companies would have an advantage in the selection of risks. It may be repeated, however, that wherever State systems have competed with private insurance institutions, although the State has carried the poorer risks it has driven the private institutions from the field, and if the State has been getting the inferior business it has handled it so economically as to bring the cost below that of private insurance. If any further commentary is needed upon the success and probability of success in private insurance in the field of workmen's compensation it is afforded by the extracts, given as an appendix below, from recent articles in insurance journals.

But there is another factor for consideration in connection with the proposal to allow the selection and segregation of the best risks. If the prevention of accidents is to be regarded as an important, let alone the paramount, concern in connection with a compensation system these select risks *should not be allowed to withdraw* from the rest, but should be left to act as a leaven for the general mass. It is quite patent what would be the effect of the presence in a group, say of furniture factories, of two or three factories with superior preventive facilities. Whether the fermentation should take the form of emulation on the part of the less progressive employers, or of a demand for reduced rates by the more progressive, the effect would be to call attention all round to the desirability of prevention, and co-operative effort would be spontaneously evoked.

And this raises a question of the greatest possible importance in connection with compensation insurance—namely, of the choice of two avenues of approach to the actuarial phase. One method is to attempt to appraise each separate individual risk or employer and to assign to it or him a proper insurance rate repre-

senting the hazard assumed. Another method is to pool all the accidents in a group of industries and to assess the cost of compensation *pro rata* over the members of the group. The first method is represented by the Ohio system, the second by the Washington system. The first treats each employer as a segregated unit; the second merges the individual employer in the group. The first appraises the employers' risk as it is found, the second assumes that the risk is the same, or ought to be throughout the group. It is unhesitatingly admitted that the second is the proper method and standpoint and the one most conducive to the prevention of accidents. The reasons for this submission are illustrated by a conversation which I overheard while this memorandum was under preparation. I chanced to be riding in the smoking compartment of a railway coach with the managers of the two largest tanning industries in Canada. One of them remarked to the other: "I see you had another accident on that fleshing machine of yours last week. Isn't there some way of guarding that machine?" Then, apparently realizing that he might be thought officious, he added apologetically, "You know under this new compensation scheme we will all be grouped together and we will have to pay for your accidents." This indicates precisely what would be the inevitable result of a pooling of the different industries in respect of accidents and their cost. The only argument against such a system of pooling is the injustice to the more progressive employers. But such an injustice need not continue. Either the weaker members of the group would have to measure up to the stronger or sub-classification would be necessary to penalize the less careful employer. The point I desire to make here is that *any differentials in the rate should be left to spontaneous action on the part of the groups.* This would bring home, as would otherwise be impossible, the exact relation of accident prevention to the insurance rate. In other words it should be assumed, until disproven by experience, that the hazard of each employer in the same industry is the same.

Where the same group includes industries of different types and different degrees of hazard the necessary variations must of course be made by way of sub-classification. But such variations may be made by proportioning the assessment rates, making the rate for one industry twice as high, or half as high again, as another. The relations or proportions being fixed the rates themselves could be determined with reference to current needs.

#### THE CURRENT COST PLAN.

An effort is made by Mr. Wolfe to show that the current cost plan is unsound and undesirable. A table is given which illustrates the operation of the plan and shows that where the bare actual requirements for compensation payments is assessed from year to year the cost will continue to rise for a time and then reach a point where it will continue on a level. From a visual impression of Mr. Wolfe's table it would be gathered that the mass of red figures below the line represented a constantly growing liability. In reality the total deferred liability for instance, in 1917 is the *single column* of red figures in the column for that year, all the red figures under the line for the previous years having been wiped out. Thus, supposing the premium to have been constant at one per cent., the deferred liability would amount to 2.1 per cent. In other words, to wipe out the whole deferred liability it would be necessary to treble the premium rate for one year.

The table also shows that when the rate has reached its level it will be simply the capitalized rate and no more. This leaves nothing against the current cost except a sentimental objection against a deferred liability like that against the

national debt, and the theoretical possibility that the entire cessation of an industry might eventually leave some dependants uncared for. This is offset by the probability that any cataclysm which would wipe out a whole industry group would also wipe out its dependants.

But it is not proposed that merely the bare annual cost should be assessed. Any rational method of assessment must provide a small margin for a reserve fund, and *the addition of a small margin, even the smallest, to the current cost will eventually bring the rate to a capitalized basis.* A table is given below to demonstrate this.

This table assumes a constant pay-roll of \$1,000,000, and a constant requirement of \$25,000 to compensate each year's accidents, \$10,000 of this being required during the first year, \$5,000 the second year, \$4,000 the third year, \$3,000 the fourth year, \$2,000 the fifth year, and \$1,000 the sixth year. This diminishing scale is nearer the actuality than Mr. Wolfe's constant sum after the first year, but the results will work out similarly on either supposition.

On a capitalized basis, without making any allowance for interest, it would require a rate of 2.5 per cent. to compensate the accidents and \$25,000 would be collected each year. On the bare current cost plan only \$10,000 would be collected the first year, \$15,000 the second year, \$19,000 the third year and so on. The sixth year the amount would reach \$25,000 and the rate 2.5 per cent., but it would rise no higher unless an attempt were made to wipe off some of the running liability.

Suppose in addition to the bare current cost there were collected each year an advance of 10 per cent., so that each year 110 per cent. of the required amount would be collected and the 10 per cent. set aside as a reserve. The table below will show the result.

Year	Current Requirement	Amount Levied	Premium Rate	Placed on Reserve	Liability Incurred	Liability Written Off	Net Addition to Liability	Total Liability over Reserve
1912	\$10,000	\$11,000	1.10%	\$1,000	\$15,000	.....	\$14,000	\$14,000
1913	15,000	16,500	1.65	1,500	15,000	\$ 5,000	8,500	22,500
1914	19,000	20,900	2.09	1,900	15,000	9,000	4,100	26,600
1915	22,000	24,200	2.42	2,200	15,000	12,000	(Reduction) 800 -1,400	27,400
1916	24,000	26,400	2.64	2,400	15,000	14,000	-2,500	26,000
1917	25,000	27,500	2.75	2,500	15,000	15,000	-2,500	23,500
1918	25,000	27,500	2.75	2,500	15,000	15,000	-2,500	21,000
1919	25,000	27,500	2.75	2,500	15,000	15,000	-2,500	18,500
1920	25,000	27,500	2.75	2,500	15,000	15,000	-2,500	16,000
1921	25,000	27,500	2.75	2,500	15,000	15,000	-2,500	12,500
1922	25,000	27,500	2.75	2,500	15,000	15,000	-2,500	11,000
1923	25,000	27,500	2.75	2,500	15,000	15,000	-2,500	8,500
1924	25,000	27,500	2.75	2,500	15,000	15,000	-2,500	6,000
1925	25,000	27,500	2.75	2,500	15,000	15,000	-2,500	3,500
1926	25,000	27,500	2.75	2,500	15,000	15,000	-2,500	1,000 (Asset) -1,500
1927	25,000	27,500	2.75	2,500	15,000	15,000	-2,500	

It will be seen that for four years the amount of liability incurred would exceed the amount written off. But from the fifth year the amount written off would exceed the amount incurred and the liability would be entirely wiped out at the end of the sixteenth year. It would then be possible and necessary to reduce the rate. It will be seen that the rate would be slightly above the capitalized rate after the fifth year until the liability was wiped out but if the rate were left at the capitalized rate after the fifth year there would be a running liability amounting to about 2.50 per cent. of the pay-roll. So that the whole liability could be at any time wiped out by the imposition of a double premium.

A variation in any one of the terms of this illustration would alter the result but not the principle. If the reserve margin were reduced it would take longer to overtake the liability. If the obligations in respect of a year's accidents should extend—and they undoubtedly would—over a longer period than six years it would take so much longer to reach the "peak" of the liability, and the rate would continue for a longer time to rise.

A factor which has upset the original calculations of the German actuaries is that of accident prevention. The effect of prevention upon the rate, and of the rise in the rate upon prevention, are amongst the most important features of the whole subject of workmen's compensation. It is perfectly apparent what would be the effect upon the less progressive employers, and upon employers in the mass, of the rather rapid rise in the rates for the first few years. It would tend to provoke effort, individual and concerted, to lessen the number of accidents. The effect is strikingly apparent in the figures of the German system given above. Under normal conditions unaffected by prevention activity the rate should have continued to rise for a generation—until the last of the dependents of the first year's accidents dropped off. But as already pointed out the rise in the German rates was suddenly arrested, in some industries as early as the sixth year, and this is traceable to no other cause than the organized movement for accident prevention.

It is not proposed to enlarge upon the importance of the current cost plan in relation to accident prevention. If the slightest effect can be credited to the current cost plan it is conclusive. It is only desired to add in anticipation of a possible counter observation that the capitalized plan with the immediate imposition of a heavy rate would at once produce a maximum shock to industrial conditions—itself a very serious matter—after which, the chill having been, as it were, taken off, the incentive to accident prevention would be no more insistent than it is now.

The factor of accident prevention has also had this influence in Germany—it has deferred the time when the German rate will reach a capitalized basis. The current requirement having been reduced, the percentage margin was also reduced and the reserve fund increased more slowly.

Reference is made by Mr. Wolfe to the danger that industries may be driven to the wall by increase in the rates and the system therefore collapse like an assessment life insurance system. Sufficient has already been said with the German rates as an illustration to dispel any practical apprehension. Theoretically it is of course possible to conceive of an industry, such as, for instance, the liquor industry, being wiped out. But it could scarcely be considered within the realm of practical possibility that a whole industry-group should perish from the imposition of a reasonable premium rate such as the German rates are. In any case, as

has been pointed out, the total liability would be only a small percentage of the pay-roll. Any danger there may be is of course a matter for consideration in determining the amount of reserve margin which should be imposed, and it might be found advisable to charge a higher margin in some industries than others.

It is unnecessary to add after what has been said that the object in establishing a reserve fund is to provide for just such contingencies as the cessation of any particular industry.

Reference has already been made above (page 16) to the sentimental objection that the industries of the future will be required to pay claims in respect of accidents which occur at the present time, and it has been pointed out that this objection is fully met by the consideration that the present is now paying indirectly for the accidents of the past and that it would be unfair to load the present community with both the past and the future.

A final and conclusive argument in favour of the current cost plan is that no other is practically possible. This brings me to deal with Mr. Wolfe's contention in its positive form, namely, that the rates should be based on the capitalized plan. As Mr. Wolfe has given no reason for this positive contention except the purely sentimental reason above referred to it is perhaps unnecessary to anticipate any argument. I have already in my brief (pp. 63-65; Interim Report, pp. 107-109) referred to the great difficulties in the way of an accurate capitalization calculation. In the absence of positive experience any attempt to capitalize must be purely speculative and empirical. All the general experience in the world will assist very little where there is a substantial variation in the scheme of benefits or in any other one of the many factors affecting the rate. No serious effort has been made to reduce these factors to a scientific basis. A graduation essay by an actuarial student in Scotland, published in volume 36 of the *Journal of the Institute of Actuaries* serves to show the tremendous and in fact insurmountable difficulties in the way of actuarial calculation in this branch of insurance.

In the Washington system an attempt has been made to capitalize. Opponents of the system express disparaging doubts as to the sufficiency of the basis. The argument of course recoils, for any system of individual liability must of course involve much greater complexity in capitalization. But if the basis is insufficient it simply means that the current requirement will gradually raise the rates, so it might have been as well, as appears from the first annual report, to charge an advance of about fifty per cent. on the current requirement. One method of assessing rates would therefore be to start on the basis of the current cost and add a margin for reserve, large or small, according as a temporary running liability was feared or otherwise. In either case the method would be scientifically correct and absolutely sound, while any attempt to capitalize must be at best an approximation, as is shown by the experience of the building associations in Germany.

An epitome of the practice and experience under the German system of rating is given in the following extract from the article by Dr. Zacher, the head of the Imperial Insurance Office, in a German encyclopedia, the "Handwörterbuch der Staatswissenschaften" Vol. VIII, Jena, 1911: "Compensation payments are advanced by the post office on the order of the directors of the trade associations and are liquidated by the latter at the end of their fiscal year. The amount of these payments, together with the cost of administration, and the amount required to be set aside towards a reserve fund, are assessed upon the members of the trade associations, so that not the capital value of the pensions but merely the actual

requirements of the previous year are met. This method has the advantage over the capitalization method that the burden of accidents rises only gradually and a large amount of capital remains at the disposal of the industries, until (after about fifty years) the rate reaches its maximum where the liabilities written off constantly balance those incurred. Since, however, under the assessment method the average annual rate after it has reached its maximum would be considerably higher than under the capitalization (premium) method, the amendment law, for the purpose on the one hand of obviating such an increase in the future, and on the other hand of enabling the transition, later, to the capitalized premium basis, in itself correct, has provided for a further increase of the reserve fund already accumulated, the interest of which is to be employed (after the year 1922) for the purpose of avoiding further increase of the assessment rate; thus to secure a permanent uniform rate representing an approximate mean between the capitalization (premium) rate and the maximum current cost rate."

#### EMPLOYERS' LIABILITY INSURANCE BUSINESS OF BRITISH COMPANIES IN 1911.

Reprinted from the *Post Magazine and Insurance Monitor*, 26th October, 1912.

We are disposed to regard workmen's compensation business as an index of an unsatisfactory condition at present obtaining in British insurance. The intensity of competition is forcing all forms of insurance protection not unlimited in extent and by no means unlimited in resources. The cost of obtaining and retaining business is constantly increasing. If report be true, small armies of Inspectors and Superintendents of Agents are scouring the country, spurring agents to fresh efforts and not merely putting forth strenuous endeavors to obtain new policy holders, but engaged in a constant struggle to retain old connections. Almost every scrap of business is eagerly contested and the fight grows ever keener. Amalgamation has reduced the number and increased the magnitude of individual combatants.

Workmen's compensation business has been a potent factor in producing existing conditions. Thirty-five years' ago employers' liability insurance was non-existent. A few companies transacted personal accident insurance on conservative lines, but the Fire and Life Offices held aloof. The Employers' Liability Act, 1880, opened a new field of activity. Subsequently the first Workmen's Compensation Act, that of 1897, tempted certain Life Offices to embark in a business which by reason of its annuity features seemed to offer a field for the scientific assessment of premiums. A decade later the Workmen's Compensation Act now in force induced the Fire Offices generally to compete and fostered the system of the departmental store in insurance. Rates were cleverly calculated on lines designed to teach the free lance the lesson that outside the Tariff there is no life. The lesson has been taught; but it has had a wider application than was designed, for inside the Tariff there has been no gain except to the employer and the workman. The side lines of insurance have been stimulated and expanded to the pitch of over production and narrow margins. The public has had a liberal education in the art of comparing benefits and making claims, the *ex gratia* payment to retain a valuable connection is becoming constantly more frequent, while the injured workman and his lawyer, with marked ingenuity, have developed the art of malingering and expanding costs. The business of miscellaneous casualty insur-

ance is in a fair way to yield no return beyond a banker's profit from the temporary employment of other people's money and is over-shadowed with the constant menace that the narrow underwriting margin will change from a positive to a negative quantity.

Considerations such as the foregoing cause the future to be regarded with misgiving. There seems to be no finality in the cost of workmen's insurance and there have been indications that when rates are raised the increase takes account only of past conditions, without providing for the constant factor of deterioration. Hence the companies seem always to sink money in the acquirement of experience by which they are unable to profit. The difficulty of assessing the ultimate cost of claims remaining long unsettled is evidenced by the experience of the Tariff Offices, from which the following figures which do not comprise those of all the companies are taken as samples:—

Thus, the subsequent payments and present estimates for claims still unsettled have already exceeded the original estimates for those which arose in 1906 by 32.86 per cent., 1907 by 24.49 per cent., 1908 by 33.00 per cent., 1909 by 20.50 per cent., 1910 by 3.96 per cent. throwing a cumulative burden on the trading of successive years, obscuring the real experience of the business and contributing to the postponement of reform in the matter of tariff rates.

A branch of insurance exhibiting the pitfalls of an experience shifting like a quicksand, and constantly deteriorating without reaching finality, lays a heavy responsibility upon all who conduct it—especially those whose duty it is to calculate premiums for the Tariff Offices—and we look forward with interest to the results obtained on the trading of the current year. That there should remain any disposition to cut rates for the purpose of securing volume in so unpromising an enterprise is inexplicable save on the theory of an impelling necessity. These results have been attained with the aid of a Tariff Association well supported. What would happen in a rate war gives food for serious reflection."

#### LIABILITY INSURANCE.

Article from the *Western Underwriter*, Nov. 28th, 1912.

Some days ago the Journal of Commerce and Commercial Bulletin published a well written article in which a very gloomy view of the present liability situation was taken. This evidently brought out comments from officers of eastern companies, for it was soon followed by an article in the New York Commercial in which it was stated that the companies were not despairing of the situation, that the two American casualty subsidiaries of large English companies will write over \$2,000,000 in premiums this year, showing the willingness of the British Companies to risk their money in the business, and stating it was believed that two or three companies thought to be in rather weak condition will have no great difficulty in selling more stock and creating a larger surplus.

In the earlier article, it was pointed out that the loss reserve requirements of the present New York law are admittedly entirely too low and that companies must put up extra reserve if they would be on the safe side; that the workman's compensation rates are being lowered by special rating and rate cutting and that they are proving inadequate; that court decisions are resulting in constructions of compensation laws which will cost the companies large sums; that the cost of medical aid is running far beyond what it was expected to do, and that in America

rates for compensation insurance are apparently being under-estimated even more than they were in England where the companies in the aggregate have suffered a heavy underwriting loss.

Even if it were admitted that the drab was used a little too freely in painting this picture and if it were lightened up considerably, it is yet gloomy enough to make thoughtful casualty men appreciate that the situation is one that justifies concern. The companies do not know what the proper rates for workmen's compensation are. They have computed them to the best of their ability from such experience in related lines as they had, but there are enough uncertain factors, such as cost of medical aid, to leave considerable room for doubt as to whether they were about right or not. Add to this uncertainty the fact that the compensation laws of no two states are alike and that even the brief experience under the older laws is not an accurate guide as to what results will be under the newer ones, and add also the possibility that some of these laws may be declared unconstitutional and settlements may have to be opened and many claims paid on a higher basis, it can readily be seen that the problems are most serious ones. If the volume of premiums were small the danger might not amount to much, but the volume is very large and if there shall be found to have been a considerable underestimating of rates the amount involved will be large accordingly.

In a way it is fortunate that the results of mistakes in liability insurance do not appear at once and when a company finds it has written business at too low a rate it has some time to prepare for the heavy deferred losses. The underwriters themselves and some of the insurance departments are now watching the situation very closely. The situation is not like that of fifteen or twenty years ago, when a number of liability companies failed, for then the nature of the business was not as well understood and the states had taken practically no steps to protect the solvency of the companies by requiring loss reserves. However, the present period does resemble the earlier one in that there are little companies, and some not so little, that seem to imagine that they can do business at rates lower than those at which older and stronger companies are losing money, just as there were such institutions then.

It is improbable that any considerable time will be permitted to elapse until some important state or states raise their requirements, thus forcing companies to provide fully for future trouble. Meanwhile the companies need to adopt a system of rating by which bad risks will be penalized as an offset to the granting of special rates on good risks; the companies that have not strength to meet a hard shock need to go very conservatively in writing liability and workmen's compensation insurance, as a number of them are doing, and agents need to exercise unusual care to place their business in substantial, conservative companies."

#### WANT LAW REPEALED.

Article from *Western Underwriter*, November 28, 1912.

That an attempt will be made to repeal the Michigan Workmen's compensation law, is the report that has gained considerable currency out in the state. The manufacturers are at the bottom of the mire. Those in the smaller cities cannot reconcile themselves to the big hoist in rates which has prevailed since the law became effective. In Detroit, thus far, there has been no talk of repealing it. The manufacturers seem to have accepted it as one of the steps of modern progress and are adjusting their affairs to meet it. The manufacturers who are

agitating for a repeal are charging that the casualty companies were the chief lobbyists in favour of the law when it was passed. The casualty companies deny this, saying they did not favour it at the time, but have accepted it and are doing their best to live up to it.

#### DENY ISSUING ILLEGAL POLICIES.

Officials of liability companies operating in Detroit deny the charge of the state insurance commission that they are writing policies in violation of the law, insuring the workingmen instead of the employers, or writing in unlawful classes, at the behest of employers, waiving the rights of the employers under the law.

"It is possible some insignificant little company might be doing such things, but I do not see how such a company could be licensed," said J. H. Thom, general superintendent of the Standard Accident. "Certainly none of the responsible companies are doing it. All companies of standing are working sincerely for the success of the compensation law. We hope the industrial accident board will get after whatever companies are wiring illegal policies, if there are any, and compel them to stop it."

The alleged illegal policies, as described by a member of the accident board, do not look as if they were policies issued by a liability company at all, but rather some form of collective accident policies.

#### CROOKED ATTORNEYS BUSY.

Insurance companies are much-incensed over the acts of a number of attorneys and certain unscrupulous, dishonest employers. Both these classes of men are playing on the workingmen's ignorance of the law. Attorneys, hearing that men have been injured, go to him and represent that while the law compels the employer to pay compensation, it will not be done willingly. They offer to get the money for a commission of 25 per cent. The injured men empower the attorneys to act for them and all the attorneys have to do is to present their credentials to the insurance companies and collect the money. The insurance companies are powerless to protest. They think the law will have to be amended to prevent this.

