THE WORKERS' COMPENSATION ACT

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THIS was first proclaimed on 17.11.14, followed by various amendments and alterations in the following years. It was consolidated in 1929, and amended again in 1935, providing for medical expenses, hospital and ambulance services. There were various alterations and amendments again in 1936, with more medical expenses, and again in 1938.

In 1946 very radical changes were made, almost completely socializing the Workers' Compensation Act, greatly increasing the amount allowed for medical expenses and total compensation. By amendment again in February 1951 the amount for medical expenses was raised to £125, with powers to increase this amount and total compensation, plus, plus.

Prior to the 1946 Act, workers' compensation problems centred around the great group of non-traumatic cases, especially that group of non-industrial diseases, etc., skeletal defects and changes, visceral, circulatory, and nervous disorders, with the difficulties in diagnosis and their possible relationship to industrial accident.

It presented problems often of some difficulty, leading sometimes to diametrically opposed opinions, on the same set of facts, but always based on some definite connection or otherwise with industry.

There was very little difficulty then in presenting a subject for discussion to such an association as ours. Medically there were so many aspects to consider that any one of them could be presented in an hours' paper for a provocative educational discussion. Now, with the 1946 alterations, which apparently opens wide the Act to all pathological conditions in which it may be very difficult to see the industrial connection, paper writing, essay, or what you will, is very difficult.

Accidental Causes

Doctors are early trained to regard all pathological conditions as being caused either by trauma or disease, and other causes. Hence to them accident was synonymous with trauma, and the injury resulting therefrom traumatic. They soon learned that the law had another way of regarding the term "accident". Various explanations were given of its meaning in the English language, and one listened to many legal battles on whether or not a certain injury was due to accident or disease. Then it was turned round from "injury due to accident" to "accidental injury"; thus the *injury* became of supreme importance, but it still had to arise out of, and in the course of, employment.

Doctors are still being taught "trauma" instead of "accident" and still think of the "traumatic origin", rather than the "accidental cause".

Then the single event accident idea was changed to a series of events, and finally to occupation, and the aggravating or accelerating effect of this, accepted as "accidental origin".

Finally the law had one more brain wave; it changed "and in the course of" to "or in the course of", and extended the course of employment to home to home and widely opened out the Act and its benefits to the worker.

The doctors still wonder at the way in which the law, by use of our wonderful language, can alter our ideas based on scientific observation of injury due to accident, or disease, to cover or include almost any pathological condition.

For the purpose of this discussion, one can divide all industrial cases into two main groups:

(1) *The real traumatic injury.* Once about 80 per cent of all claims; now a diminishing proportion. It is due to violence from without, about which there can be no doubt. The only difficulty that can ever arise here may be the means and method of treatment, the period of disability, and, if any, the permanent loss, or in other words the remaining functional capacity of the individual.

(2) *Disability due to disease.* In early days a very small group; two diseases and four poisons in the first Act, together with such as could be brought in as accidental injuries aggravating or precipitating a pathological condition in the individual. This has so grown with the various alterations and changes in the Workers' Compensation Act that it includes almost all

pathological conditions which may affect the individual. Whilst these may be totally dissimilar in nature and origin, and basically have no relationship whatever to industry, some part of what we doctors consider the ordinary progress of the disease may yet be interpreted as an "accidental injury", arising out of or in the course of the employment.

Further, the wide interpretation given to the term "aggravation of a pre-existing condition" can be of great assistance to the claimant. There are few skeletal inflammations, acute and chronic, that are not improved by rest, and alternatively aggravated by use and ordinary work.

