

Powers and procedure of Commissioners.

23. The Commissioner shall have all the powers of the Supreme Court for the purpose of enforcing the attendance of witnesses, compelling the production of documents and material objects, administering oaths and taking evidence.

*See S. 34 30/1926 In 23 A*

Appearance of parties.

24.—(1) Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner or, with the leave of the Commissioner, by any other person authorized in writing by such person.

*See S. H 7 30/1926*

(2) No person other than a legal practitioner who appears or acts on behalf of any party in connection with proceedings before a Commissioner under this Ordinance shall be entitled to any fee or reward for so appearing or acting.

*his son, daughter, father, mother, brother, sister, wife, nephew, etc. this person may be employed.*

Evidence to be recorded.

25. The Commissioner shall make notes of the evidence of every witness as the examination of the witness proceeds, and such notes shall be written and signed by the Commissioner with his own hand and shall form part of the record:

Provided that the evidence of any medical witness shall be taken down as nearly as may be word for word.

Costs.

26. All costs incidental to any proceedings before a Commissioner shall, subject to regulations made under this Ordinance, be in the discretion of the Commissioner.

Power to submit questions of law.

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

Registration of orders.

28. At the conclusion of the hearing of every application for the settlement of a matter by the Commissioner the Commissioner shall record his decision and order. Where the order directs the payment of compensation under this Ordinance or the variation of the amount or rate of

payment of compensation previously ordered by the Commissioner or settled by agreement, the Commissioner shall record a memorandum of his order in a register in the prescribed manner.

29.—(1) Where the amount of compensation under this Ordinance has been settled or varied by agreement, a memorandum thereof shall be sent by the employer, and may be sent by any party interested, to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner: Registration of agreements

Provided that—

- (a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned ;
- (b) where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation and the employer proves that the workman has, in fact, returned to work and is earning the same wages as he did before the accident and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the Commissioner thinks just in the circumstances ;
- (c) the Commissioner may at any time rectify the register ;
- (d) where it appears to the Commissioner that an agreement as to the payment of a lump sum, whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement or may make such order, including an order as to any sum already paid under the agreement, as he thinks just in the circumstances ;

(e) the Commissioner may, within six months after a memorandum of an agreement as to the payment of a lump sum, whether by way of redemption of a half-monthly payment or otherwise, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as he thinks just in the circumstances.

Costs paid by employer to workman's solicitor to be disclosed.

(2) Any memorandum of agreement to which this section applies shall disclose the amount (if any) paid or payable under or in respect of the agreement by the employer to the solicitor and counsel for the workman or his dependants as costs, and, if it appears to the Commissioner that the amount is excessive, the Commissioner shall, subject to regulations made under this Ordinance, tax such costs; and if the costs are reduced on taxation, the amount of such reduction shall either be applied or dealt with for the benefit of the workman or his dependants, or paid to the employer.

Enforcement of orders and agreements as Supreme Court judgments.

**30.** A copy of every memorandum and every amendment to a memorandum registered under section 28 or section 29 and of every order made under section 29 shall be sent, in such manner as may be prescribed by rules of court, by the Commissioner to the Registrar, who shall, subject to such rules, record the same in a special register without fee, and thereupon every such memorandum, amendment to a memorandum and order shall for all purposes be enforceable as a Supreme Court judgment.

Effect of failure to register agreement.

**31.** Where a memorandum of any agreement, the registration of which is required by section 29, is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of

compensation which he is liable to pay under the provisions of this Ordinance, and notwithstanding anything contained in the proviso to sub-section (1) of section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

**32.**— (1) With the leave of the Full Court, or upon the certificate of the Commissioner making the order that it is a fit case for appeal from his order, an appeal shall lie to the Full Court from any order of a Commissioner where a question of law is involved in the appeal. Appeals.