Certain employers are said to be deducting a certain percentage from the pay of each employee for a compensation fund, thus compelling the employees to pay for their own insurance.

The plan of the City of Detroit to insure with a liability company seems to have lapsed. The council committee to which it was referred has made no report whatever.

The state industrial board has called a general meeting of employers and employees, to be held at Lansing on December 11 and 12, at which representatives from manufacturing institutions and from labour organizations are expected to gather and confer with the board upon the different phases of the law with a view to facilitating its operation.

#### RIDDLES STATE PLAN.

The propaganda of Commissioner Palmer to establish State compensation insurance is riddled by an insurance official writing in the *Michigan Manufacturer*. The writer there points out that manufacturers are likely to be misled by the commissioner's claims that his "bureau" can furnish much lower rates because of lower expenses. One of the commissioner's points is that there will be no officers'

salaries to pay. The law directs that deputies, assistants and clerks shall be employed at the expense of the fund. If the fund is properly administered some high salaried expert must be engaged to do it. Unless a very large number of employers come in it is likely to be all eaten up by the expenses of administration. The travelling expenses of all agents connected with the fund must be paid from it. Postage expense must be charged to it. This is the most costly form of advertising, though the commissioner announces there will be no advertising expense.

It is further pointed out that the commissioner fails to mention that his fund will have no medical attendance or funeral expenses. The employers will have to pay those items themselves in addition to the premiums, and medical attendance is one of the heaviest losses the employers desire to insure against.

#### MANY ENTANGLEMENTS.

The entanglements of the employers, the contributors to the fund, are next taken up. When a stock company is confronted with a bad risk it can refuse it. The insurance commissioner is compelled by law to accept all deposits tendered him, and naturally all the bad risks in the state which have been turned down by the stock companies will rush to the commissioner's haven in hopes of getting some measure of protection. Also, small concerns of doubtful financial ability will gravitate there. In the event of disaster they will be unable to respond either through increased assessments or through individual payments. A few responsible manufacturers who might cast their lot with such a conglomeration as this would find themselves paying the compensation of improperly safeguarded small plants under irresponsible ownership. They would become the partners of undesirables, chosen without consultation with the subscribers, who neither personally or by representative have any voice whatever in the handling of the fund.

The test of true insurance is to meet the requirements of a far-reaching disaster involving many injuries. The insurance commissioner's fund would be wiped out by a real disaster, having depositors subject to assessment to meet claims already accrued.

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#### APPENDIX IV.

##### MR. WOLFE'S REPLY TO MR. WEGENAST.

It is unnecessary to refer to the many points touched upon by Mr. Wegenast in his fifty-three page brief. Many of them are immaterial and their discussion serves only to becloud the main issue.

Mr. Wegenast's principal statements may be condensed as follows:

- (a) The German current cost system is a success and the rates have remained practically stationary in all of the 66 mutual accident associations.
- (b) The capitalized reserve system for computing losses, works a hardship upon many manufacturers, and is impracticable.
- (c) The statements contained in my Memorandum are unjustified and are unreliable.
- (d) The system of collective liability in the State of Washington is a pro-

nounced success, is ideal and gives greater benefits than any other system at a lower cost.

For the sake of brevity, I have thus attempted to condense the principal points in the reply, and will discuss them in the order given.

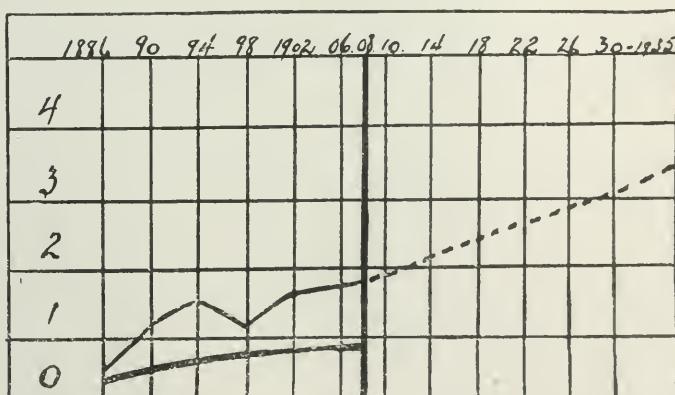
*The German cost system is a success and the rates have remained practically stationary in all of the 66 mutual accident associations.*

In support of the contention Mr. Wegenast derives considerable satisfaction from quotations which he takes from a book "Accident Prevention and Relief," by Schwedtman and Emery, two gentlemen who went abroad for the National Association of Manufacturers of the United States of America, but Mr. Wegenast has neither intelligently appreciated the statements which are contained in that book nor has he given due weight to the sources of his quotations.

That book, if it proves anything, shows conclusively that the cost of insurance is constantly rising in Germany, and that satisfaction with the system is not so generally prevalent as Mr. Wegenast would have us believe. It seems to me that many pages of Mr. Wegenast's brief can be dismissed with these words, which appear from the mouth of his own authority:

"It will be seen that most of these insurance rates are extremely high as compared with employers' liability insurance rates in the United States. In fact, German rates are higher than present workers' indemnity insurance rates in England, especially when we bear in mind that the German insurance system provides only for a small portion of deferred payments. Each year's assessment covers the actual cost of that year, plus approximately 10 per cent for reserve fund, consequently the cost will increase each year because the new permanent injuries are added each year to the existing old ones" (Schwedtman and Emery, p. 146).

In an attempt to find out what the ultimate and permanent cost of the insurance would be, Messrs. Schwedtman and Emery inquired from a number of prominent men. Professor Dr. Manes (whose opinion is frequently cited with approval by those who advocate the German system) gave these gentlemen a table which exhibits graphically the system of future costs. Any attempt to describe this table would be inadequate to present properly its full force. I have therefore reproduced it:—



Allow me to point out some of the significant facts shown by the table:

*First.*—The cost is steadily rising, and while there are some "kinks" in the line, the correctness of the general statement which I made is effectually and effectively proven.

*Second.*—The insurance cost will steadily rise until it reaches its maximum in 1935, when it will be many times the cost to-day.

*Third.*—The accidents per hundred of injured workers have not decreased since the beginning of the system, although the increase is not as rapid as in the case of the insurance costs.

In explanation of the table Messrs. Schwedtman and Emery say (page 147):

"A number of experienced officials of employers' associations feel that Dr. Manes' estimate of nearly double the present cost is too high, but other equally good men consider the figure very conservative. If we consider the estimate as correct it would mean that in order to cover deferred payments we must practically double each one of the insurance rates shown on the preceding pages."

In other words, it is estimated by the friends of the German system that the maximum will be reached in 1935 (50 years after the inauguration of the present German workmen's compensation system), and "equally good men" consider Dr. Manes' estimate of double the present cost as "very conservative."

Now a word to show that not all is absolutely happy in Germany. If Mr. Wegenast will refer to Schwedtman and Emery's book page 32, he will find a statement of G. Neusser, LL.D., Imperial Counsellor, and one of Germany's foremost legal authorities on this subject. He says:

"It must be acknowledged that some of the small employers are groaning under the insurance burdens, and it is worthy of consideration whether or not, for some of these industries, which technically do not differ much from each other, territorial organization instead of organization by crafts might not bring about greater economy in expenditures."

Before dismissing the German system, I desire to call your attention to the statement which appears at the bottom of page 4 of Mr. Wegenast's brief, in which he attempts to take issue with me in my belief that the German system was largely a development of existing benefit systems, and attempts to give the impression that the number of the existing associations was small. An investigation of the social insurance field in Germany before the passage of the compulsory laws indicates how well developed was the ground and how receptive was the soil in which the new seed was to be planted. In 1874 it was estimated that about 5,000 benefit societies covering 800,000 workmen, existed in Prussia and sickness funds existed in large numbers as annexes to the Trade Guilds. Mr. W. Harbott Dawson in his book "Social Insurance in Germany" states on pages 7 and 8:

"Finally, there had come into existence a large class of voluntary aid or benefit societies (*Hilfskassen*), formed more or less on the model of the English Friendly Societies, and for the development of which the Imperial law of April 7, 1876, was passed, providing for registration, restricting the functions of such societies to the granting of sickness and funeral benefits, fixing the rates of contributions and benefits, and providing for the security of funds.

"About this time it was estimated that the benefit societies of all kinds in operation in Germany numbered 12,000 and their membership over 2,000,000. In Prussia alone the members of the registered benefit societies numbered 810,000, those of the unregistered societies and clubs 200,000 and those of the Miners' Societies 220,000.

"An investigation into the influence of the compulsory insurance laws upon the Poor Law made by the German Poor Law Association in 1893-4,

brought to light the extent to which the working classes of industrial towns were insured against sickness prior to the passing of these laws. Some of the replies then received are quoted:

"Bielefeld.—'The major part of the factory operatives were insured against sickness and a large part of them against accident before the passing of the obligatory system of insurance.'

"Colmar (Alsace)—'Before the laws were passed a large part of the workers were already insured against sickness.'

"Erfurt.—'A large part of the industrial population was insured against sickness and a part against accident before the laws were passed.'

"Halle.—'The larger part of the workers were already insured against sickness.'

"Kaiserslautern.—'A large part of the workers were already insured against sickness.'

"Plauen.—'About one quarter of the workers were already insured against sickness.'

"Zittau.—'A large part of the workers (2,800 out of 7,500) were already insured against sickness, accident and infirmity and old age.'

"Essen.—'Before the issue of the obligatory laws voluntary funds afforded the workers about the same benefits to which they have now a legal claim, except in the case of old age pensions.'

*The capitalized reserve system for considering losses, works a hardship upon many manufacturers, and is impracticable.*

The question of the current cost system as against the capitalized reserve value, is one to which I intend to devote but little time. I entertain but little hope of convincing Mr. Wegenast of the demerits of the current cost system if he is obsessed (as he seems to be) with the idea that the ultimate cost of the current cost system will be practically what it is to-day. I shall therefore content myself with stating that Germany is practically the only large country which has deemed it advisable to adopt that system, and as I have pointed out in my Memorandum this decision was doubtless arrived at after considering the condition of the benefit societies existing at the time. The capitalized reserve system, on the other hand, is founded upon correct actuarial and financial bases, is in use in a number of important states and countries and attempts to substitute definite guarantees for indefinite promises. Professor E. Czuber, of the Insurance Council, made a report in 1904 on the Austrian system (that country being one which uses the capitalized reserve system), and the United States Commissioner of Labour in his 24th Annual Report in speaking of the two systems of raising money, first by charging only the current costs, states the advantages as follows:

"In the first case, only the expenditures of the current year are assessed on members, and the element of security, the most important feature of insurance of any kind, depends upon the ability of the accident insurance organization, or rather of its members, to pay the assessments when due. In the second case, the money raised by assessments is a capital sum whose interest (simple and compound) and principal can be drawn on to accomplish the purpose of the insurance, namely, payment of the pensions. In this case the security is the greatest possible, assuming of course that the computations have been correctly made. In the first case, the financial duties of the insurance organizations consist of collecting the assessments and paying the pensions or other benefits; in the second case,

they have the additional duty of investing and administering the capital not needed for immediate use. The first-named system is that in use in Germany, which in practice is modified by a system of reserves for the purpose of reducing the assessments in the future; the second system is that in use in Austria, although it has also been modified in actual practice."

*That the statements contained in my Memorandum are unjustified and are unreliable.*

It is a matter of sincere regret that Mr. Wegenast has attempted to create in your Lordship's mind the impression that I have failed to deal frankly with you in my quotation of actual costs year by year, and he attempts to give weight to his impression by quoting a number of rates, which he states are obtained from the same source as mine, and which do not justify my conclusions.

As an actual fact, Mr. Wegenast has taken the very figures which I used, but has resorted to the trick of moving the decimal point one place to the left, and has conveniently dropped the last figure. If this be a justifiable treatment of statistics, it is respectfully submitted that the entire system of mathematics requires a radical change. I had hoped to save your Lordship the trouble of considering a great number of figures, all of which tended to prove that the ultimate cost of the German system would be many times its original rates, a conclusion not only deducible from the figures shown, but also from a knowledge of the conditions in that country. It is this knowledge which Mr. Wegenast evidently lacks and which is shown more graphically in the diagram of the preceding pages—which, it must be borne in mind, was prepared by those friendly to the German system. But Mr. Wegenast not only takes liberties with mathematical processes, but he also fails to explain to your Lordship the cause for some of the "kinks" to which I have referred. In my previous Memorandum I pointed out that the assessments in the current cost system had been kept at a minimum owing to the increasing number of employees who were participating. In other words, we have a problem in division. The dividend was constantly increasing, and the only way in which to keep the quotient small, was to increase the divisor; the full effect of this can well be seen from columns A B and C in the following tables, the wages of the persons insured being the divisor, and the total amount paid out for insurance being the dividend and the average amount per \$1,000 of wages of persons insured being the quotient:

Industry and Year.	Number of persons insured.	A Total amount of wages of all persons insured.	B Total amount of Insurance Benefits paid.	C Average amount per \$1000 of wages of persons insured.
Mining (Associa-tion No. 1)		\$	\$	\$ c.
1885	348,219	15,612,647	11,619	0 74
1886	343,707	59,689,357	531,973	8 91
1887	346,146	61,077,267	925,317	15 15
1888	357,582	66,191,221	1,122,227	16 95
1889	375,410	73,807,168	1,208,822	16 38
1890	398,380	85,484,513	1,393,367	16 31
1891	421,137	92,589,346	1,549,144	16 73
1892	424,440	90,339,736	1,736,751	19 22
1893	421,124	88,073,445	1,895,963	21 53
1894	426,555	89,894,774	2,001,422	22 26
1895	430,820	91,605,609	2,072,993	22 61
1896	446,342	99,159,499	2,117,744	21 36
1897	468,953	108,896,427	2,110,204	19 38
1898	495,086	118,290,202	2,327,099	19 67
1899	521,352	128,975,066	2,529,106	19 59
1900	565,060	148,889,252	2,784,217	18 70
1901	607,367	168,203,293	3,782,572	22 49
1902	601,132	158,403,618	4,118,503	26 00
1903	619,798	169,830,953	4,826,097	28 42
1904	642,526	178,241,621	5,176,896	29 04
1905	647,458	183,229,695	5,596,385	30 54
1906	689,248	212,110,849	5,989,107	28 24
1907	732,584	245,371,008	6,375,598	25 98
1908	798,378	265,879,323	6,927,885	26 06
Quarrying (Associa-tion No. 2)				
1885	95,545	2,618,000	7,471	2 85
1886	82,585	12,807,227	112,920	8 82
1887	187,929	14,626,866	188,271	12 87
1888	202,498	15,879,369	271,225	17 08
1889	231,250	17,655,352	339,941	19 25
1890	251,400	19,647,621	342,697	17 44
1891	253,250	20,149,122	369,030	18 31
1892	252,800	19,879,424	411,939	20 72
1893	227,500	19,199,045	369,366	19 24
1894	226,300	19,112,195	551,121	28 84
1895	228,000	19,486,566	422,391	21 68
1896	252,200	22,039,093	465,274	21 11
1897	330,882	24,110,308	492,579	20 43
1898	369,257	27,608,883	497,221	18 01
1899	416,095	31,006,503	545,957	17 61
1900	419,144	32,850,794	602,682	18 35
1901	384,086	31,080,642	750,318	24 14
1902	378,813	30,982,117	854,990	27 60
1903	391,172	32,221,794	906,391	28 13
1904	406,617	34,320,692	1,025,916	29 83
1905	427,122	36,099,737	1,104,671	30 60
1906	459,929	40,171,369	1,134,586	28 24
1907	476,691	43,931,068	1,243,147	28 30
1908	439,719	42,518,401	1,218,235	28 65

Industry and year.	Number of persons injured.	A Total amount of wages of all persons insured.	B Total amount of insurance benefits paid.	C Average amount per \$1,000 of wages of persons insured.
Fine mechanical products (Association No. 3.)		\$	\$	\$ c.
1885	39,646	1,699,749	.675	2 16
1886	36,750	7,008,687	22,078	3 15
1887	40,513	7,767,084	30,553	3 93
1888	45,818	8,878,412	46,467	5 23
1889	51,929	10,360,305	39,880	3 85
1890	61,182	12,772,065	49,405	3 87
1891	64,172	13,542,914	57,875	4 27
1892	64,527	13,447,077	67,077	4 99
1893	66,558	14,072,563	75,065	5 33
1894	72,073	15,238,683	89,538	5 88
1895	82,478	18,095,980	95,699	5 29
1896	94,880	21,150,876	106,478	5 03
1897	105,483	23,795,161	116,072	4 87
1898	119,639	27,901,628	130,954	4 69
1899	132,621	31,607,345	159,190	5 04
1900	143,797	35,059,033	187,348	5 34
1901	141,106	35,421,719	242,036	6 83
1902	137,326	35,325,655	269,826	7 64
1903	150,176	38,779,023	301,950	7 79
1904	167,988	44,438,917	328,760	7 40
1905	185,140	50,323,029	377,557	7 50
1906	206,539	58,290,296	413,147	7 09
1907	222,958	69,558,811	453,731	6 52
1908	224,497	70,311,883	494,624	7 03

I could proceed in this way through the entire 66 associations, but the statistics are open to your Lordship, as they are to all of us, and the constant repetition would accomplish no good purpose.

*The system of collective liability in the State of Washington is a pronounced success, is ideal and gives greater benefits than any other system at a lower cost.*

Mr. Wegenast states on page 5 of his brief:

"Fortunately, though it may detract from the credit of originality, there is at least one example of the successful application of the collective liability principle in a jurisdiction having no more facilities, and much less experience than the Province of Ontario. I refer to the State of Washington. It may be sufficient at this point, without discussing the system on its merits, to say that the experience of that State points to the most successful application of the collective liability principle yet achieved in any jurisdiction in the world."

Upon what does Mr. Wegenast base his conclusions that the system in the State of Washington is such an unqualified success? It must be borne in mind that the system of workmen's compensation in that State is about one year old, and to assume that an infant of that age proves conclusively that the adult will be desirable, is a conclusion entirely unjustified. Any system during its first year ought to move along smoothly. The serious problems occur later and I am of the opinion that if Mr. Wegenast depends upon the State of Washington to prove the desirability of the adoption of a similar plan in Ontario, he is leaning upon a slender reed indeed.

In connection with this it may not be inappropriate for me to call attention

to the peculiar reasoning indulged in by Mr. Wegenast. He states in the concluding paragraph of subdivision 6, on page 8, of his brief:

"Attention cannot be too emphatically called, however, to the fact that the scale of benefits under the Washington Act is more generous than that of any other system in the world, and at a cost, it may be noted in passing, apparently less than most of the other systems—certainly only a fraction of the cost under such a system as Mr. Wolfe proposes."

and in the sixth line thereafter on the same page he states:

"It may be observed, *in limine* that no workmen's compensation system can make something out of nothing. The problem is simply the distribution of the money paid by the employer without too great a deduction for administration expenses, and of course another consideration is the avoidance of paying undeserving claims."

Now if the scale of benefits under the Washington Act is more generous than that of any other system in the world, and the cost is less, it must follow that the Washington officials have found some way of disproving Mr. Wegenast's conclusion "that no compensation system can make something out of nothing." They have apparently found such a way, for a calm consideration of the administration expenses in the State of Washington does not afford us any relief in this direction. If the benefits are greater—the ultimate cost will be greater: if the State of Washington is using the current cost system, the employers there will have a similar experience to the German employers, but the increase in cost will be more rapid, due to the inability of bringing a constantly increasing number of workmen under the Act.

I deem it hardly necessary for me to repeat that I am in favor of some form of workmen's compensation to take the place of the unsatisfactory liability insurance. I thought that I had made my position clear in this matter, but the first sentence of Mr. Wegenast's analysis is: "A careful perusal of Mr. Wolfe's Memorandum fails to reveal any definite purpose or conclusion."

If the last paragraph of my Memorandum:

"To summarize—I am of the opinion that the methods now being followed in Germany, Ohio, and Washington are ill adapted to the needs of Canada or to any of the United States. I am of the opinion that the maximum benefit can be derived from the adoption of a type similar to that in use in the Commonwealth of Massachusetts, with such modifications as will make it applicable to the particular community which it is intended to benefit."

conveys no conclusion to Mr. Wegenast's mind, I despair of convincing him of any of the facts mentioned in my Memorandum or in this reply.

All of which is respectfully submitted.

(Signed) S. H. WOLFF.

24th January, 1913.

## APPENDIX V.

## MEMORANDUM OF THE BELL TELEPHONE COMPANY.

THE HON. SIR W. R. MEREDITH,  
*Chief Justice of Ontario, Osgoode Hall, Toronto, Ont.*

SIR,—I have the honor to submit at your suggestion the views of the Bell Telephone Company of Canada, with regard to the proposed Ontario legislation relating to compensation to workmen, for injuries received by them during the course of their work.

In the first place it seems to us that the telephone business in Ontario differs from other businesses in that it comprises one large and well organized system with a very large and rapidly growing number of smaller systems.