Does this term mean the symptomatic effects of use, i.e. the increase in pain, etc., or does it require to actually cause spread of the inflammation or make the condition really worse? The non-industrial inflamed hand may localize with rest, but becomes a cellulitis with use and work; the varicose ulcer heals with rest, but spreads with activity. Similarly with almost any skeletal inflammation. Likewise the term "acceleration of development of, or progress of, a disease" can have a very wide application. No one can dispute the fact that stress and strain of lifting weights, pushing trucks, etc., could be an important factor in the formation of a hernia, progress of arthritis, or tennis elbow; or with tenosynovitis or most forms of ganglion. When, however, a doctor uses this term, it is only right that the employer would expect him to define a period of time in which this progress was accelerated, whether it was advanced a month, a year, or more, in time.

Let one illustrate further this progress in industrial social service by reference to a few of the conditions to which they can be applied.

Probably the condition most affected is the simple hernia. In 1938 I reviewed 300 claims. Only 33 per cent of them could be accepted as "accidental injury". I think the comment was made by a well-known surgeon at that time that I was too liberal; it should have been 25 per cent. It has always been contended that the hernia found as a swelling "when under the shower" has been quite some time in its formation. Even if such were found during the course of work, even if manifested by a transient pain, it was there before beginning that day, possibly weeks before. Examining recruits from 1939 onwards, one learned again of the number of herniae unknown to their owners, and sometimes even to the expert. It takes something

more than the swelling to make that hernia accidental. Few doctors, and certainly no patients, can diagnose an inguinal hernia until it presents through the external inguinal ring. It must be absolutely true that no hernia can immediately come through the internal ring, down through the tissues of the cord, and present itself as a swelling through the external ring without very considerable pain. Hence, industrially, "in the course of work" cannot apply in such a case. However, the better way to help the worker is the application of the word "acceleration", by stress of his occupation. If that cannot apply because of the absence of stress, he must look for some cause other than "in the course of work". Perhaps I am wrong, but a learned judge recently drew attention to the temporal relationship of the pathological or physiological cause. He thus could hardly apply this to the appearance of the relatively painless swelling, or a hernia which must have been some time in going through the inguinal canal.

Is the recurrent hernia a fresh injury? Prior to 1938 most workers were operated on in public hospitals, and simple, indirect herniae done mostly by associates, registrars, and occasionally by the house surgeon. The percentage of recurrence was about 5 per cent, and in most cases there was a definite reason for it, such as haematoma, abscess, post-operative pneumonia, etc. Most of the cases were young, strong, able-bodied men, and they were carefully screened for coughs and cold, etc. Now the young men are still there, but there seems to be more of the older group, past middle age, amongst them. Figures given in an American journal, in recent review of over 1,000 cases, gave a 25 per cent recurrence in men over 50. Moreover it does not depend on the method used, nor the priod of disablement. It is no better in three months than five weeks. All surgeons meet it, the great amongst the lesser.

The late Mr. Hamilton Russell, whilst doing a recurrent hernia one morning, pointed out to me the perfect repair at the internal ring (the indirect sac); but not the direct bulge on the inner side of the deep epigastric artery. "My fault," he said. "I should have examined the sac for that" (a bilocular sac). That has always been the surgeon's attitude; he reflects on himself. "My fault, I should have seen that, or have done this." Probably in many cases he is right; he operated on the man to cure him, and now he is worse off than before. But is it always so? Is there no factor of acceleration by stress or strain, of the explosion effect of the chronic cough, the morning hate of the

cigarette smoker? There is one way of operating on the older man which will give a very high percentage of cure, but few patients will consent to this. It means removal of the cord, and complete obliteration of the canal.

The percentage of recurrence has gone up; exact figures cannot be given as yet. The cough screening is certainly not as carefully done as in public hospital cases. Two men came up for review one afternoon a few months ago, both recurrent hernia, both done by the same young surgeon. Both had a cough at the time of operation, and no suturing will stand up to explosive coughing. If these facts were not present, if it were possible to go through life without any stress at all, perhaps there would have been no recurrence; but as stress is part of work, therefore work accelerates the recurrence of a weak repair. One wonders!