(2) An appeal shall lie to the Full Court as of right from the following orders of a Commissioner, namely:—

- (a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum ;
- (b) an order refusing to allow redemption of a half-monthly payment ;
- (c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such a dependant ;
- (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12 ; or
- (e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions ;

Provided that no appeal under this sub-section shall lie against any order unless a question of law is involved in the appeal, and in the case of an order other than an order such as is referred to in clause (b) unless the amount in dispute in the appeal is not less than fifty pounds.

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

(4) Save in so far as the same may be modified by any rules made under this Ordinance, the rules of the Supreme Court for the time being in force as to appeals to the Full Court in civil matters shall, with the necessary modifications, apply to appeals under this section from orders of the Commissioner.

#### RULES AND REGULATIONS.

Rules of Court.

**33.**—(1) The Chief Justice, with the concurrence of a Puisne Judge, may make rules of Court for regulating the procedure and practice in respect of proceedings under sections 27, 30 and 32.

(2) No such rules of court shall come into operation until the same shall have been laid before the Legislative Council and gazetted for one month; but when the same shall come into operation they shall have effect as if enacted by this Ordinance and shall be judicially noticed.

Power of the  
Governor in  
Executive  
Council to  
make  
regulations

**34.**—(1) The Governor in Executive Council may make regulations for all or any of the following purposes, that is to say:—

- (a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate;
- (b) for prescribing the intervals at which and the conditions subject to which a workman may be required to submit himself for medical examination under sub-section (1) of section 11;
- (c) for prescribing the procedure to be followed by Commissioners in the disposal of matters under this Ordinance and by the parties in such matters;

- (d) for regulating the transfer of matters from one Commissioner to another and the transfer of money in such matters ;
- (e) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased workman and for the transfer of money so invested from one Commissioner to another ;
- (f) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance ;
- (g) for prescribing the form and manner in which memoranda of agreements shall be presented to and registered by Commissioners ;
- (h) for the withholding by Commissioners, whether in whole or in part, of half-monthly payments pending decision on applications for review of the same ;
- (i) for prescribing the costs which may be allowed in respect of any claim or proceedings under this Ordinance ;
- (j) for prescribing the fees to be paid in respect of any claim or proceedings under this Ordinance ;
- (k) for prescribing the fees to be paid to any person appointed to assist a Commissioner under the provisions of sub-section (2) of section 20 ;
- (l) for the maintenance by Commissioners of registers and records of proceedings before them ; and
- (m) for providing for any matters which are authorized by this Ordinance to be prescribed ; and
- (n) generally for carrying out the provisions of this Ordinance.

Regulations to be approved by Legislative Council.

(2) All regulations made under this section shall be laid before the Legislative Council for approval, and when so approved shall have the same force and effect as if they were contained in this Ordinance.

Publication of regulations.

(3) All regulations made under this section shall be published in the *Royal Gazette* and shall be judicially noticed.

Commencement.

35. This Ordinance shall commence and come into operation on a day to be fixed by the Governor by proclamation published in the *Royal Gazette*, which shall be judicially noticed.

see Section 34 34/1928  
in add ch 34A

SCHEDULE

Sections 2 (1) and 4.

LIST OF INJURIES DEEMED TO RESULT IN PERMANENT PARTIAL DISABLEMENT

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

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

Passed in Council this twenty-third day of April in the year of Our Lord one thousand nine hundred and twenty-six.

JOHN DE NOBRIGA,  
Clerk of the Council.