This company, which is the one large system above referred to, has assets of millions of dollars in Ontario, and is organized and managed upon scientific and business-like lines. It has a substantial fund reserved to cover accidents, which at the end of the year 1912 amounted to over \$276,000, and it is the rule of the company that in the event of accidents to employees the company continues the payment of full wages during the time the employees are laid off, and also meets the doctors' and hospitals' accounts, and if necessary the board accounts of the employees.

We feel that this company might well be placed in a group by itself. We are aware that this request has been put forward by other organizations in different lines of business, but we feel that such requests differ from this company's request in that even though this company were placed in a group by itself there would still remain over 400 other telephone systems operating in Ontario having a capital investment of over 4½ millions of dollars.

We are aware that your Lordship's efforts are directed towards affording adequate protection to employees, and that therefore your Lordship would be unwilling to adopt any plan under which by the exclusion of the strongest members of any group of industries adequate protection to the employees of the remaining systems in that group of industries might be destroyed.

We take it, however, that it is only in order to afford adequate protection that it is in some instances proposed to adopt such a policy which it appears to us must result in the penalizing of the strong for the weak, the solvent for the insolvent, and the careful and provident for the negligent and improvident.

Having regard, however, to the substantial and rapidly growing class of telephone businesses which would remain if this company were removed therefrom, we think that your Lordship might fairly find that there is no valid objection to making this company constitute the single member of one group and the various other telephone systems operating in Ontario another and entirely separate group. It will be seen that the telephone business differs from those in which a similar request has been made in that if this company be excluded a large and substantial class will still be left, whereas in the other instances, as we understand it, the exclusion of the large company or companies would have left practically nothing remaining.

If, however, it is deemed inadvisable to separate this company entirely from other telephone systems we would suggest that in the group or groups comprising

the telephone systems there be not included any power, electric light, or other similar companies. Their lines of business are so different, and their risks so dissimilar that we think that the reasons for this request should be obvious, and we shall not take up your Lordship's time by labouring the point. We can see no objection, however, to grouping telephone and telegraph companies together.

We should, however, urge most strongly that the telephone business in Ontario naturally divides itself into two groups, the one comprising those systems which carry on their operations as a business and for a profit, and the other comprising those systems, such as the municipal, the mutual, and the smaller rural concerns, which carry on their operations, not as a business, not for profit, but merely for the convenience of their subscribers.

It must be apparent that these two groups and the risks and hazards of their respective employees differ greatly. On the one hand we shall be likely to find concerns that are carefully and systematically organized and managed and employing what may be called professional labour in distinction to amateur labour. On the other hand we shall find those concerns which are more likely to be somewhat loosely organized and managed, and whose labour is frequently supplied in a casual manner by more or less unskilled persons.

It seems to us that such a division would be fair to all concerned, provided that each of the two groups is substantial enough to afford adequate protection to its employees.

In order to avoid the necessity of complicated investigations in each case as to whether or not each concern is carrying on its business for profit, we suggest that an arbitrary line be drawn. For instance, concerns having a paid-up capital of \$15,000 or \$20,000 or over might be placed in the profit-making group, and all others in the non-profit-making group. But inasmuch as many of the concerns are not actually incorporated, and as the paid-up capital is not always a safe guide, we think that the better plan would be to separate the two groups according to the capital invested, and this could be readily ascertained in a rough way by referring to the number of subscribers, for with these local companies each subscriber represents a fairly fixed capital investment.

We therefore suggest that with the exception of municipal systems, which of course by the statute are not intended to operate for profit, all systems having 200 or more subscribers should be included in the profit-making group, and that the non-profit-making group should comprise all municipal systems, and all other systems having less than 200 subscribers. We think that this division would be substantially correct on the ground that it may fairly be assumed that when a system has 200 or more subscribers it is operating upon a business basis, and that it enjoys regular and professional labour. We have endeavoured to ascertain as nearly as possible the number of the various telephone systems operating in Ontario, and while it is possible that our figures are not complete we think that they are well within the mark. Our figures have been gathered from the sources of information open to us through our wide-spread operations in Ontario and may we think be regarded as substantially reliable.

So far as we can ascertain there are, exclusive of municipal systems, about 73 local telephone systems operating in Ontario having 200 or more subscribers, and there are about 361 other telephone systems operating in Ontario, including 33 municipal systems. In order to ascertain whether each of the two groups above mentioned would be substantial, we have endeavoured to investigate the capital invested. Our records furnish us with fairly complete information from which we

may ascertain the number of the subscribers of a great many of these systems and may pretty closely estimate the number of the subscribers of the others, and our experience has shown us that for these companies \$75.00 is a conservative estimate of the capital investment per station.

According to our figures it appears that the 73 local systems to be included in the group comprising those operating as a business have over 30,532 subscribers, which at \$75.00 a station represents a capital investment of \$2,389,900, and that the other group of 361 systems have about 31,450 subscribers representing a capital investment of \$2,358,750.

The above figures do not, of course, include the capital investment in Ontario of the Bell Company, but they make it clear that if the telephone businesses in Ontario were to be divided along the lines suggested by us each group would be substantial.

Having thus seen that the workmen's protection would not be in any way prejudiced by dividing the telephone systems into the two groups we have mentioned, we respectfully submit that there is no adequate or equitable reason why the class of company which is likely to have a better organization and to adopt greater precautions and safeguards should be linked with the class of company which is more likely to carry on its business in a haphazard and casual way and therefore increase the risks of its employees.

With regard to the employees themselves and the accidents to which they are subject, we assume that physical injuries only will be covered by the statute. For example, we assume that it is not the intention that the statute shall cover an attack of hysterics brought on (as we have known it to be) by touching a harmless piece of cold metal on the switchboard, the operator wrongfully imagining that she had received an electric shock, whereas the whole trouble was that on that particular day she was feeling ill and nervous. We merely draw your Lordship's attention to this point so that it may not be overlooked.

We are not of course aware as to exactly what the terms of your Lordship's report to the Government will be, but we trust that any legislation dealing with this subject will in addition to correct grouping provide that those employers who take proper precautions will be entitled to derive benefit therefrom. In other words we would respectfully submit that if employers are to be called upon to contribute to a proposed fund those whose methods and safeguards are sufficient should not be called upon to pay as high a rate as those even in the same group, whose methods and safeguards are insufficient. Under the prevalent practice of insurance companies those persons who take proper precautions to safeguard their property from destruction or damage are afforded a lower rate than those who have failed in this regard, and this we think would be a reasonable method to adopt in the proposed legislation. Should it be that the statute contemplates the appointment of inspectors, they would be able to ascertain the conditions under which employees are working and the rate for the individual employers could be fixed accordingly.

In conclusion we must thank your Lordship for allowing us this opportunity of explaining our views, and we need hardly say that, should any further information be desired from us, we shall be most happy to furnish the same if in our power.

I have the honour to be, sir, on behalf of the Bell Telephone Company of Canada,

Your obedient servant,

Montreal March 6, 1913.

HUGH L. HOYLES,

*General Solicitor.*

## APPENDIX VI.

### MEMORANDUM OF MANUFACTURERS AND EMPLOYERS OF WATERLOO COUNTY, ONTARIO.

To SIR WILLIAM MEREDITH,  
*Commissioner on Workmen's Compensation:*

As numerous manufacturers and employers of Waterloo County are in receipt of letters from the Liability Insurance Companies, requesting them to oppose a Government scheme of workmen's compensation insurance, we are informed that as a result of different replies that have been forwarded to you in answer to these letters, it has been represented that employers as a rule do not support the views set forth in the various resolutions placed before you on their behalf in opposition to private liability insurance. We the undersigned manufacturers and employers of Waterloo County, emphatically place ourselves on record as being in opposition to private liability insurance and re-affirm all resolutions passed in favour of a system administered by the Government.

DATED at Berlin, the twenty-third day of December, A.D. 1912.

Berlin:

The Williams, Greene and Rome Co., of Berlin, Limited, Sam J. Williams, President.  
The Breithaupt Leather Co., Limited, L. J. Breithaupt, President.  
The G. V. Oberholtzer Co., Limited, per N. B. Detwiler, Treasurer.  
The Algoma Power Co., Limited, per D. B. Detweiler, President.  
The Berlin Furniture Co., Limited, J. E. Jacques, Director.  
The H. King Furniture Co., Limited, H. King, President.  
The Western Shoe Co., Limited, per G. Keller, Secretary.  
Baetz Bros. and Co., per J. H. Baetz.  
The Berlin Brick Co., per J. H. Baetz.  
The Wunder Furniture Mfg. Co., Limited, per Michael Wunder, Pres. and Gen. Mgr.  
Simeon Benbacher.  
Anthes Furniture Co., J. S. Anthes, Manager.  
J. M. Sdmedes & Sons.  
David Bean & Sons, Limited, D. A. F. Bean.  
Quality Mattress Co., per M. H. M.  
Harry Tolton, per C.  
A. & C. Boehmer, Limited, C. S. Boehmer, President.  
The L. McBrine Co., Limited, F. McBrine, President.  
Berlin Foundry, per P. Gais.  
The Lang Canning Co., Limited, Geo. C. H. Lang, President.  
The Berlin News Record, W. V. Uttley, Treasurer.  
H. Wolfhard & Co., per Rathman.  
Rittinger & Motz, J. A. Rittinger, Editor, Berlin Journal.  
Merchants Printing Co., Limited, H. S. Hallman, President.  
J. E. Wiegand & Co., per M. E. Wiegand.  
The P. Hyymen Co., Limited, per Peter Hyymen, President.

- Onward Mfg. Co., per T. A. Witzel.  
H. J. Hall & Son, M. C. Hare, Attorney.  
The Kaufman Rubber Co., Limited, A. R. Kaufman, Manager.  
Geo. J. Lippert Table Co., Limited, Geo. J. Lippert.  
Charles A. Ahrens & Company, per Chas. A. Ahrens.  
H. Dunker & Son.  
The Hagen Shirt and Collar Co., Limited, John A. Lang, President.  
The Berlin Interior Hardwood Co., Limited, H. Ford, Secretary.  
J. Kaufman Planing Mill.  
Foster-Armstrong Company, Ltd., per Josiah Betzner, Accountant.  
H. L. Janzen.  
The Merchants Rubber Co., Limited, A. A. Voelker, Assistant Manager.  
Berlin Felt Boot Co., Limited, per A. Rumpel.  
Jackson Cochrane & Co., per J. Cochrane.  
Berlin Lion Brewery, Limited, C. W. Puethir, President.  
The Berlin Button Works, Limited, Wm. Schlu, President.  
The Alpha Chemical Co., Limited, Percy S. Pearce, Secretary.  
C. H. Doerr & Co., per C. H. Doerr.  
The Lippert Furniture Co., Limited, per G. Lippert.  
National Furniture Co., Limited.  
The Walker Bin and Store Fixture Co., Limited, O. Kinger, Treasurer.  
J. Kreiner & Co., per G. Kreiner.  
The D. Hibner Furniture Co., Limited, D. Hibner, President.  
Dominion Button Manufacturers, Limited, D. Gross, Jr., President.  
The Berlin Trunk and Bag Co., Limited, A. L. Beuthaupt, President.  
The Star Whitewear Mfg. Co., A. L. Beuthaupt, Proprietor.  
Berlin Robe and Clothing Co., Limited, per W. T. Barrie.  
R. Boerme Co.  
The Berlin Suspender Co., Limited, per C. K. Hagedorn, President.  
Geo. H. Hachborn & Co., per G. H. H.  
The Berlin Gasoline and Thresher Co., Limited, G. A. Tuerk.  
Forwell Foundry, Limited, E. E. Ratz, Secretary-Treasurer.  
The Berlin Table Mfg. Co., Limited, E. H. Scully, Managing-Director.  
The Berlin Glue Works, per John Wintermeyer, Manager.  
Dominion Tire Co., Limited, per J. Frank Anthes.  
E. A. Wallberg, per H. J. Boggis.  
The Kimmel Felt Co., Limited, A. W. Young, Secretary-Treasurer.  
The Elmira Felt Co., Limited, A. W. Young, Secretary-Treasurer.  
Dumart Bros., per H. Dumart.  
Dominion Sugar Co., Ltd., Henry Surtis.  
The Pollock Manufacturing Company, Ltd., per Arthur B. Pollock, President.  
Canadian Pyrofugout Flooring Co., Ltd., per Carl Ide, Manager.  
The Berlin Shoe Mfg. Co., Limited, H. D. McKellar, President.  
Berlin Bedding Co. Limited., H. D. McKellar, President.  
Hallman Shirt and Collar Co.  
W. J. McCutcheon.  
W. E. Woelfle Shoe Co., per W. E. Woelfle.  
Casper Braun Monument Works and Contractor.  
The John Forsyth Company, Limited.

The Berlin and Racycle Mfg. Co., Limited, Arthur Pequegnat, Manager and Treasurer.

The Arthur Pequegnat Clock Co., Arthur Pequegnat, Manager.  
*Hespeler:*

R. Forbes Co., Limited, G. D. Forbes, President.

A. B. Jardine & Co.

*Elmira:*

The Great West Felt Co., Limited, O. H. Vogt, Managing-Director.

Elmira Machinery & Transmission Co., Limited, A. H. Vice, Secretary.

The Elmira Milling Co., Geo. Ratz.

The Elmira Furniture Co., Limited, per J. Eric Arnold.

The Elmira Interior Woodwork Co., Ltd., per A. Edwards, Manager.  
Heimbecher & Jung.

The Elmira Felt Co., Limited, A. C. Kimmel.

The Ideal Shoe Co., Ltd., F. Nolinsky.

*Waterloo:*

Chas. Muller.

The Globe Furniture Co., Limited, J. Bahnsen, Manager.

The Waterloo Glove Mfg. Co., per John Schoudelmoyer.

Walker-Bolden & Co.

The Waterloo Furniture Co., Limited, E. O. Weber.

The Kuntz Brewery, Limited, per A. Bauer.

A. Bauer & Co.

Jno. B. Snider.

Joseph E. Seagram & Sons, Limited, Jos. E. Seagram, President.

Doering Trunk Company, Limited, F. Doering, President.

Richard Roschman & Bro.

Synder Bros., Uph., Co., Ltd.

Butsuls, Limited, per B. S. Butsul, President.

*Preston:*

Metal Shingle and Siding Co., Limited, C. Dolph, President.

The Preston Car and Coach Co., Limited, W. J. Hodgins, Secretary-Treasurer.

Clare Bros. & Co., Limited, per A. W. W. Clare.

P. E. Shantz, per C. B. Shantz.

The Canadian Office and School Furniture Co., Limited.

The Preston Woodworking Machinery Co., Limited.

Preston Furniture Co., Limited, per F. Moss, President.

The Crown Furniture Co., of Preston, A. Moss.

## APPENDIX VII.

### MEMORANDUM OF LOCOMOTIVE FIREMEN AND ENGINEMEN.

Ottawa, Ont., March 24th, 1913.

The HONOURABLE SIR WILLIAM R. MEREDITH,

*Chief Justice of Ontario, Commissioner on Workmen's Compensation.*

Legislative Buildings, Toronto.

DEAR SIR,—At the conclusion of the final sittings of the Compensation Commission held in the City of Toronto, on the 20th instant, there seemed to be considerable difference of opinion expressed with regard to the percentage of average weekly earnings which should constitute the monthly payments as under the provisions of sub-section 3 of section 29 of your Honour's proposed Compensation Act.

After listening with interest to the reading of the greater portion of the proposed bill at the sittings on the 17th instant, and the subsequent discussion on the merits and demerits of the proposed bill at the sittings on the 20th instant, and after noting carefully some of the main principles of the proposed measure with respect to the methods, etc., of the payment of compensation to injured workmen or their dependants, I believed that the proposed measure, on the whole, if enacted would provide quite reasonable compensation to injured workmen within the scope of the act, provided, however, that the scale of compensation was made sufficiently high under the provisions of section 29. This, notwithstanding the fact that one of the main features of the proposed measure is contrary to the resolution passed by the Canadian Legislative Board of our Brotherhood, at its last meeting—held in this City, February 17-22, last, which favoured a Compensation Act whereby the rights of the workmen would not be impaired under the common law, and outlining some of the main principles which they desired should be incorporated in any proposed Compensation Act affecting our members. (A copy of the resolution referred to is herein enclosed.) I am still of the opinion that, if the scale of compensation is sufficiently high, and that compensation shall be *continuous monthly payments through life* (and that without a maximum limitation placed thereon as proposed by some of the representatives of the employers), it would seem that the advantages gained by this system would more than make up for the limited number who might desire to claim compensation under the common law rights, and which are debarred from this privilege in your proposals. I therefore submit, on behalf of the employees in locomotive service whom I represent, that the scale of compensation as submitted on behalf of the workmen at the final sittings of the Commission should be incorporated in your proposed measure, and that sub-section (3) of section 29 should read as follows:

“If the workman so elects, instead of the compensation provided for by sub-section 2, it shall be a monthly payment during his life equal to 66  $\frac{2}{3}$  per cent. of his average weekly earnings during the previous twelve months if he has been so long employed, but if not then for any less period during which he has been in the employment of his employer.”

I would respectfully submit, that the foregoing proposal is only fair and consistent to the employee in view of the fact that the common law rights will be denied the workmen under the provisions of your proposed measure, and I trust that you may see your way clear to make your recommendations to the legislature accordingly.

Thanking you in anticipation of your favourable consideration of these suggestions, I remain,

Very respectfully yours,

Wm. L. Best,

Legislative Representative, Brotherhood of Locomotive Firemen and Enginemen.

RECOMMENDATION AND RESOLUTION PASSED BY THE CANADIAN LEGISLATIVE BOARD  
OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN AT THEIR  
MEETING HELD IN THE CITY OF OTTAWA, FEBRUARY 17-22, 1913, WITH  
RESPECT TO A PROPOSED WORKMEN'S COMPENSATION ACT.

*Resolution.*

That this Board favours the principle of a Workmen's Compensation Act whereby the rights of workingmen would not be impaired under the common law, and that such an act be framed in keeping with the principles outlined in the Chairman's recommendations No. 3, schedule "B," as follows:

*Recommendation.*

1. For reasons both humanitarian and economic the prevention of accidents should be one of the prime considerations in any scheme of workmen's compensation, and it would seem that no system would be quite satisfactory which will not tend to produce at least some effort and result in conserving the life, health, and industrial efficiency of workingmen.

2. Compensation should be provided in every case of injury or death arising out of and in the course of employment.

3. Compensation should be paid exclusively by the employer, i.e., out of the industry; in other words, compensation should be the first charge on production of any industry after wages.

4. Compensation should be paid for injuries received in the course of employment with respect to the extent to which the industrial efficiency of the injured person has been impaired, and in addition thereto an amount proportionate to the extent to which such injured person has become a financial burden upon a dependant.

5. The administration of such compensation should be entirely under the control of an independent Board appointed by the Government, which Board should have power to adjust all claims without the necessity of the injured employees or their dependants resorting to litigation.

## APPENDIX VIII.

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### MEMORANDUM OF LOCOMOTIVE ENGINEERS.

OTTAWA, March 25th, 1913.

SIR WILLIAM R. MEREDITH, C. J. O.

*Workmen's Compensation Commissioner,  
Legislative Buildings, Toronto, Ont.*

SIR,—In consequence of the small amounts filled in the blank spaces of the several clauses in sub-sections (1) and (2) of your draft Bill, and in view of the fact that the employees are deprived of their common law rights, as representing the Brotherhood of Locomotive Engineers, I am of opinion that the blank space in sub-section (3) of section 29 should be filled in by 66. Also that sub-section (3) should remain worded as at present, *i.e.*, be a monthly payment during his life.

I have the honour to remain, Sir, yours respectfully,

C. LAWRENCE,

Legislative Representative of the Brotherhood of Locomotive Engineers.  
200, Elgin Street, Ottawa, Ont.

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## APPENDIX IX.

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### MEMORANDUM OF THE CANADIAN PACIFIC RAILWAY COMPANY.

To The HONOURABLE SIR WILLIAM R. MEREDITH,  
*Royal Commissioner, on Workmen's Compensation for Ontario.*

The Canadian Pacific Railway Company has the honour to submit the following statement of its views on the subject of workmen's compensation, with the hope that, coming as it does from one of the largest labour-employing corporations in the Province, it will be thought worthy of careful consideration. In order that the essentials of the situation may be clearly set forth, no attempt is made at present to elaborate the argument, but, in view of the great importance of the subject, this company is prepared to substantiate and amplify its views at any convenient time by the evidence of men eminently qualified to deal competently with the question.

### CANADIAN PACIFIC LIBERAL WITH ITS EMPLOYEES.

As a preamble it may be stated without fear of contradiction that the Canadian Pacific Railway Company has always recognized the necessity of caring for the interests of its employees, being thoroughly convinced that the welfare of the Company is wrapped up with that of its servants. It has endeavored to deal liberally

with those men who have sustained injuries in its service and to compensate widows and orphans generously for the loss of husbands and fathers killed in its employ. Many cases could be mentioned in which compensation has been granted where no legal liability existed and where settlements have been made at considerably higher figures than any court would award. It has been the company's policy to avoid litigation whenever possible, and such cases as have been taken into court will be found to be those where unfounded or exorbitant claims have been made, or where there has been wilful or intentional disobedience of orders or carelessness in safeguarding the interests of the public.