Other skeletal injuries. As a rule the injured joint or bone presents no difficulty regarding its relationship to industry. The sub-acute inflamed joint, which has no true relationship to work, but which is referred back to that "knock, sprain or wrench, etc., I gave it", days or weeks before the onset, may be difficult. More so is the cause of poly-arthritis (or what was once termed multiple infective arthritis). We all know that trauma can precipitate "arthritis" in a joint, but we, like Bosanquet, in "Tubercle and Trauma" (*B.M.J.*, 1912), expect evidence of that trauma to the joint at that time, followed at once by definite *clinical signs of injury.* When that is not forthcoming, and no report has been made of the incident at the time, can the bald statement, plus the arthritis, be accepted as industrial origin of the disease?

It has also been recently considered that when once an industrial strain or sprain (ligament injury) has taken place in a joint, any subsequent similar strain or sprain to that joint is to be regarded as a recurrence of the original injury, even years after, no matter how treated, or how perfect the result. If this were correct, then the reverse should also hold: an industrial injury, or strain of an old non-industrial strain, is only a recurrence, and not industrial. I find this hard to accept. One cannot accelerate or aggravate a perfectly healed joint injury; and there could always be a fresh or second injury.

The old non-industrial injury of a joint. (1) The "loose cartilage of the knee joint"—often the result of sport, football, etc., of injuries apart from work; it comes out with a simple

twist, and can be reduced by the patient without difficulty; one day at work it locks, and he cannot reduce it; he reports it, is sent to the surgeon, and one of two things happens. (a) It cannot be reduced by manipulation; operation is necessary to restore the joint to the condition present when he started work; (i.e., aggravation of pre-existing disease). (b) The cartilage is reduced; the joint has been restored to "as it was" on starting work; the aggravation was only temporary and has been cured. Can the employer be asked to do more, or does his liability then cease? The surgeon certainly advises operation to cure the condition; whose is the liability? Probably like the Repatriation Department he would say it was not due to "industrial service" and he is not liable.

(2) A similar joint problem arises in the case of the old non-industrial non-united fracture of the navicular bone of the wrist, as in Kienbock's disease, etc., or aseptic necrosis of the semi-lunar bone. Arthritis as a rule sooner or later develops and causes disability, the stress or strain of work causing acceleration of the disease. This is *industrial,* is relieved by complete rest to the joint; it will probably recur again under stress or strain of work.

To whom does the problem of the diseased bone belong? Rest cures the industrial injury, but there is no hope of obtaining union in the old fracture; the arthritis will recur. Operation and excision of the bone, with a loss of 20 to 30 per cent function or bone grafting; fixation of the wrist, with a loss of up to 50 per cent. Even this is preferable to months of disability and no better results.

In the old symptomless, uncomplicated, sclerosed, non-united bone, I would say let him work with nine bones instead of eight in his wrist, until such time as symptoms arise, and so avoid a "cerebral complex" in the man.

In a recent judgment, Willis v. Moulded Products, the learned judge gave a very excellent exposition of the term "injury by accident", as applied to a case of cerebral haemorrhage, the result of arterial disease and hypertension occurring in the "course of employment", and from that case he deduced its application to many disease cases.

In this he shows that the sudden rupture of the diseased artery and extravasation of blood was an "accidental injury" within the meaning of the Act, and that as it took place in the course of his employment it was compensable.

In his review of these cases he quotes a case, Ormond v. C. H. Holmes & Co. Ltd., 30 B.W.C.C. 254, to show that the pathological change, the injury by accident, the thrombosis, commenced to form before the worker began his day's work, and thus was outside the Act, although the resultant onset, paralysis in the course of employment, would suggest that the case was compensable.

This, I take it, means that the pathological change, the result of injury, must occur during the course of employment, and that the resulting effect of that change, i.e. the onset of the disease, even occurring during the course of work, does not make the case compensable.