**WORKMEN'S COMPENSATION ORDINANCE, 1926.**

**Comparative Table.**

Marginal Note of Ordinance.	Section in Ordinance.	Corresponding section in English Workmen's Compensation Act, 1925.	Corresponding section in Indian Workmen's Compensation Act, 1923.
Short title .. .. .	1	51	1
Interpretation .. .. .	2	3, 4, 5, 48	2
Employer's liability for Compensation	3 (1)	1 (1)	3 (1)
Slight injury .. . . .	3 (1) (a)	1 (1) (a)	3 (1) (a)
Misconduct .. .. .	3 (1) (b)	1 (1) (b)	3 (1) (b)
Disease .. .. .	3 (2)	43 <i>et seq.</i>	3 (4)
Liability for negligence	3 (3)	29 (1)	..
Independent action .. .. .	3 (4)	29 (2)	3 (5)
Amount of Compensation	4 (1)	8, 9	4 (1)
Death .. .. .	4 (1) (a)	8	4 (1) A.
Permanent total disablement	4 (1) (b)	9	4 (1) B.
Permanent partial disablement	4 (1) (c)	9	4 (1) C.
Temporary disablement	4 (1) (d)	9	4 (1) D.
Method of calculating wages	5	10	5
Review .. .. .	6	11	6
Payment of lump sum in lieu of half-monthly payments	7	13	7
Distribution of Compensation :			
On death .. .. .	8 (1)	..	8 (1)
Lump sums .. .. .	8 (2)	..	..
Other cases .. .. .	8 (3)	..	2, 26, Sched. 8 (2)
Receipt of Commissioner	8 (4)	..	I, 10, 8 (3)
Notice to dependants	8 (5)	..	Sched. II, 1, 8 (4)
Workman under disability	8 (6)	..	8 (5)
Variation of order .. .. .	8 (7)	22	8 (6)
Deductions for costs.. .. .	8 (8)	Sched. I, 10.	..
Compensation not to be assigned, attached or charged	9	40	9
Notice and claim .. .. .	10 (1)	14 (1)	10 (1)
Contents of claim .. .. .	10 (2)	14 (2)	10 (2)
Service of notice .. .. .	10 (3)	14 (3)	10 (3)
Medical examination .. .. .	11 (1)	..	11 (1)
Refusal to be examined	11 (2)	..	11 (2)
Leaving vicinity prior to examination	11 (3)	..	11 (3)
Death prior to examination	11 (4)	..	11 (4)
Compensation not payable during period of suspension	11 (5)	20	11 (5)
Measure of compensation on refusal to be examined or disregard of medical advice	11 (6)	..	11 (6)
Sub-contracting .. .. .	12 (1)	6 (1)	12 (1)
Indemnity .. .. .	12 (2)	6 (2)	12 (2)
Contractor .. .. .	12 (3)	6 (3)	12 (3)
Control of principal .. .. .	12 (4)	6 (4)	12 (4)
Remedies both against employer and stranger	13	30	13
Recovery of damages a bar	13 (1)	30 (1)	..

Comparative Table.—Continued.

Marginal Note of Ordinance.	Section in Ordinance.	Corresponding section in English Workmen's Compensation Act, 1925.	Corresponding section in Indian Workmen's Compensation Act, 1923.
Indemnity by third party ..	13 (2)	.. 30 (2)	
Bankruptcy of employer ..	14 (1)	.. 7 (1)	.. 14 (1)
Proof in bankruptcy ..	14 (2)	.. 7 (2)	.. 14 (2)
Priority ..	14 (3)	.. 7 (3)	.. 14 (4)
Lump sum in lieu of half-monthly payments	14 (3)	.. 7 (3)	.. 14 (5)
No priority if insured ..	14 (4)	.. 7 (5)	.. 14 (6)
Voluntary liquidation ..	14 (5)	.. 7 (6)	.. 14 (7)
Returns as to compensation ..	15	.. 42	.. 16
Contracting out ..	16	.. 1 (3)	.. 17
Workmen in employment of Crown	17	.. 33	..
Workmen in employment of local authorities	18	..	..
Reference to Commissioners ..	19	.. 21	.. 19
Appointment of Commissioners ..	20	.. Sched. I, 1	.. 20
Venue of proceedings and transfer	21	..	.. 21 (1)
Applications to Commissioner ..	22	.. (Workmen's Compensation Rules, 1913-1924, 8 <i>et seq</i> )	.. 22
Powers and procedure of Commissioners	23	.. Sched. I, 4	.. 23
Appearance of parties ..	24	.. (Workmen's Compensation Rules, 1913-1924, 35)	.. 24
Evidence to be recorded ..	25	..	.. 25
Costs ..	26	.. Sched. I, 7	.. 26
Power to submit questions of law	27	.. Sched. I, 4	.. 27
Registration of orders ..	28	..	..
Registration of Agreements ..	29 (1)	.. 23 (1) (2) (5), 25 (4) (5)	.. 28 (1)
Costs paid by employer to workman's solicitor to be disclosed	29 (2)	.. 23 (5)	..
Enforcement of orders and agreements as Supreme Court Judgments	30	.. 23	.. 28 (2)
Effect of failure to register agreement	31	.. 25 (1) (2)	.. 29
Appeals ..	32	.. Sched. I, 4	.. 30
Rules of Court ..	33	..	.. 32 and 33.
Power of the Governor in Executive Council to make regulations	34 (1)	..	..
Regulations to be approved by Legislative Council ..	34 (2)	..	.. 34
Publication of regulations ..	34 (3)	.. 50	.. 1
Commencement ..	35	..	.. Schedule I.
List of injuries deemed to result in permanent partial disablement	Schedule	..	..