As further evidence of the company's desire to continue the welfare of its employees, a reference to the Pension System, which it established in 1902, should prove convincing. Under this system the superannuated employee receives a pension (based upon earnings and length of service and in no case less than twenty dollars a month) from the fund, *which is liberally administered*, and is entirely supported by the company, without any call upon the wage-earners. Again, there is the company's system of railway club-houses of which seven have been built—at Chapleau, White River, Schreiber, Ignace, Kenora, Revelstoke, and Cranbrook, at a cost of many thousands of dollars. The purpose of these institutions is to provide the men on the road with comfortable quarters, free from those demoralizing influences which frequently exist in sparsely settled districts. The buildings are built, equipped, and supported by the company, are conducted by the Y.M.C.A. and the men pay only the actual cost of the meals.

#### APPROVES PRINCIPLE OF WORKMEN'S COMPENSATION.

Notwithstanding all this, the company has no intention of opposing the principle of workmen's compensation. *It would, indeed, welcome any larger scheme of legalized compensation* which would tend to improve the relations of capital and labour, give adequate assistance to those suffering from the results of accidents and reduce to a minimum the cost of litigation, while at the same time safe-guarding the employer from unfounded or unjust claims. The company considers it entirely desirable that some law should be put on the statute book of the Province of Ontario with this object in view, but it respectfully and firmly denies that these desirable results would be obtained by the enactment of any measure of compulsory state or class insurance. It would go further and assert that, were any such law to be passed, the Province would burden itself with one of the most impracticable, costly, and ineffective systems of insurance against industrial accidents that could possibly be devised.

#### COLLECTIVE LIABILITY PROPOSAL.

It has been proposed, and the proposal seems to have gained the support of several employers of labour and labour representatives who have appeared before the Commission, that Ontario should adopt the basic principle of the German law of workmen's compensation, under which certain industries are grouped together and are assessed collectively for injuries sustained in the various units of the group. According to such a plan of procedure it would follow that the steam railways operating in the Province would be compelled to contribute to a joint fund, out of which compensation for injuries and deaths on the various roads would be paid, while the different industries of the Province would be similarly grouped.

### GERMAN INFLUENCE EXERTS FASCINATION.

On the face of it the plan seems excellent, distributing liabilities in comparatively equal proportions over a considerable number of employers. But it will be found on a more careful study of the scheme, taking into account the different conditions prevalent in Germany and Ontario, that it is far from being adaptable to the needs of this country. It is true that advocates of the system both in the United States and Canada have succeeded in convincing numerous people, who have not taken the trouble to think the matter out for themselves, that it is the only satisfactory solution of the problem, but in general these advocates have not been men of practical experience in the conditions which they would seek to readjust. They have been carried away to a certain extent by the glamour of things German, an influence which is becoming world-wide and which tends to impress people with the idea that every system which emanates from the German mind is the highest exemplification of human wisdom. While Germany has undoubtedly made wonderful strides industrially and socially, it does not follow that every plan she originates for her own needs, should be accepted as equally applicable to Canadian requirements.

### DIFFICULTIES OF UNDERSTANDING CONTINENTAL SYSTEMS.

Further, it should not be forgotten that there is a danger, when considering any continental system of workmen's compensation, of failing to obtain a complete understanding of the entire subject. The difficulty of grasping the full meaning conveyed by words written in a foreign language must not be overlooked. Even the most careful student is apt to lose something of the intention of a foreign writer, when he endeavours to describe a complex system in which technical and legal phrases are constantly used. Nor is there less difficulty in grasping the viewpoint of the continental mind, trained as it has been under a system to which Canadians are strangers. For these reasons, if for no others, it would not be advisable to accept any continental system without the most thorough and painstaking inquiry.

It is true that in the States of Washington and Ohio, systems of State insurance of workmen's compensation have been organized and advocates of the principle point to them as examples of what has been done to import the idea into America. But these enactments have been so recent and have been in operation for so short a time that it would be premature to pronounce them successful, and it is much too early to make any deductions from them. Indeed, there seems to be at the present time in the United States a revulsion of feeling against State systems in general, as evidenced at the recent meeting of the National Association of Manufacturers.

### IMPORTANT FINDING OF THE U.S. FEDERAL COMMISSION.

In this connection the finding of the Employers' Liability and Workmen's Compensation Commission of the United States, recently made public, will doubtless carry considerable weight, in view of the fact that conditions in the United States and Canada are so nearly identical. After an exhaustive survey of the whole situation and after the claims of the so-called German system had been vigorously presented, the Commission found that, so far as railways engaged in interstate commerce were concerned at any rate (and that is as far as their recommendations went), "the plan of mutual insurance applied to the railroads of the country is not at present feasible." "The German system very probably operates well in Germany."

states the Commission, "because it fits in with the entire interrelated system of laws for the relief and protection of workmen . . . The Governmental methods of that country lend themselves to a successful administration of such a scheme. The working population is comparatively stable and not constantly changing as with us; public records are kept which exhibit the personal as well as the family history of every workman. There is, therefore, not the same opportunity for fraud in connection with claims for compensation as there would be with us. The German people take kindly to bureaucratic and more or less paternalistic supervision of their business on the part of the Government which would be resented by us." The draft bill recommended by the Commission rejecting the German plan of mutual industrial accident insurance under State supervision has passed the Senate and is now pending in the House of Representatives.

#### PROPOSAL OUT OF HARMONY WITH CANADIAN IDEAS.

The development of Canada has been largely along the lines of individualistic effort; that of Germany has been more communistic. Germany's industrial system has made the present scheme of compensation feasible, it being a natural outgrowth of the national organism. But were the plan to be applied to Canada, it would mean grafting a foreign branch to a stem, unable to support it effectively. Anything more out of harmony with the Canadian way of doing things could scarcely be conceived. It would mean the complete reorganization and readjustment of our entire industrial structure.

This, then, is the first great objection to the adoption of any system of mutual insurance of workmen's compensation, administered by the State, the absence of any suitable organization of society on which to build the plan, coupled with the natural antipathy of Canadians to be bound down and circumscribed by a bureaucratic supervision of their industrial undertakings. Any scheme of compensation to be a success in this country should be a natural growth, springing from within and evolving a system that will harmonize with, even if it eventually alters, existing conditions.

#### THE SCHEME IMPRACTICABLE.

A second objection will be found in the impracticability of organizing and operating such a plan as has been proposed. Any system to be of value must include every industry in the country. To limit its scope to such industries as fall under certain heads or are of prescribed magnitude, would be to curtail the benefits of the legislation materially. Having this in mind, the organization of a system of mutual State-administered insurance covering the entire industrial field becomes a gigantic task. The enumeration and classification of all the industries of the country, the determination of the assessment to be levied on each, the levying of means of collecting the tax, the keeping of records, the determination of the amount of compensation to be paid in various cases, and the thousand and one requirements of such a system, would involve the Province in a complicated and costly administrative undertaking. In many instances the amount of the tax sought to be collected would be far less than the cost of collection, and all the expenses of administration would fall upon the Province. Surely, if the desired object can be achieved without the erection of this expensive and cumbersome machinery, it would be foolish even to enter upon the consideration of such a proposal.

#### WILL NOT REDUCE THE NUMBER OF ACCIDENTS.

In the third place, the collective or State method of providing for compensation will not achieve that important result, towards which all measures of workmen's compensation should be directed, namely, the reduction of risks of employment. *There has been too great a tendency in approaching the subject to regard compensation as the sole objective.* Accidents are considered as inevitable, and, how to deal equitably with those who suffer from them, has been the concern of many advocates, to the exclusion of all other considerations. Viewed from this standpoint, it is natural that employers should seek relief in combining to reduce their liabilities. But unfortunately this very effort to reduce payments for compensation, tends to make the average employer indifferent as to the safety of his employee. He feels that his competitors will bear the bulk of the loss, when accidents occur, and he is accordingly far more careless about the welfare of his own employees than were he to be personally concerned in their safety. If legislation is to bring about better conditions of employment, it must not ignore the fact that the imposition upon employers individually of the liability to make compensation for accidents occurring in their establishments is the more efficient means of effecting a reduction in the number of industrial accidents.

#### EFFICIENT RAILROADS WOULD BE PENALIZED.

In the case of the railways it would be exceedingly difficult if not impossible to arrive at an equitable settlement. *Were the same tax to be applied to every railway operating in the Province, it would mean that the best operated system would be penalized,* and in consequence there would be no inducement for any road to improve its methods of operation. Whereas when each road is required to take care of its own liabilities for accidents, there would be a greater incentive for it to strive to reduce the number of claims, by adopting means of preventing accidents.

#### MALADMINISTRATION OF STATE SYSTEM INEVITABLE.

Another serious objection to State or collective insurance is to be found in the inevitable maladministration of the law. Even the idealized German system has become honeycombed with fraudulent and ill-founded claims, as has been shown by Dr. Ferdinand Friedensburg, President of the Senate (retired), in the Imperial Insurance Office, in his pamphlet, "The Practical Results of Workingmen's Insurance in Germany." Once the operation of the compensation law gets into the hands of a State department, there will be a tendency to accept claims more and more readily. The law, it will say, has been made for the benefit of the working-man, and why should not the workingman profit by it. As in Germany, so in Canada, it will doubtless become easier and easier to secure compensation, and from being a benevolent system, it will sink into a social evil of the worst kind. This is the serious danger confronting any system that takes away from the employer direct interest in the working of the law.

#### PUBLIC WOULD BE SADDLED WITH DEFICITS.

Again, by keeping down rates to please the employing classes and by recognizing all sorts of claims to please the workingmen, an insurance department would be in danger of falling between two stools and the resultant shortage would have to be made up from the public treasury. It would be eminently unfair for

any State system to operate at a loss in order to make a good showing for cheap management, when the public would be called upon to pay the bill. This prospect is by no means uncertain, and it is another source of danger that would be avoided by leaving the payment of compensation to individual employers.

#### DIFFICULTY OF ADJUSTING RATES.

Yet another and an even more vital objection to the proposed plan, which need only be mentioned here, rests in the difficulty of adjusting rates of insurance. Rules of actuarial science based upon the mathematical theory of probability as applied to the expectation of life from which the cost of life insurance can be accurately estimated, could not determine at all accurately the cost of an insurance of accident compensation, based on laws administered by men whose judgments would constantly be changing, as influenced by reasons of expediency and charity. Resultant upon this, deficits would grow up, rates would have to be stiffened, and the whole system would become burdensome by reason of its uncertainty.

#### POSITION OF CANADIAN PACIFIC RAILWAY.

The Canadian Pacific Railway Company advances these few vital reasons for its attitude in opposing the proposed system of mutual State-administered insurance of compensation. *It holds that the interests of employer and employee and of the general public as well would be better served by a system of simple compensation, whereby each individual employer of labour would be liable for those injuries suffered by workmen in his own employment.* It is fully prepared to endorse any law putting this principle into effect in a sane and reasonable way, and to carry out the provisions of such a law on its own system. But it objects strenuously to any plan whereby it would be compelled to contribute to a State insurance fund or be forced to share the accident liabilities of other railroads.

Montreal, July 15th, 1912.

THE CANADIAN PACIFIC RAILWAY COMPANY.

(Seal)

(Sgd.) D. McNICOLL,

*Vice-President.*

(Sgd.) H. C. ORWALD,

*Asst. Secretary.*

## APPENDIX X.

### MEMORANDUM OF THE CASUALTY INSURANCE COMPANIES.

The casualty insurance companies have been doing business in Ontario for a number of years and have established at great cost large organizations for carrying on their work, and have during these years supplied a want in the community by giving protection to the employers against accidents for which they were liable under the existing law. If a workmen's compensation law is enacted with compulsory insurance under State management, it will at one stroke wipe out the casualty business of the companies which have been doing business in Ontario, resulting in great monetary loss to the companies and loss of employment to many persons who are engaged in the business. We submit that such a proposal would be unfair to the companies unless the benefits to be derived from State management of insurance are more than sufficient to counter-balance the injustice that would be done to the companies.

The insurance companies united with the railways in procuring the attendance before the Commissioner of Mr. Wolfe and Mr. Sherman, both of New York, who have given years to the study of legislation relating to workmen's compensation for injuries and are recognized throughout the United States as leading authorities on this question. In their evidence before the Commissioner they have discussed fully the different forms of legislation and the results which are likely to follow, and anything we could say on this branch of the case would be but a repetition of the evidence which has been given before the Commissioner. It is for the Commissioner to decide what weight shall be given to this evidence.

We propose to confine our observations to a few points touching the operation of the insurance companies.

#### EXPENSE RATIO.

1. It has been said that the cost of management by the companies is much higher than it would be under State control. The average expense ratio of the different companies under the liability law is approximately thirty-five per cent., which includes the commission paid to agents. It is unfair to compare the results under a liability law and under a workmen's compensation law, because under a liability law, the employer is only insured against loss resulting from negligence and there must necessarily be great difficulty in almost all cases in determining whether or not there was negligence. Under a compensation law, the only question to be determined would be the amount which has also to be determined under a liability law. The commission which companies have been called upon to pay to agents has ranged from twenty to twenty-five per cent. of the premium and if this expense is deducted, it will be seen that the cost of management by the companies under the liability law is as low if not lower than any of the State schemes under a compensation law. With the widely extended liability of employers for injuries to their workmen, and the necessity to provide insurance, the rate of commission will be greatly reduced, and should be regulated by the act. Under these circumstances, we submit insurance could be conducted by the companies more cheaply and more efficiently than under State management.

## SECURITY FOR PAYMENT OF PENSIONS.

2. One objection which has been urged to the individual liability has been that a compensation Act should provide for payment of pensions instead of lump sums in all cases of fatal accident or permanent disability, and while an employer may be solvent at the time of the accident, there would be no guarantee that solvency would continue as long as the pensions were payable. It is submitted that it would be an easy matter to provide against this danger by requiring the employer in all such cases to purchase an annuity for the amount of the pension in an insurance company approved of by the Government and writing that class of insurance as is done in the Province of Quebec. The result would be that the casualty company which carried the risk would be called upon to purchase an annuity which would give to the workmen greater certainty of payment than in a State managed system.

## LITIGATION.

3. A great deal has been said about the excess of litigation to which workmen have been subjected under the present act. We have already pointed out that any comparison of results under the present Act and under a compensation act would be unfair, and it would be impossible to avoid considerable litigation under a liability law, but the results show that there is no justification for the sweeping charge that the disposition of the casualty companies is to fight all claims. We have procured from a number of casualty companies doing business in Ontario a statement showing the number of accidents reported to them in Ontario and Canada respectively during the last five years and the settlements made, the number of cases in which writs have been issued in which these companies were interested, the number of cases which have gone to trial and the number of these cases in which judgment has been given for the defendants. We have not been able to procure all the returns from each company because the records of all these were not kept in Canada, but the statement shows a very small percentage of cases which have gone to trial or in which suits have been brought, and is a complete answer to the charges which have been made against the companies. We attach hereto a summary of these statements.

## SOLVENCY OF CASUALTY COMPANIES.

4. A statement has been made by counsel for the Manufacturers' Association that he questions the solvency of any of the companies doing casualty insurance business in Ontario, but he did not offer a tittle of evidence or argument in support of his statement, and, on the contrary, on another occasion he quoted from a prospectus written by a man who had failed in the insurance business, showing the large profits which were being made by the casualty insurance companies. These statements are entirely inconsistent and the counsel did not say which one he believed to be true, but was willing to adopt whichever one best supported his contention. We do not think his statement will be considered seriously, but, we would like to show what the position of the companies is as to reserves.

Every company doing business in Ontario is required to file annually a statement of its affairs which shows the unearned premiums and liabilities for outstanding claims made up on a basis similar to that required by the State of New York, the particulars of which have been furnished to the Commissioner, and each company is then required to deposit with the Government sufficient to cover the outstanding liability shown by the statement.

Reference to the report of the Superintendent of Insurance for the year ending December 31, 1911, shows the following deposits by companies licensed to transact casualty business in Canada.

Canada Accident Company .....	\$95,595 00
Canadian Railway Accident Company .....	75,011 00
Dominion of Canada Guarantee and Accident Company ..	201,151 00
Employers' Liability Assurance Corporation .....	650,677 00
Fidelity and Casualty Company .....	125,360 00
General Accident Company .....	44,360 00
Guardian Accident and Guarantee Company .....	62,658 00
Imperial Guarantee and Accident Company .....	111,900 00
London and Lancashire Guarantee and Accident Company	83,835 00
London Guarantee and Accident Company .....	212,547 00
Maryland Casualty Company .....	266,582 00
Ocean Accident and Guarantee Corporation, Limited .....	419,255 00
Railway Passengers Assurance Company .....	99,626 00
United States Fidelity and Casualty Company .....	193,175 00
Travellers' Indemnity Company .....	105,123 00

We would suggest that the Department of Insurance should exercise a closer supervision over the returns than has been practised in the past, and adopt such regulations as may be necessary to make certain that the reserve to be deposited by each company with the Government would be sufficient to provide for all claims.

#### GOVERNMENT COMMISSION.

The insurance companies would welcome a Government Commission or any summary way of dealing with claims, under which the decision of such tribunal should be final and without appeal.

The insurance companies would offer no objection to reasonable supervision of their rates in a way similar to the regulation of freight rates by the Railway Commission and while the competition for business would be sufficient to protect the employers from unduly high rates, the power to regulate would give to the employers the machinery for ascertaining what would be a fair rate in every case.

We submit that a company which would be approved of by the Commission is equipped to carry on the business of insurance more effectively and more cheaply than any State Commission; and with provisions under the law along the lines above suggested, the security to the workmen would be better than that offered by a system such as that adopted in Germany or Washington State.

#### STATEMENT OF COMPANIES WRITING EMPLOYERS' LIABILITY INSURANCE IN CANADA COVERING A PERIOD OF FIVE YEARS PRIOR TO 1912.

##### IN ONTARIO.

Company.	Accidents reported.	Number of cases settled.	Number of writs issued.	Number of cases taken to trial.	No. of cases tried and resulted in favor of defendant.
1. ....			396	33	7
2. ....	1,688	519	68	7	4
3. ....	100	55	5	.....	.....
4. ....	175	143	8	.....	.....
5. ....	228	118	10	1	1
6. ....	1,289	649	.....	.....	.....
7. ....	543	219	28	6	.....

STATEMENT OF COMPANIES WRITING EMPLOYERS' LIABILITY INSURANCE IN  
CANADA COVERING A PERIOD OF FIVE YEARS PRIOR TO 1912.

## IN CANADA.

Company.	Accidents reported.	Number of cases settled.	Number of writs issued.	Number of cases taken to trial.	No. of cases tried and resulted in favor of defendants
1.	7,622	2,245	183	20	6
2.	900	500	7	.....	.....
3.	566	447	11	.....	.....
4.	2,169	782	51	6	6
5.	1,960	1,081	.....	.....	.....
6.	1,438	623	55	11	2

(Sgd.) RITCHIE, LUDWIG & BALLANTYNE,  
*Counsel for Casualty Insurance Companies.*

## APPENDIX XI.

## MR. F. W. HINSDALE'S SUGGESTIONS.

The following is a correct sketch of the suggestions and opinions which I expressed to Mr. F. W. Wegenast, of the Canadian Manufacturers Association, with reference to details in the operation of the Washington Act:—

I suggested that instead of the provision excluding industries causing only 5 per cent. impairment, a provision excluding all injuries not lasting beyond the third day thus shutting out the vast majority of the trivial injuries.

I would prefer a waiting period of three days to one of a week, since the latter would probably involve a provision for first-aid.

The manufacturers of Washington are absolutely and unanimously opposed to providing medical benefit or first-aid, and prefer to pay for all injuries from the beginning without a waiting period.

I suggested that the Act should be limited to employers of at least three persons as this would obviate great difficulty in the collection of premiums, and as many such employees are practically doing contract work and fixing the conditions of their own employment.

I would be opposed to grouping industries by hazard because it is practically impossible to estimate hazard in advance. Under the Washington system, for instance, laundries and paper mills were each estimated at a rate of 2 per cent. It was found in actual experience that it was necessary to collect the full premium from paper mills since the law has been in operation, 15 months. It has only been necessary to collect for one-fifth of the time from the laundries. In other words the rate for paper mills was correctly estimated, while the estimated rate for laundries was five times too large.

I would recommend instead of grouping and rating by hazard the grouping of allied industries with sub-classifications or differentials. The only exception

that should be made to the general principle is where a given industry presents too small an exposure. In such cases it may be necessary to group it with a dissimilar industry of a similar estimated hazard.

I think the provision of the Washington Act by which the pension in the case of the injury or death of a minor child ceases at the time when the child would have attained the age of 21 years, constitutes a discrimination as compared with the case of an injury to a person over 21. In the latter case the pension would continue while in the former it ceases.

I agree with Mr. Wegenast's suggestion that a class might be formed for cartage and drayage, including safe-moving and moving of other heavy articles and commodities, but would prefer, on account of the probable smallness of the class, to group it with some other class as similar as may be.

I consider class 4 under the Washington Act one of the most dangerous classes on account of its smallness and great hazard. With safe-moving and heavy teaming grouped I would be satisfied to place house-moving and house-wrecking into class 5 with an appropriate differential.

Class 7 in the Washington Act refers to railway construction. There is no class in which the operation of railways is listed. We have, therefore, grouped the operation and construction of railways in class 7 which is unfortunate. Construction work is one thing and operation entirely another.