Suppose in the haemorrhage case that the artery gave way because of necrosis of its wall resulting from occluded nasa vasori of the vessel wall. High blood pressure was a secondary matter; it would have given way even if presure were at its minimum. Thus the injury or the necrosis had been deevloping for days and could not have taken place at the time of the resultant haemorrhage. Would this be regarded as the same as Willis v. Moulded Products or Ormond v. C. H. Holmes & Co. Ltd.?

The 1946 Act abandoned the Schedule of Industrial Diseases, and compensation rights are given in respect of any disease due to the nature of any employment in which the worker was employed at any time prior to the date of the disablement. There are, however, many diseases not due to the nature of the employment. They are widespread; many at times assume epidemic proportions; they are infectious or contagious, with a definite incubation period of days, but a sudden onset often during the course of work; so that the worker may apparently be quite fit on starting work, but before the day is over he has become quite incapacitated from some illness. This would fulfil the requirements of "arising in the course of employment", being unexpected, thus accidental; the injury acute inflammation of tissues (in the body) due to the action of some living agent, virus or bacteria, it matters little which. The only difficulty is this necessary *incubation period,* and the wide spread source of the infection, not only at his work and travelling to and from there, but even in his home or any other place to which he may go.

This I think makes it quite impossible to bring the condition within the provisions of the Workers' Compensation Act. One

specifically refers to the various infections of the upper air passages: the common cold, influenza, diphtheria, ulcerated throat, mumps, measles, etc., and extending down the pneumonias, tuberculoses, or even poliomyelitis, hepatitis or glandular fever. In the latter group it may be possible, by the nature of the work, and the specific nature of the disease, to connect both the infection and the onset with the occupation. This applied particularly in 1948-49 to a group of cases at one of our public hospitals, from laboratory workers to medical and nursing staff.

Similarly one would consider the effect of debilitating conditions because of the nature of the employment, or exposure to sudden change in temperature of surroundings. Chilling, from being compelled by the work to remain inactive, exposed to the cold, etc., can cause the development of some inflammation such as pneumonia or fibrositis, rheumatism, etc., to follow almost immediately afterwards, and make the condition one of "accidental injury". In this respect consideration must be given to the term "inactive exposure". It was always said, "no matter how cold or wet you may be, as long as you can keep moving, nothing untoward will result." I wonder how many members of football teams develop effects of chilling after a cold Saturday game.

It must be admitted that any disease or illness which may affect a man can have its onset, disabling or otherwise, during the course of his employment. This "accidental injury", in the sense that it was not expected or designed, and tissue destruction or damage has taken place, apparently comes within the provision of the Workers' Compensation Act. A little thought, however, will suggest that it is not so simple. To illustrate this, consider certain surgical complications of visceral disease, the perforation of a gastric ulcer, or other diseased hollow viscus; in all respects an "accidental injury" within the individual, and although one that may take place in any gastric ulcer, it is not the only surgical complication of such disease. However, like the case of Ormond and Holmes, the real injury took place with the formation of the ulcer, and this perforation is the resultant effect of that tissue injury or destruction. Is that legally correct?

Similar reasoning may apply to other surgical conditions, such as appendicitis, cholecystitis, etc. In the case of haematemesis, the bleeding gastric ulcer, due to the destruction of a blood vessel by the ulcer, without the effect of stress or strain, difficulty occurs in (1) diagnosis of the ulcer (there are other

causes of haematemesis), and (2) the time when the bleeding began, or the visceral injury took place. This I would think would also apply to the bleeding bowel, or the bleeding kidney or bladder, without accidental injury, outside the lesion itself. It is difficult to determine the time of the onset of the bleeding condition. It certainly took place some time before it was manifest to the individual.