**WORKMEN'S COMPENSATION ORDINANCE, 1926.****ARRANGEMENT OF SECTIONS.****PRELIMINARY.**

1. Short title.
2. Interpretation.

**COMPENSATION.**

3. Employer's liability for compensation.
4. Amount of compensation.
5. Method of calculating wages.
6. Review.
7. Payment of lump sum in lieu of half-monthly payments
8. Distribution of compensation.
9. Compensation not to be assigned, attached or charged.
10. Notice and claim.
11. Medical examination.
12. Sub-contracting.
13. Remedies both against employer and stranger.
14. Bankruptcy of employer.
15. Returns as to compensation.
16. Contracting out.
17. Workmen in employment of Crown.
18. Workmen in employment of local authorities.

**COMMISSIONERS.**

19. Reference to Commissioners.
20. Appointment of Commissioners.
21. Venue of proceedings and transfer.
22. Applications to Commissioner.
23. Powers and procedure of Commissioners.
24. Appearance of parties.
25. Evidence to be recorded.
26. Costs.
27. Power to submit questions of law.
28. Registration of orders.
29. Registration of agreements.
30. Enforcement of orders and agreements as Supreme Court judgments.
31. Effect of failure to register agreement.
32. Appeals.

**RULES AND REGULATIONS.**

33. Rules of Court.
34. Power of the Governor in Executive Council to make regulations.
35. Commencement.

**SCHEDULE.**

List of injuries deemed to result in permanent partial disabiement.

No. 8—1926.

*Su 30/1926*  
*" 34/1928*

[L.S.]

I ASSENT,

H. A. BYATT,  
*Governor.*

11th May, 1926.

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

[On Proclamation.]

BE it enacted by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof as follows :—

PRELIMINARY.

1. This Ordinance may be cited as the Workmen's Short title. Compensation Ordinance, 1926.

2.—(1) In this Ordinance :—

Interpretation.

“ Adult ” and “ minor ” mean respectively a person who is not and a person who is under the age of seventeen years ;

“ Agriculture ” includes horticulture and the cultivation of the ground for any purpose, sowing seeds, planting, removing crops and keeping or breeding live stock, poultry or bees ;

[Price 1/3.]

"Commissioner" means a Commissioner for Workmen's Compensation appointed under section 20;

"Compensation" means compensation as provided for by this Ordinance;

"Dependants" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively: provided that a person shall not be deemed to be a partial dependant of a workman unless he was dependent partially on contributions from the workman for the provision of the ordinary necessities of life suitable for persons in his class and position;

"Employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Ordinance, be deemed to continue to be the employer of the workman whilst he is working for that other person.