Roadmaking in class 8 is construed as the making of new roads and of such work on old roads as involves the use of scrapers and other machinery but the upkeep of old roads is not considered as road-making. I would suggest a clear definition of the class and suggest "road construction or the work upon old roads involving the use of scrapers and other machinery."

I suggest the elimination of class 26, "the stamping of tin and metal" for the reason that it would be an extremely small class, and the work is closely allied to work listed in class 34, working in steel, iron or other materials although there should be a differential.

I prefer the application of a unit rule as far as possible in the case of the manufacture of jewelry, tinplate, etc., and other industries involving the use of hammers and stamping machines.

Asphalt manufacturing might be put in with class 31, cement, etc.

Class 32, canners of fruit and vegetables, we include in class 39 covering workers in food stuffs.

We have eliminated class 27 because there is no one in the State engaged in the manufacture of bridges nor in the making of steel shovels, etc. If they are made on the ground they fall into the construction class.

I agree with the suggestion of making a class for machine shops, tool works, including iron, steel, copper, zinc, brass or lead articles or wares and hardware, with another class for boiler works, foundries and similar heavy forms of iron working.

Shipbuilding is in the construction class.

It is important to keep a clear distinction between construction and operation.

In railway construction if tunneling is assessed at a higher rate than general construction a corresponding reduction should be made in the case of grading, track laying, etc., on comparatively level country.

The rate for house-wrecking and house-moving should have been higher than 6½ per cent.

Operation of telephone system too high.

The brick laying rate, 5 per cent., is too high.

All rates in classes 5 and 6 are too high.

Rates on railway construction are on the whole twice too high.

Street railway, 3 per cent. of pay-roll is too high. Power houses are taken in with street railways. I would separate street lighting from street railways.

Where not possible to separate pay-roll in any industry, we strike a percentage which would be applicable to the class. We do not include street hazard of chauffeur. A garage goes in the machine shop class.

We distinguish between shipbuilding with scaffolds and shipbuilding without scaffolds, but they are in same class.

Making of row-boats and small boats is in the woodworking class.

Gas works are in a separate class. Metre readers are not included.

There is an agitation in Washington to separate foundries and machine shops, the machine shop hazard being much lighter than that of the foundry.

The printing rate might be put down to  $\frac{1}{2}$  of 1 per cent., electro-typeing and photo engraving the same.

We need full rate longshoring and stevedoring. A proportion of 2 to 3 as between wharf operation and stevedoring is about right.

Moving picture operators might go in with stage employees.

Fireworks go in with powder at half the rate. Experience seems to show that the proportion between fire-works and powder is not far out.

I submit that a class representing 1,000 workmen is a fair size.

In Washington manufacturers of cooperage and cheese boxes object to be put with lumbering. I would suggest putting baskets, cheese boxes and cooperage in a class by themselves.

In the sash and door, planing mills, box factories and woodenware factories, 100 mills would make a sufficiently large class.

In Washington upholstering is classed with fabric.

With regard to trucking in Washington, a distinction is made between light and heavy trucks. For instance, compensation is refused to a man injured by moving a piano while a man injured in moving a safe is compensated.

With regard to contracting it would not jeopardize the class if a few contractors failed to pay their premiums.

I think the distillers and brewers make a good class by themselves without making differentials.

*Re Abattoirs and Packing Houses.* The unit rule is applied and a dray is considered as attached to the industry to which it belongs.

I suggested merging the shoe and rubber manufacturing in a class with a lot of others.

I would put mattress manufacturing with upholstering rather than with textiles.

I consider pulp and paper mills a bad class. I would put on them a higher rate than we have got.

*Re clothing, whitewear and bedding.* This class is not hazardous. We never had any injuries reported from ordinary sewing machines.

I would suggest that pickling industries be put in with bottling and vinegar.

*Re Quarries.* Taking sand out of a pit is put in this class.

*Re Butter, Cheese and Dairies.* We count creameries very slight hazard notwithstanding the use of machinery.

*Re Silverware, Plated Ware and Musical Instruments.* We put musical instruments in with printers, though I think printers should be put by themselves.

Jewelry should be a class by itself.

**Printing and engraving** a good group. The question arises about non-hazardous departments.

*Re Carshops.* In Washington we combine car and locomotive shops.

*Re Spices, Condiments and Coffee.* I would suggest putting these in a general food class. The bulk of it is in barrels.

*Re Quarrying.* There is a serious objection from the men operating sand and gravel pits in Washington. The real hazard of the pit is one thing and the handling of the material for building purposes another. Mr. Wegenast suggests putting in same class with a differential. In Washington the one is put in the quarry class and the other in the building material class.

With regard to building construction we propose to ask the legislature to lower or raise the rates as we deem it necessary.

We divide roadmaking into blasting and without blasting.

*Re Steamboats.* I would suggest that all boating should be in a class by itself. Mr. Wegenast asks if I would rate it on the tonnage. I prefer the payroll as a basis.

In dredging we distinguish between construction and operation.

Very respectfully,

F. W. HINSDALE.

## APPENDIX XII.

### MEMORANDUM OF THE TRADES AND LABOUR CONGRESS OF CANADA.

TORONTO, 239 Quebec Avenue.  
March 25th, 1913.

SIR WILLIAM R. MEREDITH,

*Chief Justice of Ontario; Commissioner on Workmen's Compensation.*

DEAR SIR.—Enclosed find the schedules of compensation in the draft act filled in as promised. Permit us to say in behalf of the great interests we represent that the schedules of compensation and the waiting period, if any, are of vital importance to the position of the worker under the proposed legislation. Clause 3 of section 29 is of such tremendous importance to the workers that we ask, that you will recommend a fair and just proportion of the wages as compensation, and then not entertain any interference with the clause as you have suggested. The flat rate which precedes it as sub-section 2 under which the worker can choose if his or her wages are so miserable as not to reach that sum, we cannot do other than commend, Sir, as evidence of the Commissioner's desire to be fair with the great mass of workers in industrial Ontario. We respectfully ask with all the earnestness at our command that you will suggest to the Government the widest

possible application of the grouping of employers into classes to bring the entire industrial sphere of Ontario within the scope direct of the Compensation Board, in their administration of the accident fund directly under their control, by the assessment of the yearly wage-roll of the employers under the collective system.

Under the draft act you have discussed with us, we believe it is your desire wherever the worker does not come within the direct administration of the accident fund, to so protect him by the individual liability of his employer, and this under jurisdiction of the Commission, or Board as to place him in an infinitely better position than he is at present under the present iniquitous laws relating to accident damages in Ontario.

Let us also say and this in every spirit of fairness to the manufacturers that the proposed draft submitted by them cannot possibly meet with the approval of the workers in this Province. Nay further, Sir, the more it is diagnosed the worse it seems. It proposes to take away all the rights of the workers, and give in return a poor, minimum or starvation compensation, and this surrounded by so many contentious clauses that it would be a blow to the workers in Ontario severe and unjust, and when thoroughly understood would cause a reaction of the workers against such an unfair measure.

We, however, feel confident that you, Sir, have thoroughly understood the unfairness of the proposals of the Manufacturers representatives perhaps better than we have ourselves. True they propose a collective system of insurance, and a Compensation Board, so did we first of anyone before the Commission, but what would be the use even of that system to the workers unless the compensation to be paid was of some use in keeping them out of the hands of the charitably disposed. The social side of the legislation is to prevent the injured soldiers in industry and their dependants from being thrown on the scrap heap as objects of charity, and the dependants of the killed worker, male or female, being able to continue an existence by the aid of Government legislation in the interests of the whole people, instead of being beset with all the temptations that arise around those left to face the world without the means of a livelihood.

But why should we cover again what has been so many times stated in the evidence before you? We earnestly hope that you will not allow any delay in the recommendations to the Government, so that the legislation can be passed this session. Should any delay be met with it will be a grievous disappointment to the workers in Ontario we assure you.

Again we express our confidence, Sir, that you will complete the draft act in such a manner as to commend itself to the interests we represent, the workers of this Province.

In conclusion we hope that no alterations will be made that will detract from your intention, we believe, to give to the people of this Province legislation on this most important matter that will be a credit to the Banner Province of this Dominion.

On behalf of the Trades and Labour Congress representatives.

(Sgd.) FRED. BANCROFT,

(Sgd.) JOSEPH GIBBONS.

Any further assistance in completing the legislation we will be pleased to render.

## SCALES OF COMPENSATION.

(29) (1) Where death results from injury the amount of compensation shall be:—

(a) The necessary expenses of the burial of the workman not exceeding \$100.

(b) Where the widow or an invalid husband is the sole dependant a monthly payment of \$25.00.

(c) Where the dependants are widow or an invalid husband and one or more children a monthly payment of \$25 with an additional monthly payment of \$6 for each child under the age of 18 years not exceeding in the whole \$45.

(d) Where the dependants are children a monthly payment of \$12 for each child under the age of 18 years not exceeding in the whole \$45.

(e) Where the workman was under the age of 21 years and the dependants are his parents or one of them, a monthly payment of \$25 ceasing when the workman would have attained the age of 21 years.

(f) Where the sole dependants are persons other than those mentioned in the foregoing clauses a sum reasonable and proportionate to the injury to such dependants to be determined by the Board, but not exceeding 50 per cent. of the monthly payment to a dependant widow.

(2) Where a total disability results from the injury the amount of compensation shall be:—

(a) If the workman is unmarried a monthly payment of \$25.

(b) Where the workman is rendered completely helpless and requires constant attendance a monthly payment of \$50.

(c) Where the workman had at the time of the injury a wife or an invalid husband a monthly payment during their joint lives of \$35 to be reduced to \$25 upon the death of either of them.

(d) Where the workman had at the time of his injury a wife or an invalid husband and one or more children a monthly payment of \$25 with an additional monthly payment of \$6 for each child under the age of 18 years not exceeding in the whole \$45.

(e) Where the workman had at the time of the injury a wife or a husband not an invalid, a monthly payment of \$25 and an additional monthly payment of \$6 for each child under the age of 18 years not exceeding in the whole \$45.

(f) Where the workman had at the time of the injury one or more children a monthly payment of \$14 for each child under the age of 18 years not exceeding in the whole \$45.

(3) If the workman so elects instead of the compensation provided for by sub-section (2) it shall be a monthly payment during his life, equal to 66 per cent. of his average weekly earnings during the previous twelve months if he has been so long employed, but if not then for any less period during which he has been in the employment of his employer.

## APPENDIX XIII.

## DRAFT

## Workmen's Compensation Act as Suggested by the Canadian Manufacturers Association

[Issued by the Canadian Manufacturers Association]

Below is submitted a draft bill embodying the proposals made to the Government Commissioner, Sir William Ralph Meredith, on behalf of the Canadian Manufacturers' Association, and supported by practically all the associations of employers throughout the Province. The proposal is that of a collective fund administered by a Government Commission. The proposal is based upon the principles underlying the system of Germany and those recently adopted by some of the American States. The existing system most closely corresponding to the proposal is that of the State of Washington, but considerable variations from the Washington Act have been introduced by the way of simplifying its operation and removing the anomalies incidental to the restricted constitutional powers of the American States. And of course an endeavour has been made to adapt the form of drafting to that of our Provincial statutes.

AN ACT RESPECTING COMPENSATION TO WORKMEN AND THEIR  
DEPENDENTS FOR INJURIES ARISING IN THE COURSE OF  
INDUSTRIAL EMPLOYMENTS.

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## PART I.

1. This Act may be cited as *The Workmen's Compensation Act*.<sup>Citation.  
1913.</sup>

2. In this Act unless the context otherwise requires:—

Definitions.

“Accident Fund” shall mean and refer to the fund mentioned <sup>Accident  
fund.</sup> and described in section 44.

“Association” shall mean any association or body of employers <sup>Association.</sup> whose constitution shall have been approved by the Board as entitling it to represent any of the classes provided for in this Act or any sub-division or group of employers in such class.

The only place where these “Associations” come into play is in sections 23, 93 and 94. They are not an essential feature of the Act.

“Average earnings” and “earning capacity” shall mean and <sup>Average  
earnings.</sup> refer to the average earnings or earning capacity at the time of the injury and may be calculated upon the daily, weekly or monthly wages or other regular remuneration <sup>Earning  
capacity.</sup> which the workman was receiving at the time of the injury.

or upon the average yearly earnings of the workman for three years prior to the injury, or upon the probable yearly earning capacity of the workman at the time of the injury as may appear to the Board best to represent the actual loss of earnings suffered by the workman by reason of the injury.

Beneficiary.	"Beneficiary" shall mean and include the workman, and a husband, wife, child or other person being a dependant and entitled directly or through another to compensation under this Act.
Board.	"Board" shall mean the Industrial Insurance Board.
Brother or sister.	"Brother or sister" shall include half-brother, half-sister, step-brother and step-sister.
Child or or children.	"Child or Children" shall include grandchildren, adopted children, illegitimate children and posthumous children from the date of their birth.
Construction.	"Construction" shall be deemed to include repair, alteration and demolition.
Dependant.	"Dependant" shall mean and include any husband, wife, child, parent, brother or sister dependent in whole or in part for support upon the earnings of a workman and entitled to compensation under Part III of this Act; but shall not include a husband or wife who has lived in a state of abandonment for more than one year before any injury in respect of which compensation is sought under this Act.
Employer.	"Employer" shall mean and include every person, firm, association and body having in service under contract of hire, written or oral, express or implied, persons engaged in or about any establishment, undertaking or employment within the scope of this Act; and shall in respect of any such establishment, undertaking or employment, include municipal and public corporations and the Crown.
Employment.	"Employment" shall mean and refer to the whole or any part of any employment, establishment or undertaking within the scope of this Act, shall mean any department or part of such employment, as would if standing by itself be within the scope of this Act.
Injury or injured.	"Injury or Injured" shall be deemed to refer only to an injury resulting from some fortuitous event as distinguished from the contraction of a disease, and only to an injury occurring in the Province of Ontario.

"Invalid" means one physically or mentally incapacitated from ~~invalid~~ earning.

"Major Arm" shall mean the right arm, or if the workman is ~~major arm~~ lefthanded, the left arm.

"Manufacturing" shall be deemed to include making, assembling, ~~manufacturing~~, preparing, altering, repairing, ornamenting, printing, finishing, packing or adapting for sale or use any article or commodity.

"Parents" shall include grandparents and other persons *in loco Parents parentis* whether related by consanguinity or not.

"Permanent total disability" means any condition permanently ~~incapacitating~~ <sup>Permanent</sup> ~~total dis-~~ ability a workman from performing any work at any gainful occupation; the following shall be presumed to constitute permanent total disability: (a) loss of both legs, (b) loss of both arms, (c) loss of both eyes.

"Workman" shall mean and include any person engaged under ~~workman~~ contract of hire, written or oral, express or implied, in or about any employment within the scope of this Act; provided that a person engaged in purely clerical work and not exposed to the hazards incident to the nature of the work carried on in the employment shall not be deemed a workman within the meaning of this Act and shall not be entitled to compensation hereunder except as provided by section 7.

3. This Act shall apply to employers and workmen in every employment, establishment or undertaking in the Province of Ontario, in which three or more persons are regularly employed in or about the work of lumbering, mining, quarrying, fishing, manufacturing, building construction, engineering, transportation, operation of railways, telegraphs, telephones, electric power lines, water works and other public utilities, navigation, operation of boats, ships, tugs and dredges, operation of grain elevators and warehouses; teaming, scavenging and street cleaning; painting, decorating and renovating, dyeing and cleaning; or any occupation incidental thereto or immediately connected therewith.

This is the section which defines the occupations which are to come under the Act. It is susceptible of expansion or modification and it may be necessary to make it in some respects more explicit. The danger of itemizing too explicitly is that the section might lose in generality. The employments covered by this section are classified in section 45.

The limitation of the Act to employers of three persons or over is not an essential feature of the Act. It would be very difficult, however, for the Board in the initial stages of its work to collect the premiums from the smaller employers, and these might be left for a few years under the present law. There is a justification for this in the fact that the employees in such cases largely fix the conditions of their own employment. They are mostly of the class of casual workers who are excluded in all systems.

What accidents compensated.

4. Where personal injury is caused to a workman by accident arising out of and in the course of any employment within the scope of this Act compensation shall be paid to such workman or his dependants, as the case may be, as hereinafter provided, unless such injury was in the opinion of the Board intentionally caused by such workman or was due wholly or principally to intoxication or serious and wilful misconduct on the part of the workman.

This is the crucial section of the bill. It must be read in conjunction with section 44, which designates the source from which the compensation is to be paid.

It will be noted that the section provides for compensation for injuries due to the negligence of the workman himself, except in the extreme cases specified in the section. According to the statistics these extreme cases amount to only about 1 per cent. of the total number of accidents, while the cases due to ordinary negligence of the workman constitute about 25 or 30 per cent. of the total. The section is drafted on the assumption that the workman will make a substantial contribution to the cost of compensation, either by a "waiting period," during which no compensation will be paid, or by modification of the scale of benefits. If the proposition were to pay full compensation for the injury, the section should be so drafted as to exclude all cases where the injury was due to the fault of the workman.

The causes of accidents are shown by statistics to be distributed about as follows:

Fault of employer, 20 per cent;

Inherent risks of business, 50 per cent;

Fault of workman, 30 per cent.

Extension of Act to other employers.

5. Any employer employing less than three persons in any employment which would be within the scope of this Act if three or more persons were employed, and who shall have paid the proper premium for such employment, shall be deemed, for the period covered by such premium, to be within the scope of this Act and any workman of such employer shall, during such period, be entitled to the same compensation, and under the same circumstances and conditions, as if such workman had been a workman within the meaning of this Act.

This section would allow employers of less than three persons at their option to come under the Act.

Extension of Act to other industries.

6. Where it shall appear to the Board that any kind of employment not within the scope of this Act may properly be brought within the scope of this Act, the Board may so report to the Lieutenant-Governor in Council, who may thereupon, by Order-in-Council, declare such employment to be within the scope of this Act, and from and after the date of such Order-in-Council, or such date as may be named therein, such employment shall be deemed to be within the scope of this Act.

This section is not necessary, and perhaps not desirable. It is suggested as a form of provision by which further industries could be brought under the Act by Order-in-Council.



7. Where in any industry within the scope of this Act any employer, or any officer or other employee, not being a workman within the meaning of this Act, is carried on the pay-roll at a salary or wage considered by the Board reasonable and fair and not less than the average salary or wage of such pay-roll such employer, officer or employee or his dependants, as the case may be, shall be entitled to the same compensation and under the same circumstances and conditions, as if such employer, officer or employee had been a workman within the meaning of this Act, provided that this section shall not apply unless the employer has, prior to any injury for which compensation is sought, given notice satisfactory to the Board that such employer, officer or employee was being or was intended to be so carried on the pay-roll.

This section is intended to bring optionally under the Act the employer himself and such employees as are excluded by the definition of "workman" in section 2.

8. The compensation to which any workman or dependant is entitled under this Act shall be in lieu and instead of every action, claim or demand which such workman or his heirs or personal representatives could, before the passing of this Act, have brought against his employer in respect of any injury: provided that where the injury was intentionally caused by such employer or by the default of such employer in complying with any statutory provision in respect of safety or the employment of persons under specified age, the right of action which would, but for this Act, have been in such workman or his heirs or personal representatives shall be deemed to be vested in the Board, and the Board may, in the name of such workman, or his personal representatives, as the case may be, bring such action, and any moneys realized in any such action shall form part of the accident fund.

 This section leaves the employer still open to an action for negligence, but the action is brought by the Board, and the money recovered goes to the accident fund. It is contemplated that the section would not be used except in cases of gross negligence on the part of the employer.

9. Where an injury to a workman occurs under such circumstances as would, before the passing of this Act, have entitled such workman to certain cases, an action for damages against some person other than the employer, such workman or his dependants, as the case may be, may either claim compensation under this Act or may bring such action against such other person.

(2) If such workman or his dependants bring such action he or they shall be entitled to claim by way of compensation under this Act only the deficiency, if any, between the amount recovered and actually collected and the amount of compensation provided by this Act.

(3) If such workman or his dependants have claimed compensation under this Act the Board shall be subrogated to the position of such workman as against such other person for the whole or any outstanding part of the claim of such workman against such other person.

This section is intended to save the right of action against third persons who may be responsible for an injury. The workman would get his compensation under the Act, and the Board would prosecute the action against the third party.

## PART II.

### CONSTITUTION OF BOARD.

The provisions respecting the constitution and powers of the Board are adopted from and are similar to those of the Railway Act of Canada.

**Board of  
three Com-  
missioners.**

11. There shall be a Commission to be known as the Industrial Insurance Board, consisting of three Commissioners appointed by the Lieutenant-Governor in Council.

**Status of  
Board.**

(2) The Board shall be a body corporate and shall have a seal which shall be judicially noticed.

**Tenure of  
office.**

(3) Each Commissioner shall hold office, during good behaviour, for a period of ten years from the date of his appointment, but may be removed at any time by the Lieutenant-Governor in Council for cause; provided that,—

(a) A Commissioner shall cease to hold office upon reaching the age of seventy-five years, and

(b) If a Judge of the High Court of Justice is appointed Chief Commissioner of the Board he shall not be removed at any time except upon address of the legislature.

(4) A Commissioner shall, on the expiration of his term of office, if he is not disqualified by age, be eligible for re-appointment.

**Chief Com-  
missioner.**

(5) One of such Commissioners shall be appointed by the Lieutenant-Governor in Council Chief Commissioner of the Board and shall be entitled to hold the office of Chief Commissioner as long as he continues a member of the Board.

**Deputy  
Chief Com-  
missioner.**

(6) Another of the Commissioners shall be appointed by the Lieutenant-Governor in Council, Deputy Chief Commissioner of the Board.

**Quorum.**

12. Two Commissioners shall form a quorum, and not less than two commissioners shall attend at the hearing of every case, provided that where in any matter there is no question of fact in dispute and no point of law, interpretation or administrative policy arising for decision, any one Commissioner may act alone for the Board.

(2) The Chief Commissioner, when present, shall preside, and his <sup>Chief Com-</sup><sub>missioner to preside.</sub> opinion upon any question which in the opinion of the Commissioners is a question of law, shall prevail.

(3) In case of the absence of the Chief Commissioner or of his <sup>In his</sup> <sub>absence</sub> inability to act, the Deputy Chief Commissioner shall exercise the powers <sup>Deputy Com-</sup><sub>missioner</sub> of the Chief Commissioner in his stead; and in such case all adjustments, findings, rulings, regulations, orders and documents shall have the like force and effect as if signed by the Chief Commissioner.

(4) Whenever the Deputy Chief Commissioner appears to have acted for or instead of the Chief Commissioner it shall be conclusively presumed that he so acted in the absence or disability of the Chief Commissioner within the meaning of this section.

(5) No vacancy on the Board shall impair the right or authority of the remaining Commissioners to act.

(6) Notwithstanding anything contained in the four preceding subsections the decision of a majority of the members of the Board shall <sup>Decision of majority binding.</sup> be binding and any document signed by two of the Commissioners shall be deemed to be authorized by the Board.

### 13. No Commissioner shall directly or indirectly,

(a) Hold, purchase, take or become interested in, for his own <sup>Disqualification of Com-</sup><sub>missioner.</sub> behalf any interest, stock or share or any bond, debenture or other security of any company, firm or business within the scope of this Act as an employer, or of any insurance company or institution carrying on the business of employers' liability or accident insurance.

(b) Have any interest in any device, appliance, machine, patented process or article or any part thereof which may be required or used for the prevention of accidents.

(2) If any such interest, stock, bond, debenture, or other security or any such interest in any device, appliance, machine, patented process or article shall come to or vest in any such Commissioner by gift, will or succession, for his own benefit, he shall within three months thereafter, absolutely sell and dispose of the same or his interest therein.

14. Whenever any Commissioner is interested in any matter before the Board, or of kin or affinity to any person interested in any such matter, the Lieutenant-Governor in Council may, either upon the application of such Commissioner or otherwise appoint some disinterested person to act as Commissioner *pro hac vice*, and the Lieutenant-Governor in Council may also, in case of the illness, absence or inability to act of any Commissioner, appoint a Commissioner *pro hac vice*; provided that no Commissioner shall be disqualified to act by reason of

interest or of kindred or affinity to any person interested in any matter before the Board.

Duties of  
Commiss-  
sioners.

15. The Commissioners shall devote the whole of their time to the performance of their duties under this Act, and shall not accept or hold any office of employment inconsistent with this section.

Salaries.

16. The salary of the Chief Commissioner shall be \$12,000 per year, and the salaries of each of the other Commissioners shall be \$10,000 per year.

The position of Commissioner should be such that it will be a promotion for a High Court Judge to be appointed. It is submitted that the commission should occupy fully as high a plane as the Railway Board of Canada.

(2) If a judge of the High Court of Justice is appointed Chief Commissioner of the Board he shall be deemed to retain his rank and office as such judge, and in such case the salary of the Chief Commissioner shall be \$5,000 per year in addition to his salary as such judge.

This sub-section is in pursuance of the suggestion that possibly a High Court judge might take a position upon the Board and still retain his rank and salary as judge of the High Court. The salaries of High Court judges are paid by the Dominion.

17. The Lieutenant-Governor in Council may provide within the City of Toronto a suitable place in which the sessions of the Board may be held, and also suitable offices for the Commissioners, and for the Secretary and officers and employees of the Board, and the necessary furnishings, stationery and equipment for the conduct, maintenance and performance of the duties of the Board.

18. Whenever circumstances render it expedient to hold a sittings of the Board elsewhere than in the City of Toronto, the Board may hold such sittings in any part of Ontario.

19. The Commissioners shall sit at such times and conduct their proceedings in such manner as may seem to them most convenient for the proper and speedy discharge of business.

Jurisdiction  
of Board.

21. The Board shall have jurisdiction to inquire into, hear and determine all matters and questions of fact and law necessary to be determined in connection with compensation payments and the administration thereof and the collection and management of the funds thereof.

(2) The Board shall, in respect of all matters within its jurisdiction and the execution of its powers under this Act, and in respect of the attendance and examination of witnesses, the production and inspection of documents, the enforcements of its orders, the entry on and inspection of property, and other matters necessary or proper for the due exercise of its jurisdiction and powers under this Act, or other-

wise for carrying this Act into effect, have all such powers, rights and privileges as are vested in the Supreme Court.

22. The decisions and findings of the Board upon questions of fact shall be final and conclusive, and in particular but not so as to restrict the generality of the powers of the Board hereunder, the following shall be deemed to be questions of fact:

- (a) The question whether an injury has risen out of or in the course of an employment within the scope of this Act.
- (b) The existence and degree of disability by reason of any injury.
- (c) The permanence of disability by reason of any injury.
- (d) The degree of diminution of earning capacity by reason of any injury.
- (e) The amount of average earnings.
- (f) The existence of the relationship of husband, wife, parent, child, brother or sister as defined by this Act.
- (g) The existence of dependency.
- (h) The character, for the purpose of this Act, of any employment, establishment or department and the class to which such employment, establishment or department should be assigned.

This section is intended to restrict the area of appeals from the decision of the Board. It is submitted that it would not be wise to entirely shut out appeals and place in the hands of the Board the sole right to interpret the Act under which it is appointed, and the sole right to define its own jurisdiction. Appeals, however, should not be from the decision of the Board, but should be by way of a stated case, granted either by the Board or Court of Appeal on application as provided in the following section.

23. An appeal shall lie from the decisions of the Board in questions of law to the Court of Appeal for Ontario.

(2) Such appeal shall be in the form of a stated case, which may be granted by the Board upon application, or by the Court of Appeal or a judge thereof upon motion.

(3) On the hearing of any such stated case any association representing a class interested in the result of the case shall be entitled to appear and be heard.

24. The Board shall appoint a Secretary and a Chief Medical Officer and may appoint or engage such accountants, auditors, actuaries, officers and employees of Board.

inspectors, medical examiners, clerks and assistants as may be necessary for the due carrying out of the provisions of this Act; provided that the salary of the Secretary and Chief Medical Officer and the number and salaries of such auditors, actuaries, inspectors, examiners and clerks shall from time to time be approved by the Lieutenant-Governor in Council.

This would leave the appointments under the exclusive control of the Commission, and not subject to political influences, while at the same time the Government would exercise a control over the amount of money expended in salaries.

(2) Any officer or employee appointed or employed by the Board may be dismissed at will by the Board.

Duties of  
Secretary.

25. It shall be the duty of the Secretary to cause proper reports or minutes to be made of all meetings or sittings of the Board, to cause all decisions and findings of the Board to be duly recorded, and to cause all claims and communications to be brought before the Board or its proper officers and to prepare and make such reports and communications as are required by law or may be required from time to time by the Board.

Salaries to  
be paid out  
of Accident  
Fund.

26. The salaries of the Commissioners, the Secretary and all officers, clerks and assistants, together with the necessary expenses of administration of the compensation funds provided for in this Act shall be paid out of the accident fund.

Contribution  
from  
Province.

27. There may be paid and applied during each and every year from and out of the Consolidated Revenue Fund of the Province into the accident fund the sum of \$250,000, provided that nothing in this Act shall prevent the Board from applying such portions as may be necessary of the moneys levied and collected under this Act in payment of any part of such expenses or administration.

It is proposed that the expenses of administration of the fund should be met by the Government. This is justified by the fact that a large amount of work will be transferred from the present courts to the Board, and by the fact that the general community will greatly benefit by having injured workmen cared for instead of being thrown upon public or private charity. It is thought, however, that the Board should not be entirely dependent for its administrative expenses upon the allowances made by the Government, but should be free to apply, where necessary, part of the funds collected from employers.

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### PART III.

#### SCHEDULE OF COMPENSATION.

Schedule of  
compensa-  
tion.

31 The compensation payable under this Act to an injured workman or to the dependants of a deceased workman shall be as follows:

The following schedule of benefits is similar to that of the Act of the State of Washington. It will be noted that instead of starting out with a percentage of wages and fixing a maximum sum the proposed schedule starts with a flat sum which is to be reduced (under section 32) if it should exceed a certain percentage of the wages. The advantage of this method is that it reduces the ground of dispute. When an accident happens, the beneficiaries and the Board know exactly what is to be paid, unless it is shown that the average earnings of the injured workman were below a certain figure. It is submitted that by this means the work of the administering commission will be reduced by one-half, and dispute and ill-feeling between workmen and employers over the question of earnings practically eliminated.

The actual maximum fixed by this schedule in case of death and total disability is, as will be readily seen, very high. Payments in an individual case could easily reach \$10,000. The average pension would, under the Washington calculation, be equal to a capital sum of \$4,000.

Under the English Act the maximum compensation in case of the death of a workman is £300 (\$1,500).

The Ontario Workmen's Compensation Act of 1885 provides a compensation equal to three years' earnings, or \$1,500, whichever is larger, to the injured workman or his dependants.

The maximum compensation for death in other Canadian Provinces is as follows:—

QUEBEC: Four times average yearly wages, but not more than \$2,000.

NOVA SCOTIA: A sum equal to three years' earnings, but not more than \$1,500.

MANITOBA: A sum not exceeding \$1,500.

SASKATCHEWAN: A sum equal to three years' earnings, but not more than \$2,000.

ALBERTA: A sum equal to three years' earnings, but not more than \$1,800.

BRITISH COLUMBIA: A sum equal to three years' earnings, but not more than \$1,500.

(a) In case of the death of a workman as the result of an injury: In case of death.

- (1) Necessary and proper expenses of burial.
- (2) Where the sole dependant is a widow or invalid widower, a payment of \$20.00 per month.
- (3) Where the dependants are a widow or invalid widower and one or more children a payment of \$20.00 per month for such widow or invalid widower and \$5.00 per month for each child under the age of 14 years. the total payment not to exceed \$35.00 per month.
- (4) Where the dependants are children, a payment of \$10.00 per month for each child under the age of 14 years, the total not to exceed \$35.00 per month.
- (5) Where the deceased was under the age of 21 years and the dependants are the parents of the deceased, or one of them, a payment of \$20.00 per month to cease at the time when the deceased would have attained the age of 21 years.

- (6) Where the sole dependants of the deceased are persons other than a widow, invalid widower, children or parents, a monthly payment to such dependants on the basis of fifty per cent. of the average monthly support actually received by such dependants during the twelve months next preceding the injury, the monthly payment in respect of any one dependant not to exceed \$15.00 and the total monthly payment not to exceed \$35.00.

**In case of  
total per-  
manent dis-  
ability.**

- (b) In case of the permanent total disability of the workman as the result of an injury.
- (1) When the workman was unmarried at the time of the injury a payment of \$20.00 per month.
  - (2) Where the workman is rendered by the injury completely helpless and requiring constant personal attendance a payment of \$40.00 per month.
  - (3) Where the workman had at the time of the injury a wife or invalid husband a payment during the life of both the workman and spouse of \$25.00 per month, to be reduced to \$20.00 per month upon the death of either.
  - (4) Where the workman had at the time of the injury a wife or invalid husband and one or more children a payment of \$20.00 per month for such widow or invalid husband and \$5.00 per month for each child under the age of 14 years, the total payment not to exceed \$35.00 per month.
  - (5) Where the workman had at the time of the injury a husband not an invalid a payment of \$10.00 per month for such husband and \$5.00 per month for each child under the age of 14 years, the total payment not to exceed \$25.00 per month.
  - (6) Where the workman had at the time of the injury one or more children, a payment of \$10.00 per month for each child under the age of 14 years, the total payment not to exceed \$35.00 per month.

**In case of  
temporary  
disability.**

- (c) In the case of temporary disability of a workman as the result of an injury, payments corresponding to those specified in preceding clause (b) of this section beginning from the eighth day after the injury and continuing so long as the disability shall last; provided that no compensation shall be paid in any case where such temporary disability does not result in a diminution of daily earnings to the extent of at least fifty per cent.

This suggests a waiting period of one week. In most systems the waiting period is longer, and in some systems, injuries which do not last beyond the period are taken care of by a special fund to which workmen contribute a large proportion. The waiting period, either with or without such a special fund, is one form of contribution on the part of the workmen.

(d) In case of the permanent partial disability of a workman <sup>In case of permanent partial disability.</sup> as the result of an injury, a payment or payments proportioned upon the diminution of earning capacity suffered by the workman by reason of the injury, and not exceeding in any case the sum of \$1,500.

(2) For the loss of a major arm the payment shall be the said maximum of \$1,500.00, and for any other injury the payment shall be in the proportion which the loss of earning capacity resulting from such injury bears to the loss of earning capacity resulting from the loss of a major arm.

Schedules are available, very carefully worked out by other systems, of the proportions which different classes of injuries bear to the loss of a major arm. In some systems these schedules are incorporated in the Act itself. It is thought more desirable to leave this to the administering commission.

32. If the amount of compensation which would be paid under section 31 shall in the case of any injured workman exceed one-half the average earnings of the workman, the total amount payable to or in respect of such injured workman shall be reduced to one-half the said average earnings; and where in such case compensation is payable to two or more beneficiaries the share of each beneficiary shall be abated in proportion. <sup>Compensation not to exceed half average earnings.</sup>

33. Payments to and in respect of any dependant who was under the age of fourteen years at the time of the injury shall cease when such dependant reaches the age of fourteen years; and payments to any beneficiary shall continue only so long as the necessity causing dependency continues, and the support rendered by the deceased or injured workman would, in the opinion of the Board, probably have continued if the injury had not occurred. <sup>Payment during dependency.</sup>

34. In the case of death or permanent total disability the Board <sup>Commutation of payments.</sup> may, in its discretion, commute the whole or any part of the payments due to the workman or any beneficiaries for a lump sum representing the value of such payments to be applied as directed by the Board.

(2) In the case of permanent partial disability the Board may, in its discretion, instead of paying compensation in a lump sum, divide the compensation into periodical payments representing in value the lump sum to which such workman may be entitled.

It will be noted that in the case of death or total disability the compensation is *prima facie* in the form of a pension, while in the case of partial disability it is *prima facie* in the form of a lump sum. Experience in other systems has shown that the power of commutation should be very sparingly exercised in the cases of death and total disability; but it would be absurd in the case of loss of a finger to provide a pension for life.

**Commutation  
in case of  
re-marriage  
of widow.**

35. Upon the remarriage of a widow she shall be entitled to a lump sum of the payments to and in respect of such widow for two years, and from and after such remarriage the payments to and in respect of such widow shall cease and determine.

This has the effect of a bonus upon remarriage, and has been found quite effective in other systems. In Washington the bonus is only one year's payments; in Germany it is three years.

**Application  
for compen-  
sation to be  
made within  
one year.**

36. No compensation shall be payable under this Act in respect of any injury unless application for such compensation is made within one year after the occurrence of the injury.

**Workman to  
file applica-  
tion with  
Board.**

37. Where any workman or defendant is entitled to compensation under this Act he shall file with the Board an application for such compensation, together with the certificate of the attending physician, if any, and such further or other proofs of his claim as may be required by the Board.

**Duty of  
physician  
to report.**

(2) It shall be the duty of every physician or surgeon attending or consulted upon any case of injury to any workman to furnish or cause to be furnished from time to time such reports, and in such form, as may be required by the Board in respect of such injury.

**Duty of  
physician  
to furnish  
proofs.**

(3) It shall also be the duty of every physician in attendance upon any injured workman to give, without any charge therefor, all reasonable and necessary information, advice and assistance to enable such workman or his dependants, as the case may be, to make application for compensation, and to furnish such proofs as may be required by the Board.

**Method of  
payment.**

38. Monthly payments of compensation shall be made in such manner and in such form as may appear to the Board to be most convenient, and in the case of minors or persons of unsound mind payments may be made to such persons as, in the opinion of the Board, are best adapted under all the circumstances to administer such payments, whether or not the person to whom the payment is made is the legal guardian of such minor or person of unsound mind.

The administering commission will, no doubt, find the most convenient method of making payments. It is suggested that a voucher check could be issued, payable at any bank. Possibly arrangements might be made with the Dominion Government for the use of the machinery of the Post Office Savings Bank. The provision with regard to minors and persons of unsound mind is to avoid the necessity of guardianship or lunacy proceedings. The commission will be able to use its discretion from time to time as to the persons to whom the payments should be made.

**Compensa-  
tion not  
assignable.**

39. No money payable as compensation hereunder, shall, prior to the receipt thereof by the beneficiary, be assignable or transferable by any act of such beneficiary or by action of law; and such money shall be exempt from seizure on execution, attachment or garnishment.

40. Where it appears that the laws of any other province, country or jurisdiction, workmen injured in such province, country or jurisdiction are entitled, while resident in Ontario to compensation corresponding or equal to that conferred by this Act, the Lieutenant-Governor in Council may order that payments of compensation under this Act may be made to workmen who have been injured in Ontario and who are resident in such other province, country or jurisdiction: but save as in this section provided nothing in this Act shall entitle any workman resident outside of Ontario to compensation payments; provided that the Board may upon application grant leave from time to time to any workman or dependant in receipt of compensation to reside out of Ontario without thereby forfeiting the right to compensation under this Act.

Some standard must be adopted to prevent overlapping in compensation laws. The test is usually the place where the accident has happened, though there is justice in the contention that where an employer has paid his insurance premium the employee should be protected even if an accident happens outside the Province. The answer to this might be that the provincial insurance system undertakes to protect only against accidents within the Province, and perhaps justly so. The whole question is one for reciprocal arrangement with other Provinces and other jurisdictions, and with the suggested power in the hands of the Lieutenant-Governor in Council, any such arrangement could be carried into effect.

41. The Board may re-open, re-hear, re-determine, review or re-adjust any claim, decision or adjustment, either because an injury has proven more serious or less serious than it was deemed to be, or because a change has occurred in the condition of a workman or in the number of circumstances or condition of dependents or otherwise.

42. The Board may from time to time require that any workman applying for or receiving compensation payments shall submit to medical examination by the Board or its duly appointed officers; and in default of such requirement be complied with, may withhold such compensation payments.

(2) The Board may require such proof from time to time of the existence and condition of any dependents in receipt of compensation payments as may be deemed by the Board adequate.

43. If it is shown to the satisfaction of the Board that in any employment the workmen are desirous of an increase in the scale of compensation provided by this Act, and are willing to pay the necessary increase in premiums, the Board may by order sanction any such increased scale, and may direct the method of collecting such increase in premiums from the workmen in such employment.

The increased scale of benefits could take the form of a larger pension, or of medical or sick benefits. It would be a matter for arrangement between employees and their employer if any such increases were effected. The provision is not essential, and perhaps not desirable.

(2) Such order may provide that the employer shall pay to the Accident Fund the amount of such increased premiums, and from and

after such order such increased premiums shall be assessed and levied upon and collected from the employer of such employment; and any workman or the dependents of any workman in such employment injured while such order is in force and effect shall be compensated at such increased scale.

(3) Such order may be rescinded at any time, but no such rescission shall be effective until after publication of notice of such rescission in four consecutive issues of the Ontario Gazette.

#### PART IV.

##### FUNDS AND ASSESSMENT.

###### *Accident fund.*

44. The compensation provided for in this Act shall be paid out of a fund to be called the Accident Fund.

The idea is to have the insurance fund nominally and technically one common fund, into which all assessments and fines and the Government grant are to be paid, and out of which all compensation and all salaries and expenses shall be paid. For purposes of assessment, reserves, etc., the funds would, of course, be segregated. See section 69.

###### *Classification of employments.*

45. For the purpose of creating and maintaining the Accident Fund all employments and establishments within the scope of this Act shall be divided into the following classes:

These classes will be the basis of rating. A rate will be struck on the total pay-roll of each class sufficient to compensate all the accidents in the class for the year. It is not necessary, however, that there should be the same rate throughout the whole class, and differentials and sub-classifications may be made in any of the classes, and are absolutely necessary in some. See section 55. Thus for instance, in class 6 there would be a differential rate of two or three times the regular rate in quarries where blasting was necessary.

Class 1.—Lumbering; logging; river-driving, rafting, booming; saw-mills, shingle-mills, lath-mills; manufacture of veneer, excelsior; manufacture of staves, spokes, heading.

Class 2.—Pulp and paper mills.

Class 3.—Manufacture of furniture, interior woodwork; organs, pianos, piano actions; canoes, small boats; coffins; wicker and rattan ware; upholstering, mattresses, bed-springs.

Class 4.—Planing mills, sash and door factories, manufacture of wooden and corrugated paper boxes, cheese boxes; mouldings, window and door screens, window shades, carpet sweepers, wooden toys, articles and wares; baskets.