A question which naturally follows this is, what is coronary angina, or on what does it depend? The late Dr. Wright-Smith would say it is not embolism or thrombosis of the coronary vessel, but true slow occlusion of the lumen by the thickened wall. One would think that such a man would be quite incapable of any physical exertion because of this poor blood supply, yet how often is it that right up to the moment he drops he may be quite fit, and even carrying out strenuous exertion? How many of these who have had attacks show no demonstrable sign of coronary disease, yet one day they will drop in the time-honoured way. Is it analogous to the sudden arterial spasm we get elsewhere, "intermittent claudication", brain or leg, etc., and is it a muscle spasm due to this old term muscle or tissue anaemia? The individual may even be at rest when it comes, not engaged in stress, and it simulates the term "cardiac syncope" so often used by the late Dr. Mollison. In most cases the individual knows of it, and does not need to be told of the implication of the attacks; hence it is not unexpected, and when death takes place it is not accidental injury, but the natural course of something which, like the vascular thrombosis which began before he left home and finished up with paralysis or death when he was at work, is quite inevitable.

The provision of money for treatment of workers' compensation cases raised hopes that industry would, like the Army, carry its own wastage. One envisaged a series of well-organized private traumatic units connected with our hospitals if possible, or in various industrial centres, with sub-units in groups of industries, staffed by well-trained sisters, and supervised by the medical officer from the large unit. One thought it could be organized as readily as the industrial eye service which was established some years before (and still running on oiled wheels), but the fact was overlooked that eye cases belong to a very highly specialized branch of the profession, and that traumatic surgery is thought to be just a part of every day medical practice.

The fact was also overlooked in many quarters that the general practitioner is a very busy man, hard to contact at any hour of the day, and, except for the younger man, has forgotten the traumatic branch of his work, and the recent advances made in treatment.

In early days, and in some places today, hospitals and the clinics were requested to give first-aid treatment only, and refer the case to the patient's own doctor. This practice was followed by some very unfortunate results, directly due to delay in treatment, especially in compound fractures of the hand and foot bones. It became necessary to advise that in traumatic cases a doctor was not a "first-aid artist", and that he either did not treat the case at all or he carried out or arranged the complete necessary treatment for the case; otherwise he was not carrying out his legal liability to the patient.

One knows, even today, a worker's compensation case, with fracture of both bones of his leg, may be turned away from the casualty room of a public hospital, without any treatment whatever, to seek treatment by his own doctor or elsewhere.

Even when special clinics were established, the injured workers were on Doctor so-and-so's list, and medical ethics decreed that they should be sent along to him. Then the principle was reaffirmed that the worker was a free agent, and could make his own choice; that this was special work, was not paid for by the man, but by his employer, and thus, strictly speaking, did not come within the realm of general practice.

It was also pointed out that in all true traumatic cases, such as fractures, crushes, wounds, etc., immediate complete, efficient treatment was essential, and that after that, with no further active treatment, the co-operation by the man's own doctor could be of help to the clinic and the patient. When, however, this was not forthcoming, and splints were altered to suit the convenience of the patient, with untoward results to the position of the fracture, and wounds were unnecessarily exposed and dressed, the position was not at all satisfactory.

Optimism is probably a great asset in a man, but when with that is coupled a blind faith in theoretical reports of the beneficial effects of electrical machines by manufacturers and salesmen, together with faith in spot diagnosis of various skeletal injuries, a very busy practice may be obtained with very little real benefit to the individual.

A review of low back cases in two five-year periods, 1920-25 and 1930-35, showed an increase in average disability from eight

weeks to eight months; the only difference in treatment was, no diathermy in 1920-25, and this was the main treatment in the later period.

Unfortunately the push button electric therapy has come to the front again in recent years. One case will illustrate my meaning — a so-called synovitis of the knee. Hospital; manipulation; electric treatment for some months; finally consultation with a specialist; meniscus injury disclosed, and opinion that operation was necessary. But all the money had been used up in the treatment; who would pay? One was then advised that the Board could increase the amount. Needless to say, other measures were adopted.

Is this clear? One could cite many cases, but one's appeal is for clinics with trained men and co-operation from the hard-worked general practitioner.