In relation to a person engaged in plying for hire with any vehicle, the use of which is obtained from the owner thereof under a contract of bailment (other than a hire purchase agreement), the owner of the vehicle shall be deemed to be the employer.

In relation to a person employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or members of the managing committee of the club shall be deemed to be the employer ;

“ Managing agent ” means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer ;

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

“ Out worker ” means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the materials or articles ;

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

“ Qualified medical practitioner ” means a member of the Medical Board of Trinidad ;

“ Registrar ” means the Registrar of the Supreme Court ;

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

" Wages " includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

" Workman " means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether the contract was made before or after the commencement of this Ordinance and whether such contract is expressed or implied, is oral or in writing; and also includes a person engaged in plying for hire with any vehicle the use of which is obtained from the owner thereof under any contract of bailment (other than a hire purchase agreement) in consideration of the payment of a fixed sum or a share in the earnings or otherwise:

Provided that the following persons shall not be regarded as workmen for the purposes of this Ordinance:—

- (a) persons employed otherwise than by way of manual labour whose remuneration exceeds two hundred pounds a year; or

- (b) persons whose employment is of a casual nature and who are employed otherwise than for the purposes of the employer's trade or business, not being persons employed for the purposes of any game or recreation and engaged or paid through a club ; or
- (c) out workers ; or
- (d) members of the employer's family dwelling in his house ; or
- (e) persons in the naval, military or air forces of the Crown ; or
- (f) members of the Constabulary Force and the Railway Police Force and City and Borough Constables ; or
- (g) persons employed in agriculture except in so far as such employment is in connection with any engine or machine worked by mechanical power ; or
- (h) Metayers and persons employed under or in respect of or for the purposes of a Metairie Contract under the Tobago Metairie Ordinance ; Cap. 296.
- (i) domestic servants ; or
- (j) persons employed exclusively as clerical workers and/or shop assistants.

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

(3) The exercise and performance of the powers and duties of a local or other public authority or of any department of the Government shall, for the purposes of this Ordinance, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

(4) If on any proceedings for the recovery of compensation under this Ordinance it appears to the Commissioner by whom the claim to compensation is to be settled that the contract of service or apprenticeship

under which the injured person was working at the time when the accident causing the injury happened was illegal, he may, if having regard to all the circumstances of the case he thinks proper so to do, deal with the matter as if the injured person had at the time aforesaid been a person working under a valid contract of service or apprenticeship.

#### COMPENSATION.

Employer's  
liability for  
compensation:

3.—(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Ordinance :

Provided that the employer shall not be so liable —

Slight injury.

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding ten days ;

Misconduct.

(b) in respect of any injury to a workman resulting from an accident which is directly attributable to —

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a regulation or rule expressly made, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

Disease.

(2) No compensation shall be payable to a workman in respect of any disease unless the disease is solely and directly attributable to a specific injury by accident arising out of and in the course of his employment.

Liability for  
negligence.

(3) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible,

nothing in this Ordinance shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Ordinance or take proceedings independently of this Ordinance; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of his employment both independently of and also under this Ordinance, and shall not be liable to any proceedings independently of this Ordinance, except in case of such personal negligence or wilful act as aforesaid.

(4) If, within the time hereinafter in this Ordinance limited for taking proceedings before a Commissioner, <sup>Independent</sup> an action is brought to recover damages independently <sup>action.</sup> of this Ordinance for injury caused by an accident, and it is determined in such action or on appeal that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Ordinance, the action shall be dismissed; but the court in which the action is tried, or, if the determination is the determination on an appeal (by either party) by an appellate tribunal, that tribunal shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Ordinance. In any proceeding under this sub-section, when the court or appellate tribunal assesses the compensation, it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction of costs, and such certificate shall have the force and effect of and shall be registered as an agreement under this Ordinance:

Provided that an appellate tribunal may, instead of itself assessing such compensation, remit the case to a Commissioner for the assessment of the compensation, and in such case may order the Commissioner to deduct from the amount of compensation assessed by him all or part of such costs as aforesaid.