Class 5.—Mining; reduction of ores and smelting; preparation of metals and minerals.

Class 6.—Quarries; sand, shale, clay and gravel pits, lime kilns; manufacture of brick, tile, terra-cotta, fire-proofing, paving blocks; manufacture of cement, asphalt and paving material.

Class 7.—Manufacture of glass and glass products; glassware, porcelain; pottery.

Class 8.—Iron, steel and metal foundries; rolling mills; castings, forgings and manufacture of heavy engines, locomotives, machinery, safes, anchors, cables, rails, shafting, wires, tubing, pipes, sheet metal, boilers, furnaces, stoves; structural steel, iron and metal.

Class 9.—Car shops.

Class 10.—Metal wares; manufacture of small castings and forgings; metal wares, instruments, utensils and articles; hardware, nails, wire goods, screens, bolts; metal beds; sanitary water, gas and electric fixtures; light machines, typewriters, cash registers, adding machines; carriage mountings; bicycle, metal toys; tools, cutlery, instruments; sheet metal products; buttons of metal, ivory, pearl, horn.

Class 11.—Manufacture of agricultural implements; threshing machines, traction engines, waggons, carriages, sleighs and vehicles; automobiles; motor trucks; toy waggons and sleighs, baby carriages.

Class 12.—Manufacture of gold and silverware, plated ware, watches, watch-cases, clocks, jewellery, musical instruments.

Class 13.—Manufacture of chemicals and explosives; corrosive acids and salts; ammonia, calcium carbide; gasoline, petroleum products; celluloid, gas, charcoal; artificial ice; gunpowder, ammunition.

Class 14.—Manufacture of paint, color, varnish, oil, japans, turpentine, printing ink, printers' rollers; tar; tarred, pitched and asphalted paper.

Class 15.—Distilleries and breweries; manufacture of spirituous and malt liquors, alcohol; wines, vinegar; mineral water, soda waters.

Class 16.—Manufacture of non-hazardous chemicals; drugs, medicines; dyes; extracts; pharmaceutical and toilet preparations; soaps, candles; perfumes; non-corrosive acids and chemical preparations; shoe-blacking; polish.

Class 17.—Milling; manufacture of cereals; cattle foods, warehousing and handling of grain; operation of grain elevators.

Class 18.—Packing houses, abattoirs, manufacture and preparation of meat and meat products; glue.

Class 19.—Tanneries.

Class 20.—Manufacture of leather goods and products; belting; saddlery, harness; trunks, valises; boots, shoes, gloves; umbrellas; rubber goods, rubber shoes, tubing, tires, hose.

Class 21.—Manufacture of dairy products; butter, cheese, condensed milk and cream.

Class 22.—Canning and preparation of fruit, vegetables, fish and food stuffs; pickle factories; sugar refineries.

Class 23.—Bakeries; manufacture of biscuits and confectionery; spices, condiments.

Class 24.—Tobacco, cigars, cigarettes and tobacco products.

Class 25.—Cordage; ropes; fibre; brooms, brushes; work in manilla and hemp.

Class 26.—Manufacture of textiles, fabrics, spinning, weaving, knitting; manufacture of yarn, thread, hosiery, cloth, blankets; carpets; canvas; bags, belting, shoddy; felt, flax-mills.

Class 27.—Manufacture of men's and women's clothing; white-wear; shirts, collars, corsets, hats and caps; furs, robes.

Class 28.—Laundries (power); dyeing, cleaning and bleaching.

Class 29.—Printing; photo-engraving; engraving, lithographing, embossing; manufacture of stationery, paper and cardboard boxes; bags; wall-paper; bookbinding.

Class 30.—Heavy teaming, drayage and cartage; safe-moving and moving of boilers, heavy machinery; building stone and the like; warehousing, storage.

Class 31.—Stone-cutting and dressing; marble works; manufacture of artificial stone.

Class 32.—Steel buildings and bridge construction; installation of elevators, fire-escapes; installation of boilers, engines and heavy machinery.

Class 33.—Brick-laying, mason work, stone-setting, concrete work, plastering; manufacture of concrete blocks.

Class 34.—Structural carpentry.

Class 35.—Painting, decorating and renovating; sheet metal work; roofing.

Class 36.—Plumbers, sanitary and heating engineers, operators of passenger and freight elevators, theatre stage and moving picture operators.

Class 37.—Sewer construction, deep excavation, tunnelling, shaft-sinking, well-digging.

Class 38.—Construction, installation and operation of electric power lines and appliances, power transmission.

Class 39.—Telephone and telegraph, construction and operation.

Class 40.—Road-making and repair of old roads with machinery.

Class 41.—Railroad construction.

Class 42.—Steam railroad operation.

Class 43.—Electric railroad operation.

Class 44.—Shipbuilding.

Class 45.—Navigation.

Class 46.—Dredging, sub-aqueous construction, pile-driving.

46. The Board shall assign each employment to its proper class, Board to assign  
and where any employment includes several departments assignable to establish-  
ments to different classes, the Board may either assign such employment to the classes.  
class of its principal or chief department or may, for the purposes of  
this Act, segregate or divide such employment into two or more depart-  
ments, assigning each of such departments to its proper class.

(2) Any employment brought under this Act as provided by section 6 may be assigned by the Board to an existing class, or the Board may create a new class for such employment as may be deemed expedient.

This section would give the Board a large measure of discretion in classifying industries. Under sections 52 and 53 the Board's powers are further enlarged.

47. The Board shall on or before the first day of January in each year make an estimate of the premiums necessary to provide funds in each of the respective classes mentioned in section 45 sufficient to meet all claims for compensation payable during the succeeding year. Estimates of  
premiums.

The estimate and the rate would be annual, but the payment could be in instalments, monthly, quarterly or otherwise.

48. The Board shall assess and levy upon and collect from the employers in each class, by a premium rated upon the pay-roll, sufficient funds to compensate, as provided in this Act, all workmen injured in connection with any employment included in such class.

The pay-roll furnishes a rough and ready standard of assessment and *prima facie* the assessment would be upon the amount of the pay-roll. There is nothing in this section, however, to prevent the Board from taking into consideration other factors, such as the number of employees.

**Payment of premiums.**

49. Every employer shall pay into the Accident Fund such premium as may be levied by the Board.

**Notice to employers.**

50. The Board shall give notice to each employer in such manner as may be deemed by the Board proper and sufficient, of the amount of the premiums due from time to time in respect of his employment and the time when such premiums are to be due and payable.

(2) The Board may provide for an increase in or addition to the amount of the premium if not paid within a certain date named in the notice.

Provision might also be made for a discount.

**Duty of employer to pay.**

51. Notwithstanding any provision of this Act respecting estimates of pay-rolls and notices of amounts of premiums it shall be the duty of every employer without demand from the Board to cause to be paid in advance to the Board the full amount of every premium due under this Act in respect of all workmen actually in his employ and by reason of such employment insured under this Act.

It is the duty of the Board to give notice of the amount payable, but the fact that the employer has, for any reason, not received his notice, does not relieve him from liability for the amount of his premium.

**Combining classes.**

52. Where it shall appear to the Board that the aggregate of the pay-rolls in any class is unduly small, such class may be combined with any other class or may be divided amongst two or more classes as may be found expedient.

**Separating classes.**

53. Where it shall appear of advantage for insurance purposes or for the prevention of accidents, any well-defined kind of employment in any class may be taken by the Board out of such class and placed in any other class or in a class by itself.

The two sections above would give the Board ample powers of re-classifying. It would not be wise, however, it is submitted, that this power should be uncontrolled. Hence the following provisions.

**Notice of arrangement of classes.**

54. Every order making or approving of any such change as mentioned in sections 52 and 53 shall name a date, not less than two months after the date of the order, from and after which such change shall become effective.

(2) No such change shall be effective until notice thereof shall have been published in four consecutive issues of the *Ontario Gazette*.

(3) The Lieutenant-Governor in Council may at any time before such change has become effective suspend or disallow the order making or approving such change. Lieutenant-Governor-in-Council may disallow.

(4) Upon any such change being made as mentioned in sections 52 and 53 the Board may make such adjustment and disposition of the funds and accounts of the classes affected as may be deemed just and expedient. Disposition of funds.

55. The Board may establish sub-classifications, differentials and proportions in the rates as between different kinds of employments in the same class; and where any particular employment is shown to be so circumstanced or conducted that the hazard of such employment is greater than the average of the class or sub-class to which such employment belongs, the Board may impose upon such employment a special rate or differential corresponding with the excessive hazard of such employment. Sub-classifications and differentials.

56. If in any class the estimated premiums shall prove insufficient, the Board may make such further assessments and levies as may be necessary, or may temporarily advance the amount of any deficiency out of any reserve fund provided for the purpose, and add such amount to any subsequent assessment or assessments. Further assessments.

57. Premiums may, wherever it is deemed expedient, be collected in half-yearly, quarterly or monthly instalments; and where it appears that the funds in any class are sufficient for the time being, any instalment may be lapsed or its collection deferred. Collection in instalments.

58. On or before the first day of March in each year the amount of the premium for the preceding calendar year shall be adjusted upon the actual requirement of the class and upon the correctly ascertained pay-roll of each employment, and the employer shall forthwith make up and pay to the Board any deficiency, or the Board shall refund to the employer any surplus or credit the same upon a succeeding premium. Adjustment of premiums.

This section embodies the present practice of the liability insurance companies.

(2) In computing and adjusting the amount of the pay-roll of any employment the wages or remuneration of workmen only within the meaning of this Act shall be included, except as otherwise provided by section 7; and in such computation the entire remuneration of every workman shall be included whether by way of wages, salary, piecework, overtime, bonus, profit-sharing or otherwise and whether payable in money, board or otherwise.

(3) Where in any employment a change of ownership has occurred, the Board may levy any part of such deficiency on either or any of

such successive owners or pay or credit to any one or more of such owners such surplus, but as between or amongst such successive owners the premiums in respect of such employment shall be apportionable, as nearly as may be, in accordance with the proportions of the pay-rolls of the respective periods of ownership.

**RESERVES.**

59. The Board may, in addition to the amount actually required in each class for the year, assess, levy and collect a percentage margin or surcharge to be set aside as a reserve or reserves either by way of providing a contingent fund in aid of industries or classes which may become depleted or extinguished, or of providing a sinking fund for the capitalization of periodical compensation payments, or both, as to the Board may appear expedient, or may assess, levy and collect in each year a sufficient amount to provide capitalized reserves which shall be deemed sufficient to meet the periodical payments accruing in respect of all claims adjusted during the year.

This section would leave to the determination of the administering commission the question whether the assessment rates should be computed on the current cost, or on the capitalized plan. Under the first plan the Board would collect each year only enough to meet the out-goings of that year. The rate would gradually rise as the number of pensioners upon the class increased. According to actuarial computation the rate would continue to rise for a period of about thirty-five years, when it would be the same rate that would be necessary to begin with if the capitalized plan were adopted. Under the capitalized plan there would be collected each year only the amount necessary to meet the payments of that year, but also an amount representing the capital value of all pensions payable in the future on account of accidents accruing during the year. The German system (except in the building trades) is based upon the current cost method. The Washington system is based largely upon the capitalized method. The important consideration is the effect upon the initial rate which will be very much higher in some classes on the capitalized plan.

**Employer  
to furnish  
estimate of  
pay-roll.**

60. Every employer shall on or before the first day of November, 1913, or so soon thereafter as he shall have become an employer within the meaning of this Act, or whenever required from time to time by the Board so to do, cause to be furnished to the Board an estimate or estimates of the probable amount of the pay-roll of each of his employments for the ensuing year, together with a classified list of the number and respective occupations of his employees and for such other information as may be required by the Board for the purpose of assigning such employments to the proper class or classes, and of assessing the premiums thereunder.

**Division of  
pay-roll.**

61. Where any segregation or division is made as provided in section 43 the Board may require separate pay-rolls to be furnished and kept of the different departments, or may itself for the purposes of assessment divide the pay-roll of such employment upon an estimate.

**Inspection  
of pay-rolls,  
books, etc.**

62. The pay-roll, books, records, papers and premises of the employer shall at all reasonable times be open to inspection by the Board or its duly authorized auditors or other officials, for the purpose of ascertaining the amount of the pay-roll, the number and classes of

workmen and such other information as may be necessary for the Board in the administration of this Act.

63. Any employer who shall refuse or neglect to allow the Board <sup>Penalty for refusing.</sup> or any of its duly authorized auditors or other officials access to any pay-rolls, books, records, papers or premises for the purposes aforesaid, shall for each such offence incur a penalty of \$50, recoverable with costs, upon summary conviction, and payable to the Board.

64. Any auditor or official who shall wilfully or negligently divulge <sup>Penalty for divulging information.</sup> or allow to be divulged, except under instructions of the Board, any information derived in the course of or in connection with any inspection aforesaid, shall for each such offence incur a penalty of \$50, recoverable with costs, upon summary conviction, and payable to the Board.

65. No such auditor or official shall be compellable in any legal <sup>Auditors not compellable de-witnesses.</sup> inquiry or proceeding to give evidence divulging any information derived in the course of or in connection with any inspection as aforesaid.

66. Where any work within the scope of this Act is performed <sup>Payment of premiums on municipal contract work.</sup> under contract for any municipal corporation or public service commission or for the Crown, the premiums due under this Act in respect of such work may be paid by such corporation, commission or the Crown, as the case may be, and the amount of such premium deducted from any moneys due the contractor in respect of such work.

67. Where any work within the scope of this Act is performed <sup>Liability of sub-contractor.</sup> under sub-contract, both the contractor and sub-contractor shall be liable for the amount of the premiums in respect of such work, and such premiums may be levied upon and collected from either, or partly from one and partly the other; provided that in the absence of any term in the sub-contract to the contrary the sub-contractor shall as between himself and the contractor be primarily liable for such premiums.

68. Where any building or construction work within the scope of this Act is performed under contract, under such circumstances that a lien would arise under the Mechanics' and Wage-Earners' Lien Act as against the owner as defined by the said Act, if the wages or material upon such work were not paid, the Board shall have a lien upon such work for the amount of any premium due and unpaid in respect of such work, and such lien should be enforceable in the same manner as a lien under the said Act.

69. In order that the cost of compensation in each class may be <sup>Separate accounts for each class.</sup> assessed upon the employments in such class, separate accounts shall be kept of the amounts collected and disbursed in respect of each class, and of any fund or funds set aside by way of reserve, whether general or pertaining to a particular class or classes; provided that in respect of the security for any amount payable out of the Accident Fund such fund shall be deemed one and indivisible, notwithstanding the keeping of such separate accounts.

Investment  
of funds.

70. Any part of the Accident Fund set aside as a reserve may be invested by the Board in any security in which a trustee may invest funds under the provisions of the Trustee Act.

Board to  
prescribe  
rules and  
forms.

71. The Board may make such rules, regulations and definitions as may be required for the due administration and carrying out of the provisions of this Act, and may require the making of the reports of accidents, number and condition of employees and wages or earnings and may prescribe the form and use of such pay-rolls, records, reports, certificates, declarations and documents as may be requisite for the due carrying out of the provisions of this Act.

Board may  
make rules  
for accident  
prevention.

72. The Board may make, prescribe, and enforce rules for the prevention of accidents and may prescribe as penalties for the non-observance by any employer of such rules increases in the premium rates to be paid by such employer.

Board may  
approve  
rules of  
Association.

73. Where any association shall make rules for the prevention of accidents in the industry or industries represented by such Association, the Board may give to such rules the force and sanction of law for the industry or industries represented in such Association.

Board may  
pay inspec-  
tors of  
Association.

74. Where any Association appoints one or more inspectors, engineers or experts with a view to the prevention of accidents the Board may pay out of the fund of the class represented by such Association the salary and necessary expenses of such inspectors, engineers or experts.

The effect of these two sections would be to create an incentive for employers to organize in voluntary associations and to cut down the number of accidents by uniform rules, standardization of machinery and close inspection. This is a strong feature of the German system, and one which is being introduced in the State of Washington.

Annual  
report.

75. The Board shall make and issue annually, as soon as may be after the close of its fiscal year, a report of the operation of the previous year and shall make such other reports as shall be required from time to time by the Lieutenant-Governor in Council.

Fines and  
penalties.

76. The Board may provide fines and penalties for the breach of any rules or orders made under the authority of sections 71, 72 and 73, provided such fines and penalties shall be approved by the Lieutenant-Governor in Council, and shall not in any case exceed the sum of \$25 for a single offence.

Method of  
recovery of  
fines and  
penalties.

77. All fines and penalties provided and authorized under this Act may be recovered and enforced with costs on summary conviction before any Justice of the Peace for the county or of the municipality in which the offence was committed, and the costs of any prosecution for such fines or penalties may, in the discretion of the Board, be paid out of the Accident Fund.

78. The provisions of this Act relating to the organization of the <sup>Commencement of Act.</sup> Board, the classification of industries, and the assessment and collection of premiums shall become effective from and after the first day of July, 1913.

79. The provisions of this Act respecting the payment of compensation and the right of workmen to compensation shall become effective from and after the first day of January, 1914, and compensation shall be payable in respect of injuries occurring on and after the said day.

## APPENDIX XIV.

### LETTERS FILED BY MR. HINSDALE.

#### THE TIMBERMAN.

PORTLAND, OREGON, January 3, 1912 (?)

MR. F. W. HINSDALE,

*Industrial Insurance Commission, Olympia, Wash.*

My dear Mr. Hinsdale:

I want to acknowledge receipt of statistics sent by you, and to thank you very much for your courtesy. The compilations are very valuable to us and we appreciate their receipt.

Answering your point as to the proposal by the Government of Ontario to consider in their compensation bill the question as to whether each firm in which accident occurs should be liable for the compensation to be paid on account of their own accidents.

I hope that this opinion will not prevail for the following reason: First, from the fact that an adequate and comprehensive workmen's compensation presupposes and recognizes the community of interest, the interdependence of all the various industries, and the relation of each unit to its own particular group.

Under the Washington act a classification of industries in relation to the hazard has shown the common hazard of the different industries; and also the individual hazard of the various enterprises of the industry. To place each individual concern on its own basis in the payment of awards is in direct antithesis to the idea above expressed; and in fact places the individual operator in exactly the same position he stands to-day, with this possible exception: that the amount of the award would be fixed and pre-determined, while now it is determined by the courts, under the various laws governing compensation.

The Washington Compensation act makes the award certain to the worker or his dependents; it removes the uncertainty to the manufacturers and places the whole question of compensation upon a broad and humanitarian plane, with the added advantage of a reduction in the costs of liability to the employer under the old system. Unless the state should guarantee to the workman the award in case of default through bankruptcy, dissolution or financial inability, there would be no certainty of payment. Legislative edict without undisputed financial backing would be a failure in many cases, especially in the United States.

Under the proposed plan of making each employer responsible for the accidents occurring in his plant, the casualty insurance companies would still have a grip on the various industries, which the Washington act has certainly shaken loose, to the benefit of the injured workmen and to the employer. From a very close contact with the manufacturing interests of the State of Washington, I find they unanimously endorse the operation of that act. It has saved them from untold annoyances and costs, and created a community interest between the employer and employee, which in itself, if for no other reason, is a sufficient justification of its continued existence.

We are struggling in Oregon, Idaho, Montana and British Columbia to initiate compensation acts framed after the Washington law; and your splendid statistical reports have given us valuable data. And it is to be hoped that the other states which adopt compensation laws may be able to secure as competent and valuable an accountant as you have proven to your Commission.

Very truly yours,

GEO. M. CORNWALL.

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#### PUGET MILL COMPANY.

SEATTLE, WASH., January 4th, 1913.

MR. F. W. HINSDALE,

*c.o. Canadian Manufacturers Association, Toronto, Canada.*

Dear Sir:

In compliance with your verbal request of this date, I would say in relation to the operation of the Industrial Compensation Act of the State of Washington, with which you are connected, that manufacturers of the North-West have long had in mind that some legislation was necessary along this line, and when the report of a State Commission, which was appointed for the consideration of this matter, was available, the manufacturers joined in the necessary work which resulted in the placing of the present act among the statutes of this State.

Up to the present time, in my opinion, we have not had sufficient experience to criticize or intelligently amend the statute, but manufacturers as a rule, I think, and employees as well, are very well satisfied with the workings of the act in its present form. It is costing a little more, but the money is going to the right place, and it is developing a better feeling between the employer and the employee.

While an effort will be made to amend the act at the coming session of the State Legislature, the manufacturers are practically agreed to oppose any change in the act in any way whatever, believing that it is working well enough to be let alone for the next two years, at the end of which time statistics and information will be available which will make possible intelligent criticism and amendment of the act which may be necessary.

There is no First Aid feature in connection with this law, and, in my opinion, there should not be. Almost every employer has an arrangement with his employees whereby, for a small consideration of from 15c. to 25c. per week, prompt

medical and surgical attendance is provided, not only in case of accident, but also in case of ordinary sickness as well. An effort will probably be made to pass some kind of a first aid act at the coming session of the legislature, but this will be opposed by manufacturers, and, I believe, by a great many employees as well, for the reason that any First Aid under State control cannot be as prompt or efficient as arrangements now in force, and, furthermore, it would cover only accidents, which are from one-eighth to one-tenth of all cases treated.

Yours respectfully,

E. G. ANNIN,

*Business Manager.*

Puget Mill Company.

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#### THE ATLAS LUMBER CO.

SEATTLE, WASHINGTON, January 6, 1913.

*Industrial Insurance Commission of Washington, Olympia, Wash.*

Gentlemen:

Confirming our conversation in regard to the Washington workmen's compensation act, will state that the writer was a member of the Lumber Manufacturers' Committee at the time of the passage of this act and assisted in framing this bill, and after 15 months' operation I can state that the bill has proven entirely satisfactory to the employers of labor of this state. Within the past few weeks, I have attended a joint meeting of the Lumber Manufacturers' Association, the Loggers' Association, the Metal Workers' Association, and the State Employment of Labour, and the universal sentiment of the employers of labour attending this conference was to the effect that the bill was satisfactory and had worked out far better than our expectations, and a resolution was passed requesting the next legislature to make absolutely no change in the bill; that it was working out so well that it was deemed advisable not to make a change for at least another two years, and even then only minor changes might be found necessary.

In addition to the employers of labour being satisfied, after investigation we find that as a rule the employees are perfectly satisfied with the workings of the bill and that, barring an occasional labour agitator or walking delegate, there has been no dissatisfaction.

In regard to the comparative cost to the employers of labour working under this bill, the lumbermen, who pay about 10 per cent. of the entire amount paid into the fund, find as far as we can tell under 15 months' operation of the law that it is going to cost us no more and possibly a little less than we were paying in premiums to the insurance companies prior to this act going into effect, and in addition to the premiums we were obliged to pay attorneys' fees and attorney's large sums on account of witnesses and other expenses of litigation. Under the present law, it has been a pleasure to do business, for I do not know of a single damage suit having been brought against a lumber company since this law went into effect. We have not been required to pay a single cent for the expense of litigation.

Our men when injured have been paid promptly, and instead of the funds contributed by the employers of labour going to pay attorneys' fees and ambulance chasers, the entire amount goes direct to the injured or their dependents.

I can unhesitatingly recommend our plan of operation to any State considering a bill of this kind. Under our system, our funds are paid into a general fund, and then the entire amount goes to the injured, and after paying our premium we have no worries or expenses, and in every case the employer is absolutely protected against suits, and the employee receives a fixed sum, and all litigation is avoided.

Very respectfully,

CHAS. E. PATTEN.

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THE WHEELER, OSGOOD COMPANY.

TACOMA, WASH., Jan. 6, 1913.

MR. F. W. HINSDALE,  
c/o. *Canadian Manufacturers Association, Toronto, Canada.*

Dear Sir:

You have asked us to write you an opinion of the Washington State Industrial Insurance Law as we find it with an experience of fifteen months, and in reply we will mention some of the various matters briefly, so that this letter may not be too long.

While disapproving of the theory of the law, which we believe is too paternalistic to be economically sound in principle, we have tried to give a hearty co-operation in the administration of it, in order that its success might be fairly judged. We believe this attitude has been taken quite largely by the employers of the state, and it does afford a relief from previous conditions, which had become to be almost intolerable; whether or not it ultimately will provide that relief is a question which is not yet answered.

From the standpoint of the employer, therefore, we believe the law obviates some of the difficulties which have harassed the manufacturing business under the old system of recourse by the employee against the employer for industrial accidents and through the employer to the insuring liability company. As to the workman, the present system provides immediate and definite compensation in case of whatever injury, and the large economic waste of attorneys' fees and administration expense in the liability companies, together estimated at as high as 80 per cent. of the cost of the employer, is abolished. The change to straight accident insurance as distinguished from compensation to the injured workman, only when liability on the part of the employer could be proved, must present a very much more satisfactory condition to the injured workman, except possibly in the case of very serious injuries and clearly provable liability on the part of the employer when a large payment could be forced in settlement.

The workmen, we believe, are for the most part pleased with the operation of the law, but naturally enough are anxious to secure payments continuously larger and larger, and if successful this will undoubtedly prejudice the successful oper-

ation of the law. Particularly this will be so if the schedule of awards is largely increased and if the expenses of medical aid are attached solely as an obligation of the employer, as is now proposed.

We believe that the commission which was called to administer the law has given a wise, impartial and forceful administration, and in the character of the commission rests the success or failure of the law. The possibility for political manipulation to the serious detriment of the effect of the law is one of the ever present possibilities and disadvantages. We have seen nothing of this, however, and possibly it should not be considered as a real danger.

In regard to the costs to the employer under the present system as compared with the old system, we would say that with us it has been considerably more, owing to the fact that we have not considered it advisable to completely abolish, as yet, liability insurance. We feel that there is at least a possibility that a liability exists in the event of the repeal or unconstitutionality of the law; or that we may technically be judged to have had insufficient safeguards; or that there is a possibility for a claim to be made by a husband or parent for loss of services of wife or minor child, which some authorities hold is not clearly covered in the Act; or that a claim may be made against us for an injury through deliberate intention on the part of the employer. It is only fair to say, however, that these risks do not seem to be sufficient to a very large majority of employers, who have abolished altogether this supplementary insurance. In our further remarks in regard to costs, therefore, we will eliminate from consideration all but premiums to the State Insurance Fund.

Further in regard to these costs, about ten months ago we answered a similar inquiry from Mr. George M. Gillette, President of the Minnesota Employers' Association, St. Paul, Minnesota, and we should like to quote one paragraph of this letter:

"To one who has given the law merely a casual reading and is otherwise unfamiliar with it, the question of rates is very misleading, and this will answer the second paragraph of your letter, in regard to the comparative costs of the present and the old system. Elsewhere in the law an explanation is given that the rates assessed are merely tentative; in other words, they mean nothing at all except that the first assessment is on this basis. The amount to be collected is what the insurance actually costs in the class. To illustrate our meaning, we will refer to the costs in Class 10 and Class 29. In Class 10 an approximate total of \$159,000.00 was paid in on the first assessment, October 1st, 1911, and to date there has been paid out in claims \$39,000.00; transferred to Reserve Account for Pensions on account of 17 approved death claims, \$28,000.00, leaving the credit of the fund approximately \$92,000.00. In other words, a preliminary assessment of .61 $\frac{1}{4}$  per cent. of the estimated annual payroll has provided insurance for six months, and there is yet to the credit of the class over 55 per cent. of the accumulated fund. In Class 29 there was paid in on the first assessment approximately \$16,000.00, from which claims have been paid to date of \$4,000.00, leaving a credit to the fund of approximately \$12,000.00. In other words, an assessment on the same rate as above in the lighter woodworking plants has provided insurance for six months and there is still 75 per cent. of the fund unused. These figures are balances on the books of the commission as of February 23rd. If the last half year is a fair criterion of the future, in regard to accident hazards, the fund already paid in, almost insignificant in size and in the burden it imposes on the employer,

will be sufficient for at least a year in the one case which we have mentioned and two years in the other case."

In that letter we were very careful in our comparison of costs to make the proviso that future experience should be as favorable as the past had been. This we did not anticipate would be possible, for the reason, as all know who are at all experienced in casualty insurance, the first period is not a fair criterion to judge the operation of a rate schedule, owing to accumulation of unadjusted claims, accumulating payments on account of past injuries, and in this case the increased dissemination among the workmen of the knowledge of their right under the law for payment in case of minor injury.

The increase in costs has been very marked since the letter referred to was written, increasing from the figure which we hoped would apply but which we have admitted in this letter we did not expect, of  $.6\frac{1}{4}$  per cent. to 1.46 per cent. in Class 10 and from  $.3\frac{1}{8}$  per cent. to 1.06 in Class 29, or in the one case an increase of 130 per cent. and in the other case of 240 per cent. These figures are approximate. This rate of increase is surprising and alarming, and while we do not expect a corresponding increase in the future, yet even a fraction of this rate of advance would before long make the rate unconscionably high.

If, however, the rate should remain as the figures now show or should advance only slightly, the figures would still be well within that previously charged by the liability companies, namely  $1\frac{1}{2}$  per cent.

We wish to speak particularly of the practical application of the law as regards the system used in adjudicating claims and handling accounts. When two weeks ago the writer spent part of a day with you in your office, he was very much surprised and gratified by the accurate and business-like system of accounting which is used in keeping the record of such an enormous volume of detail. To be able to take instantaneous balances of the accounts of not only some fifty different classes but also some 5,800 different firms must be the result of a comprehensive plan executed with great exactness. The handicap of lack of proper equipment, facilities and services makes this seem all the more remarkable and accounts in a large measure for the success which the law has had.

There are many other features of the law which could be mentioned as being of interest, but in writing the foregoing we trust we have caught the spirit of your inquiry. If not we shall be glad to comment on any further features you may suggest.

Yours very truly,

THE WHEELER, OSGOOD COMPANY,

R. H. CLARKE,

Treasurer.

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CLEAR LAKE LUMBER COMPANY.

CLEAR LAKE, WASHINGTON, Jan. 8th, 1913.

MR. F. W. HINSDALE,

c.o. Canadian Manufacturers Association, Toronto, Canada.

Dear Sir:

We are in receipt of yours of the 2nd inst., and carefully noted the statements enclosed. The question which you ask, that of whether we would prefer an

individual liability for accidents or the operation of the law as it is at present, is one that is practically impossible for us to answer off-hand, for the reason that it would depend entirely upon the good fortune or ill fortune of a concern whether it would be more profitable for them one way or the other. As we doubtless informed you about December 1st, after learning the total amount of compensation which had been paid to our employees since the law was put in operation, and this amount was within \$25.00 of the amount of our premium paid into the fund, which shows that it would have meant very little either way for the first twelve months, so far as our company was concerned. However, during the past month we had the misfortune to have a man killed, and now, of course, we would indeed be in a very poor position were this to fall entirely upon our shoulders.

Taking the matter as a whole, we feel that it would be more equitable for all concerned that the fund be distributed as a fund instead of individually, for the reason that in that manner we will doubtless pay at the end of ten years on an average of what our accidents have cost the fund, yet it will be on an easy basis, so far as making the payments is concerned. You can readily see that if a company should be unfortunate enough to have, say, three deaths in the first six months, it is very probable that they would not have another death for the year, or possibly eighteen months. In fact, this has been our experience, and if we were compelled to pay the required amount out of our individual fund it would be very hard on us for one six months, but would, of course, pay in the next.

Another thing that we feel should certainly be avoided is the First Aid clause, to be paid for entirely by the manufacturer, for we are to-day keeping our plant in as accident proof a condition as is possible, and State inspectors are here nearly every month to see that it is in this shape. We, therefore, find that in nine cases out of ten accidents are caused by the carelessness of our men, and it hardly seems justifiable that the care of them should be out of the pockets of the manufacturers.

We can only say that we feel the administration of our Washington law has been, in a manner, far beyond our expectations and at a very nominal cost, and believe that the law in its present condition should not be tampered with, at least for the next four or five years.

Yours truly,

R. E. FORBES,

*Secretary.*

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#### WILKINSON COAL AND COKE CO.

TACOMA, WASH., Jan. 9th, 1913.

MR. FRANK WEBSTER HINSDALE.

*Care Canadian Manufacturers Association, Toronto, Canada.*

Dear Sir:

I am just in receipt of the statement of expenses of the Industrial Insurance Commission of Washington, which you have kindly had forwarded from your office, and pleased to note that the actual expenses of the Commission to date are somewhat below the allowable expenses.

Our experience with the State Insurance, *so far*, has been very satisfactory, insofar as the coal mining class is concerned especially. While we have not effected any material saving as against the rate which we were paying the Liability Companies two years ago, it is costing us considerable less than it would at the rate which the Liability Companies were charging just prior to the time the present law went into effect, as some of the Liability Companies had a rather disastrous experience in Coal mining, and raised the rates on the entire class to meet the deficit which they had incurred. Also a large portion of them, that is the reliable ones, withdrew from Coal mining risks. However, under the present law, it would appear as if the risk were not nearly so hazardous as was originally supposed, and, with an efficient Mine Inspector, such as I believe we have in this State now, the percentage of accidents should be kept down to the lowest possible minimum.

I believe that a large percentage of the employers of the State are now in sympathy with this type of law, as the money which is paid out for injuries goes directly to the injured party or to his dependents in the event of his death. It creates a better feeling between the employer and the employee, as neither one feels that he has to be on his guard against the other.

With kindest regards, I am, yours truly,

CHAS. A. FATER,

*Secretary.*

## INDEX

	PAGE
	Vol. I
<b>Alberta</b> .....	12
<b>Australia :</b>	
New South Wales.....	" I 32
South Australia.....	" I 40
Western Australia .....	" I 45
<b>Austria</b> .....	" I 13
<b>Bancroft, Mr. Fred.</b> See <b>Trades and Labour Congress of Canada.</b>	
<b>Belgium</b> .....	Vol. I 14
<b>Bell Telephone Co., Memorandum of</b> .....	" II 674
<b>Berlin, Ont., Sittings at</b> .....	" II 5
<b>Best, Mr. W. L.</b> See <b>Locomotive Firemen and Trainmen.</b>	
<b>Boyd, Mr. J. Harrington</b> .....	Vol. I, 311, 470
<b>British Act, 1906.</b> See <b>Great Britain.</b>	
<b>British Columbia</b> .....	Vol. I 15
<b>California</b> .....	Vol. I 46
<b>Canadian Manufacturers Ass'n :</b>	
<b>Brief</b> .....	" I 54
<b>Answer to Mr. Wolfe</b> .....	" II 638
<b>Memorandum on the Commissioner's draft bill</b> .....	" II 544
<b>Draft bill</b> .....	" II 607
<b>Canadian Pacific Railway Co., Memorandum of</b> .....	" II 682
<b>Cape of Good Hope</b> .....	" I 16
<b>Casualty Ins. Companies, Memorandum of</b> .....	" II 688
<b>Cease, Mr. D. L.</b> See <b>Railroad Trainmen.</b>	
<b>Cobalt, Ont., Sitting at</b> .....	" I 171

		PAGE
Dawson, Mr. Miles M .....	Vol. I	393
Denmark .....	"	18
Employers Ass'n. of Toronto,		
Secretary's Statement .....	Vol. I	164
Finland .....	Vol. I	19
France .....	"	20
Germany .....	Vol. I	21
Gibbons, Mr. Joseph. See Trades and Labour Congress of Canada.		
Great Britain .....	"	23
Greece .....	"	24
Hamilton, Ont., Sitting at .....	Vol. II	32
Hinsdale, Mr. F. W. ....	Vol. II, 277, 691	
Holland .....	Vol. I	25
Hungary .....	"	26
Illinois .....	Vol. I	47
Italy .....	"	27
Kansas .....	Vol. I	48
Lawrence, Mr. Calvin. See Locomotive Engineers.		
Locomotive Engineers, Memorandum of .....	Vol. II	682
Locomotive Firemen and Engineers, Memorandum of .....	"	680
London, Ont., Sitting at .....	"	260
Luxemburg .....	"	28

	PAGE
	Vol. I
<b>Manitoba</b> .....	30
<b>Massachusetts</b> .....	48
<b>Merrick, Mr. J. G.</b> See Employers Ass'n. of Toronto.	
<b>Miners.</b> See Cobalt, New Zealand, Russia.	
<b>Minutes of Evidence :</b>	
<b>1st—11th Sittings</b> .....	Vol. I 133
<b>12th—27th Sittings</b> .....	" II 5
 <b>Nevada</b> .....	 Vol. I 49
<b>New Brunswick</b> .....	31
<b>Newfoundland</b> .....	31
<b>New Hampshire</b> .....	50
<b>New Jersey</b> .....	50
<b>New South Wales</b> .....	32
<b>New Zealand</b> .....	33
<b>Norway</b> .....	34
<b>Nova Scotia</b> .....	35
 <b>Ohio</b> .....	 Vol. I 51
 <b>Persons Appearing before the Commission, Lists of</b> .....	 Vol. I, 468 ; Vol. II 1
 <b>Quebec</b> .....	 Vol. I 36
<b>Queensland</b> .....	37
 <b>Railroad Trainmen</b> .....	 Vol. II 377
<b>Reports of the Commissioner :</b>	
<b>Interim report</b> .....	Vol. I 5
<b>Final report</b> .....	" II v
<b>Retail Merchants Ass'n. of Canada</b> .....	" II 50
<b>Russia</b> .....	" I 38

		PAGE
Saskatchewan .....	Vol. I	40
Sherman, Mr. P. T.....	,, II	188, 620
Spain .....	,, I	41
Sweden .....	" I	43
Trades and Labour Congress of Canada.		
Brief.....	Vol. I	8
Supplementary brief.....	" II	446
Memorandum .....	" II	694
Transvaal.....	" I	44
Trowern, Mr. E. M. See Retail Merchants Ass'n. of Canada.		
Washington, State of .....	Vol. I	52
Waterloo County Manufacturers and Employers.....	,, II	240, 677
Wegenast, Mr. F. W. See Canadian Manufacturers Ass'n.		
Wisconsin .....	Vol. I	52
Wolfe, Mr. S. H .....	,, II	130, 666

**E R R A T A**

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Vol. 1, page 103, line 47: for "the less careful employer", read "the more careful employer".

" page 145, line 39: for "there", read "that".

" page 155, line 3: for "Mr. Thomas E. W. Carruthers", read "the Hon. Mr. T. W. Crothers".

" page 155, line 33: for "Mr. Carruthers", read "Mr. Crothers".

" page 163, line 6: for "on", read "of".

" page 413, line 18: for "Mineius", read "Mencius".

" page 468: for "Mr. James Gibbons", read "Mr. Joseph Gibbons".

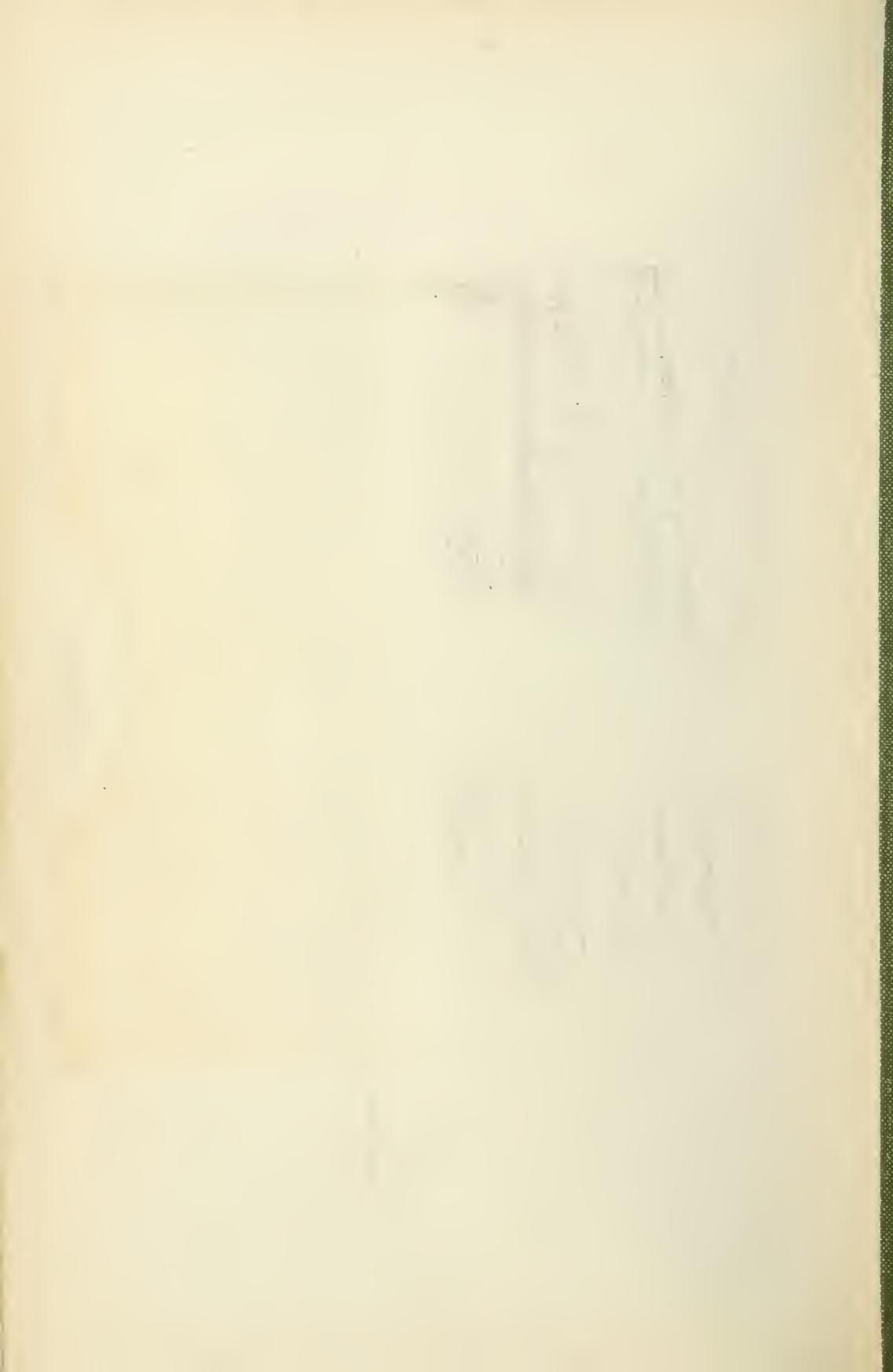
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