Is the factory doctor an asset? I think he can be a very great asset as long as he recognizes his limitations and refers the treatment of all difficult cases and difficult diagnoses to those best trained to deal with them, without ties of friendship or monetary benefit to himself. He cannot be on both sides of the fence at the same time.

What of the future? With the socialization of benefits and Workers' Compensation Act, and the severe drain on industry, the time is fast approaching when it will need to check and screen physically all its employees. The Army caries its own wastage, but it screens as well as it can all recruits or volunteers for service. Only by such means can industry avoid the heavy financial drain of the great socialization of the Workers' Compensation Act. Today this amounts to a very considerable sum of money.

In Victoria for the year 1947-48 medical expenses alone were almost £168,000. In the year 1948-49 they amounted to £189,000, and in 1949-50 will probably be well over £200,000; that is 13·5 per cent of the total amount paid in compensation.

Such is a review of the Workers' Compensation Act as I see it today.

G. H. Lush, Esq.

The object of this paper is to make an examination of the question whether the original purpose of the Workers' Compensation Acts has been achieved in their application in practice, or whether they have in practice and in their development fallen short of or exceeded their original purpose. The

conclusion which will be reached is that the present content and application of the Acts provides a system different in nature from the original conception — so different and so illogical as to call for complete legislative reconsideration.

The first Workers' Compensation Act was passed in England in 1897. This Act was confined to providing compensation for accidents incurred in what were apparently regarded as the more dangerous occupations. The Act covered railway, factory, mine, quarry and engineering workers and workers on certain building operations. In 1900 agricultural workers were included. In 1906 the Act was given general application to all workers, with, of course, a limit by reference to earnings on the definition of a worker.

In Victoria the English legislation described was substantially enacted in 1914 and, with two not very important sets of amendments, passed ultimately into the 1928 Consolidated Act.

The common law background against which these statutes were enacted was one which afforded an employee limited remedies against his master for injuries sustained in the master's service. The master's obligation at common law was to take care to make his works and ways reasonably safe and to institute a reasonably safe working system and to take reasonable care to select competent employees. The employer was liable for the negligence of overseers whose duty it was to attend to these matters. There, however, the employer's liability ended. He was not liable to pay damages for injury sustained by one employee as a result of the negligence of a fellow employee (except in the case of overseers, to which I have referred). The representatives of a workman who was killed had no remedy. And the employer had open to him in any action brought by an employee the defences of contributory negligence and *volenti non fit injuria.*

It will be seen that the employer's liability was a liability for fault of a characteristic common law type.

The workers' compensation legislation opened up an entirely new field of liability unrelated to these common law rules of liability and defence. The workers' compensation legislation was from the start not concerned with fault liability but fastened on the employer the liability of an insurer in respect of the injuries covered by it. It is quite wrong to regard the legislation as intended merely to correct the harshness of the common law rules in their application to workers in contest with employers.

The fallacy of this view is demonstrated by a consideration of other legislation affecting the rights of employer and employee. The common employment rule was whittled down by legislation and has now been finally abolished in this State. The conception that a cause of action for personal injury dies with the injured party has been for many years so cut down as to be almost non-existent and the first steps in this direction precede the workers' compensation legislation in point of time. The defence of *volenti non fit injuria* is one which practice has shown to be extremely difficult to sustain on an employer's behalf before a jury. Despite all these things workers' compensation has held an increasingly important place in our jurisprudence, and that fact alone would justify us in regarding it as something quite apart from a correction of common law insufficiencies.

What I have said justifies, I think, the conclusion that in imposing on the employer an insurer's liability the British Parliament was quite consciously setting up an entirely new piece of social legislation. The conception underlying the creation of liability for injury arising out of and in the course of the employment was that when the worker was broken in the enterprise which the employer had undertaken for his own profit, the employer should, to some extent, bear the social cost. In other words, what was done in furthering the employer's gain must be done at the employer's expense.

The English courts were quick to appreciate the novel nature of the legislation and gave effect to it according to its spirit. It is worth noting that in 1902 it was written that "the energy of the courts in giving full effect to legislation which some, at any rate, of the judges can hardly regard with approval, is, for good or bad, a sign of the tendency towards collectivism which for the last 30 years has characterized the current of public opinion in England," and in 1904 it was written: "A good deal of our legislation appears almost or quite socialistic to learned Americans accustomed to constitutional limitations."

It is worth pausing to remark on these observations on socialistic tendencies and to note that these tendencies were complained of or at least recorded as going back to 1870. It is also worth noting that in 1904 it was recorded that seven out of ten of the decisions of the Court of Appeal in cases arising under the statutes in the course of one year resulted in favour of the worker. Any insurance men who may be guests tonight

can observe that the suggestion that the court is inclined in the worker's favour is not original.

The really vital development of the Act by judicial decision is a broadening of the interpretation given to the word "accident". You are probably all familiar with the classic definition of an accident as a mishap or untoward event not expected or designed by the worker. However, some of you might be surprised to learn that the entry of a germ into tissues of the body was treated as an accident as early as 1901. This conception of accident covered internal physical changes by lesion or rupture or otherwise. In addition to those conceptions of accident, the courts ruled that the phrase "injury by accident" was a composite phrase equivalent to "accidental injury" and not one which described an injury following upon and separate from an accident. Consequently any lesion of tissue could be both injury and accident.

The significance of this development of the conceptions of accident and injury by accident was not fully realized so long as the wording of the main section of the Act remained in its original form, "injury by accident arising out of *and* in the course of the employment". The accident as defined was the subject of compensation only if there was a causal connection between it and the employment.

The full significance of the judicially developed definitions referred to became apparent when the necessity for a causal connection was abolished (in this State) in 1946. Section 5 of the Act was amended to read "out of or in the course of". The kind of accident to which I have referred then became the subject of compensation despite the fact that it was not the result of the employment provided only that it occurred in point of time and circumstance in the course of the employment. This has resulted in the cases familiar to both professions represented in this Society, in which lawyers are attempting to prove that disability or sudden death was the result of a physical change in the injured or deceased worker which can be identified and recognized and the time of occurrence of which can be fixed with the object of showing that, regardless of the time of onset of disability or death, the alleged change occurred while the deceased was on his way to work, was at work, or was on his way home. In our efforts to prove or disprove these contentions we necessarily rely on the evidence of physicians who, I think, do not feel in most cases that there is any reality in what is

required of them by the lawyers, and who also feel, I think, in many cases that scientific knowledge does not really admit of the dogmatic assertion that an identifiable physical change occurred at an ascertainable point in time. Hernia and knee cartilege cases provide examples of this type of difficulty. An accident occurs at the moment of herniation or displacement, and the chronic sufferer from these complaints may obtain or not obtain compensation fortuitously according to the time of the day of which his "accident" occurs.

The granting of compensation for accidents of this class which are not caused by the employment amounts really to a limited health insurance of the worker, and is completely outside the original concept of compensating the worker who is broken in the service of his employer. It is at this stage that we have departed from the plan of the original draftsman of the legislation and embarked on something which is different in its nature.

The extent of this departure from the original plan is increased by two other provisions in the 1946 Act. The first of these provides that accidents happening during travelling or happening at the place of employment on a working day including ordinary recesses are deemed to arise in the course of the employment. This provision makes the employer liable to pay compensation for travelling and lunch-time accidents, accidents due to skylarking (provided this does not involve running an abnormal risk) and the adoption of unnecessarily dangerous methods by the worker falling short of serious and wilful misconduct. The second provision is the new definition of a worker. The term "worker" now includes a new class of persons who do not stand in the relationship of servant to the employer master, but who are independent contractors who preserve their notional economic independence by earning their living by carrying out work on a contract basis instead of working for wages. The full effect of the addition of this class of contractors to the definition of worker will probably take some time to be developed in the courts. The Board has recently decided that any craftsman who carries on his craft by contracting, but who has not a business in the sense of business premises, scheme of advertising, and so on, that is a craftsman who lives at home and approached or is approached by persons who may require his services, is a worker who is to be compensated for any

relevant injury by any person for whom he is currently performing work under a contract.

Whether one regards the inclusion of this type of contractor as a participant in the benefits of workers' compensation as something inside or outside the original intention of the Acts is, perhaps, a matter of taste. If one regards this class of man as having asserted his right to remain his own master, then one will not regard him when injured as having been broken in the service of anyone but himself. If, on the other hand, one regards him as forced into this position by employers who would, apart from the new definition, desire to exclude him from compensation benefits, one concludes that he is within the original scope of the Acts. In current economic conditions it is suggested that the former construction is in most cases nearer the truth.

Gathering together the observations so far made, we have travelled from the original concept of compensating the worker broken in the service to a position in which the employer, with the aid of compulsory insurance, which is a factor never to be left out of sight, is obliged to compensate the worker for accidents which in relation to the employment are the merest chance and which are in no way connected with the profit-making endeavours of the employer. From the worker's point of view, the element of chance is equally strong. If he falls off his bicycle on Monday morning he gets compensation. If he falls off his bicycle on Saturday morning he doesn't. If, after suffering from heart disease for years, he falls down dead as a result of a coronary occlusion on getting out of bed in the morning, his widow may be left penniless. If he falls down dead from the same cause after getting out of the front gate to go to work, his widow may receive compensation.

The question posed is whether the present extent of compensation is too great or too small. The objection that the burden placed on the employer is excessive can, I suggest, be dismissed at once. The burden he bears is a burden of paying his insurance premiums. This burden is passed on to the general community by the most elementary costing adjustments. The insurer, on the other hand, provided he can ascertain with some degree of certainty the extent of the risk he is covering, should be able to carry on his business profitably. If these are the only arguments which can be raised by those who say that compensation covers too much, their case seems slight. The further argument that the absence of compensation in some way encour-

ages a sturdy self-reliance in the worker need not, in this year of grace, be answered. It was of course regarded as a serious objection to the whole scheme in the earlier days of the legislation.

The argument that the field covered by compensation is too small depends on the infinite anomalies that may occur under the present system. It is obvious that the needs of a worker or his family, consequent on the worker's injury or death, are exactly the same whether his injury or death is within the Act or not. The worker has the benefit of a limited health insurance, the limits of which are not related to his need and indeed can be explained historically but not justified logically.

One logical conclusion of the expansion of the legislation over the years is that the employer through his insurer should accept complete responsibility for his worker, in other words that the employer should have a health insurance scheme in respect of his workers which covers all their injuries, ailments and disabilities regardless of their relation to the employment from the first day of their engagement to the last.

Such a scheme would of course present its own manifold difficulties. The outstanding criticism is that once security legislation is carried to such an extent there is no reason for confining it to workers as distinct from those members of the community not within that description. And it is suggested that if the legislation is so expanded the employer is no longer the appropriate medium through which to give effect to such a scheme.

The alternative development is the setting up of a scheme of national health insurance. But, in 1946 and 1948 such a scheme was set up in England. The success of this English legislation is a matter upon which I can offer no information or comment. It provides a nationalized scheme of compensation for industrial accidents closely resembling workers' compensation but with the addition of sickness and unemployment benefits which apparently will cover non-compensatable disabilities, but at a very low rate—26/- per week. Generally speaking the rates of payment received by those benefiting under this Act are very low, and this suggests that we must be prepared to pay a high price for any similar scheme if it is to pay worthwhile rates.

The merits of these schemes are still controversial, and into this controversy there is no time for me to enter. But the community would probably be better served if it could decide for what goal it was heading than if it continues to develop its systems by haphazard and ill-understood makeshifts.