Amount of compensation : 4. —(1) Subject to the provisions of this Ordinance, the amount of compensation shall be as follows, namely : —

Death. (a) Where death results from the injury, a sum equal to thirty months' wages or two hundred and fifty pounds, whichever is less.

Permanent total disablement. (b) Where permanent total disablement results from the injury—

(i) in the case of an adult, a sum equal to forty-two months' wages or three hundred and fifty pounds, whichever is less, and,

(ii) In the case of a minor, a sum equal to eighty-four months' wages or three hundred and fifty pounds, whichever is less.

Permanent partial disablement. (c) Where permanent partial disablement results from the injury—

(i) in the case of an injury specified in the Schedule hereto, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and

(ii) in the case of an injury not specified in the Schedule hereto, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury ;

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

Temporary disablement (d) Where temporary disablement, whether total or partial, results from the injury, a half-monthly payment payable on the sixteenth day from the date of the

disablement, and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter—

- (i) in the case of an adult, of a sum equal to one-fourth of his monthly wages, and
- (ii) in the case of a minor, of a sum equal to one-third or, after he has attained the age of seventeen years, to one-half of his monthly wages :

Provided that there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be, and no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages as he is earning or is able to earn in some suitable employment or business after the accident.

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

5.—(1) For the purposes of section 4 the monthly wages of a workman shall be calculated as follows, namely :—

Method of calculating wages.

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

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

Provided that if the amount of the monthly wages arrived at by a calculation under clause (a) or clause (b) is more than twelve pounds and ten shillings, such monthly wages shall be assumed to be twelve pounds and ten shillings.

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

Review.

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

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

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

7. Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be.

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

Distribution of compensation:

On death.

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

Lump sums.

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

Other cases.

(4) The receipt of the Commissioner shall be a sufficient discharge in respect of any amount deposited with him under the provisions of this Ordinance.

Receipt of Commissioner.

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

Notice to dependants.

Workman  
under  
disability.

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

Variation of  
order.

(7) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent, or on account of the variation of the circumstances of any dependant, or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such order for the variation of the former order as he thinks just in the circumstances of the case :

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

Deductions  
for costs.

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

Compensation  
not to be  
assigned,  
attached or  
charged.

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

10.—(1) Proceedings for the recovery under this Ordinance of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death : <sup>Notice and claim.</sup>

Provided that :—

- (a) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if the employer is proved to have had knowledge of the accident from any other source at or about the time of the accident, or if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake, absence from the Colony, or other reasonable cause ; and
- (b) the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the Colony, or other reasonable cause.

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

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

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

Medical  
examination.

11.—(1) Where a workman has given notice of an accident or where an accident has occurred in respect of which the necessity of giving notice under this Ordinance is dispensed with, a workman shall, if the employer offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Ordinance shall, if so required, submit himself for such examination from time to time :

Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with regulations made under this Ordinance, or at more frequent intervals than may be prescribed.

Refusal to be  
examined.

(2) If a workman, on being required to do so by the employer under sub-section (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

Leaving  
vicinity prior  
to examina-  
tion.

(3) If a workman, before the expiry of three days from the time at which service of notice of an accident has been effected or, when an accident occurs in respect of which the necessity of giving notice under this Ordinance is dispensed with, before the expiry of three days from the

date of such accident voluntarily and without due cause leaves the vicinity of the place in which he was employed without having been examined by a qualified medical practitioner, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman, whose right to compensation has been suspended under sub-section (2) or sub-section (3), dies without having submitted himself for medical examination as required by either of those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased workman. Death prior to examination.

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension. Compensation not payable during period of suspension.

(6) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is thereafter proved that the workman has not been regularly attended by a qualified medical practitioner and that such refusal, failure or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner, and compensation, if any, shall be payable accordingly. Measure of compensation on refusal to be examined or disregard of medical advice.

12.—(1) Where any person (in this section referred to as the principal) in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation Sub-contracting

under this Ordinance which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then in the application of this Ordinance references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.

Indemnity.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

Contractor.

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

Control of principal.

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

Remedies both against employer and stranger

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

Recovery of damages a bar.

(1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Ordinance for such compensation, but shall not be entitled to recover both damages and compensation; and

Indemnity by third party

(2) If the workman has recovered compensation under this Ordinance, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under

section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action or, by consent of the parties, by a Commissioner.

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

Bankruptcy  
of employer.

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

Proof in  
bankruptcy

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

Priority.

(i) under section 37 of the Bankruptcy Ordinance Cap. 52. are, in the distribution of the property or assets of a bankrupt, to be paid in priority to all other debts ;

(ii) under section 198 of the Companies Ordinance Cap. 180. are, in the winding up of a company, to be paid in priority to all other debts ; and

Cap. 180.

(iii) under section 106 of the Companies Ordinance are to be paid in priority to any claim for principal or interest in respect of debentures; the amount due in respect of any compensation or liability for compensation accrued before the following date, that is to say:—

- (a) in the first case the date of the receiving order ;
- (b) in the second case the date of the commencement of the winding up of the company ;
- (c) in the third case the date of the appointment of the receiver or of possession being taken mentioned in the said section 106.

Lump sum in lieu of half-monthly payments.

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

No priority if insured.

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

Voluntary liquidation.

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

Returns as to compensation.

15. The Governor may, by notification in the *Royal Gazette*, direct that every person employing workmen, or that any specified class of such persons, shall send at such time and in such form and to such person, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation, together with such other particulars as to the compensation as the Governor may direct. Any person failing to comply with the provisions of this section shall be liable on summary conviction by a magistrate to a penalty of five pounds.

16. Any contract or agreement, whether made before or after the commencement of this Ordinance, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of his employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Ordinance. Contracting out.

17. Subject to the provisions of section 2, this Ordinance shall apply to workmen employed by or under the Crown to whom this Ordinance would apply if the employer were a private person. Workmen in employment of Crown.

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

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

## COMMISSIONERS.

Reference to  
Commissioners.

19.—(1) If any question arises in any proceedings under this Ordinance as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation (including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by the Commissioner.

(2) No court shall have jurisdiction to settle, decide or deal with any question which is by or under this Ordinance required to be settled, decided or dealt with by a Commissioner or, save as in this Ordinance, or any rule or regulation made thereunder is provided, to enforce any liability incurred under this Ordinance.

Appointment  
of Commis-  
sioners.

20.—(1) The Governor may appoint any person to be a Commissioner for Workmen's Compensation for the Colony or for such local area as he may specify, and may at any time cancel any such appointment.

(2) Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Ordinance, appoint one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

*See S 24 of 1924 No. 20 A*

Venue of  
proceedings  
and transfer.

21. In the event of the appointment of Commissioners for local areas—

(1) Where any matter is under this Ordinance to be done by or before a Commissioner, the same shall, subject to the provisions of this Ordinance and to any regulations made hereunder, be done by or before the Commissioner for the local area in which the accident took place which resulted in the injury.

(2) If a Commissioner is satisfied by any party to any proceedings under this Ordinance pending before him that such matter can be more conveniently dealt with by any other Commissioner, he may, subject to regulations made under this Ordinance, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of

such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings.

(3) The Commissioner to whom any matter is so transferred shall, subject to regulations made under this Ordinance, inquire thereinto and, if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a Commissioner to whom any matter has been transferred for report under sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

22.—(1) No application for the settlement of any matter by a Commissioner shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement. Applications to Commissioner.

(2) Where any such question has arisen, the application may be made in such form and shall be accompanied by such fee, if any, as may be prescribed; and shall contain, in addition to any particulars which may be prescribed, the following particulars, namely:—

- (a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims;
- (b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for such omission;
- (c) the names and addresses of the parties; and
- (d) a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner.