# CHAPTER XXXIX

## THE EFFECT OF RECENT LEGISLATION UPON SICKNESS AND ACCIDENT CLAIMS

This country is now committed to the payment of compensation to an unprecedented number of soldiers and sailors, incapacitated as the result of service. Taking the mean of several authoritative estimates as to the amount involved, this will necessitate the expenditure of between thirty and forty million pounds per annum for a long period, and will require diminishing but still huge disbursements for well over a quarter of a century. At such a time, a consideration of the results of the legislative provisions for payment of compensation to the industrial classes, in the event of accident or sickness, should be of interest.

The following analysis of the Home Office statistics deals with the operation of the Workmen's Compensation Act, 1906, for the seven years ending 1914:

The figures for the year 1914 are included in all the tables and charts which appear in this chapter; but, having regard to the fact that in the last five months of that year there was much disorganization of industry caused by this country being in a state of war, the statistics for the year cannot properly be considered to present normal conditions. The fact of nearly half a million fewer persons being employed than in the preceding year, coupled with the exceptional number of fatalities in the Senghenydd Colliery disaster (viz., 440), also makes it desirable to confine discussion and criticism to the period of six years, terminating in 1913, in which ordinary conditions obtained. The inferences and deductions drawn are in no way vitiated by adopting this course, because the figures as to non-fatal cases in Tables I. and II. for the year 1914 are, upon analysis, found to be, within an inappreciable fraction, identical in every case with those of 1913, due allow-

ance being made for the diminution in the number of persons employed. The only observation to be made is that, instead of the progressive increase continuing, the position already arrived at is just maintained. Whether this denotes that high-water mark has been reached, future normal years alone will disclose; it is certain that no improvement is at present revealed.

If only observed year by year as they appear, the figures for 1908 to 1913 might perhaps escape much comment; but a comparison of the six years provides much food for reflection, when we find that, with similar numbers of workers employed, the number of accidents has risen from 326,701 to 472,408 (about 44 per cent.), and the amount paid in compensation for accidents alone from £2,055,378 to £3,361,650 (63·5 per cent.). Let us first take the figures for the six years of the number of people employed, and the fatal and non-fatal cases.

TABLE I.

| | *Number of Employed.* | *Fatal Accidents.* | *Non-Fatal Accidents.* |
|---|---|---|---|
| 1908 | 7,510,603 | 3,477 | 323,224 |
| 1909 | 6,560,745 | 3,308 | 329,299 |
| 1910 | 7,025,074 | 3,474 | 373,902 |
| 1911 | 7,305,997 | 3,988 | 413,294 |
| 1912 | 7,411,005 | 3,544 | 417,694 |
| 1913 | 7,509,353 | 3,721 | 468,687 |
| 1914 | 7,057,111 | 4,216 | 437,900 |

Probably the first thing that strikes one is the large increase in fatal cases in 1911, but the entire excess in that year is accounted for by exceptionally large colliery and shipping disasters. So far as ordinary industries are concerned, the figures are normal.

The next thing to be observed is that, with the same number of people employed, in six years the *non*-fatal cases increased by over 145,000. Moreover, the rise was steady and continuous; the ratio, which was at first 1 person injured for every 23·25 employed, has now risen to 1 in 16·02, an increase of 45 per cent.; whereas the fatal cases (omitting the years 1911 and 1914, which were, as already explained, exceptional) have remained practically stationary, the increase only amounting to 7 per cent., taking the large figure for 1913, which was again swollen by an increased number of mining fatalities.

*The non-fatal accidents are, therefore, increasing at six and a half times the pace of the fatal.*

A consideration of the number of slight, serious, and very serious cases during the six years should provide material for drawing fairly sound deductions, and for this purpose I have prepared the following period-tables, showing the number of cases in each year in which the incapacity has lasted for short and long periods.

TABLE II.

| | *Less than Two Weeks.* | *From Two to Three Weeks.* | *From Three to Four Weeks.* | *From Four to Thirteen Weeks.* | *Over Thirteen Weeks.* |
|---|---|---|---|---|---|
| 1908 | 32,111 | 78,264 | 52,657 | 108,197 | 15,625 |
| 1909 | 28,152 | 83,459 | 53,721 | 106,919 | 16,418 |
| 1910 | 28,086 | 96,710 | 62,972 | 118,945 | 17,548 |
| 1911 | 30,133 | 110,701 | 68,353 | 118,971 | 17,074 |
| 1912 | 30,258 | 113,327 | 67,399 | 125,014 | 19,285 |
| 1913 | 35,421 | 136,304 | 77,026 | 134,430 | 19,765 |
| 1914 | 30,972 | 120,278 | 70,413 | 125,152 | 18,316 |

These figures do not include cases in which a lump sum payment has been made, and that explains their not reaching

the full total; they deal with 116,092 out of the increase of 145,463. The number 116,092 is the difference between the total of the non-fatal accidents for 1908 and 1913 dealt with in Table II.; 145,463 is the difference between the total number of non-fatal cases in 1908 and 1913 shown in Table I.

It is to be observed that 58,040, or substantially one-half, are cases in which the incapacity lasted from two to three weeks—*i.e.*, the difference between 1908 and 1913 in the second column of Table II.

Table III. deals with the details of a further 13,639 of the increase, and it is interesting to note that 58 per cent. of this increase is attributable to the minor cases. The jump in the numbers and the drop in the average amount paid after the year 1910, in cases in which there have been no previous payments, is striking. The low figures for the years 1908 and 1909 in cases of settlement, after previous weekly payments had been paid for more than twenty-six weeks, is due to the fact that only a small number of persistent cases would have accumulated to be dealt with in this way since the passing of the Workmen's Compensation Act of 1906. When this is allowed for, nearly the whole of the increase (starting from 1911) is to be found in the slight cases—5,352 out of 5,930.

The statistics with regard to lump sum payments in the seven selected industries will be found on p. 577.

The charts on pp. 578-582 probably convey a better idea of the position of affairs than any table of figures.

Chart No. 1 represents the total number of non-fatal accidents occurring in each year. Space does not permit of this being on the same scale as those which follow (*it is one-third the size*), but the steady rise, even on this small scale, is clearly indicated.

Chart No. 2 shows the cases in which the incapacity lasted less than two weeks. It will be noted that this is the only class of cases in which there has been a substantial fall, but the 1913 figures show a large increase even in these cases. It is to be remembered that a workman who is injured and returns to work before the end of the first week receives no compensation. If he does not return to work when the first week has expired, he receives compensation for each day of the second week that he is away from work; it is only when he is on the sick-

TABLE III.—LUMP SUM PAYMENTS (EXCLUDING INDUSTRIAL DISEASES).

| | 1908. | 1909. | 1910. | 1911. | 1912. | 1913. | 1914. |
|---|---|---|---|---|---|---|---|
| Without previous weekly payments: | | | | | | | |
| Number .. .. | 7,204 | 6,765 | 7,133 | 9,800 | 13,584 | 15,152 | 15,176 |
| Average amount .. | £8 12s. | £7 19s. | £8 7s. | £6 14s. | £6 14s. | £6 4s. | £6 16s. 11d. |
| After previous weekly payments for *less* than 26 weeks: | | | | | | | |
| Number .. .. | 5,135 | 5,158 | 6,952 | 7,315 | 7,905 | 7,883 | 7,309 |
| Average amount .. | £20 19s. | £19 8s. | £18 10s. | £21 5s. | £21 2s. | £20 1s. | £21 7s. 3d. |
| After previous weekly payments for *more* than 26 weeks: | | | | | | | |
| Number .. .. | 1,875 | 3,001 | 4,210 | 4,808 | 5,162 | 4,818 | 5,163 |
| Average amount .. | £79 2s. | £83 3s. | £92 16s. | £97 | £100 12s. | £98 12s. | £97 11s. 5d. |
| Total amount paid in lump sums .. .. | £318,437 | £403,775 | £579,241 | £690,110 | £775,353 | £727,650 | £764,346 |
| Total number of cases settled for a lump sum | 14,214 | 14,924 | 18,295 | 21,923 | 26,651 | 27,853 | 27,648 |

CHART No. 1.—CASES OF NON-FATAL ACCIDENT.

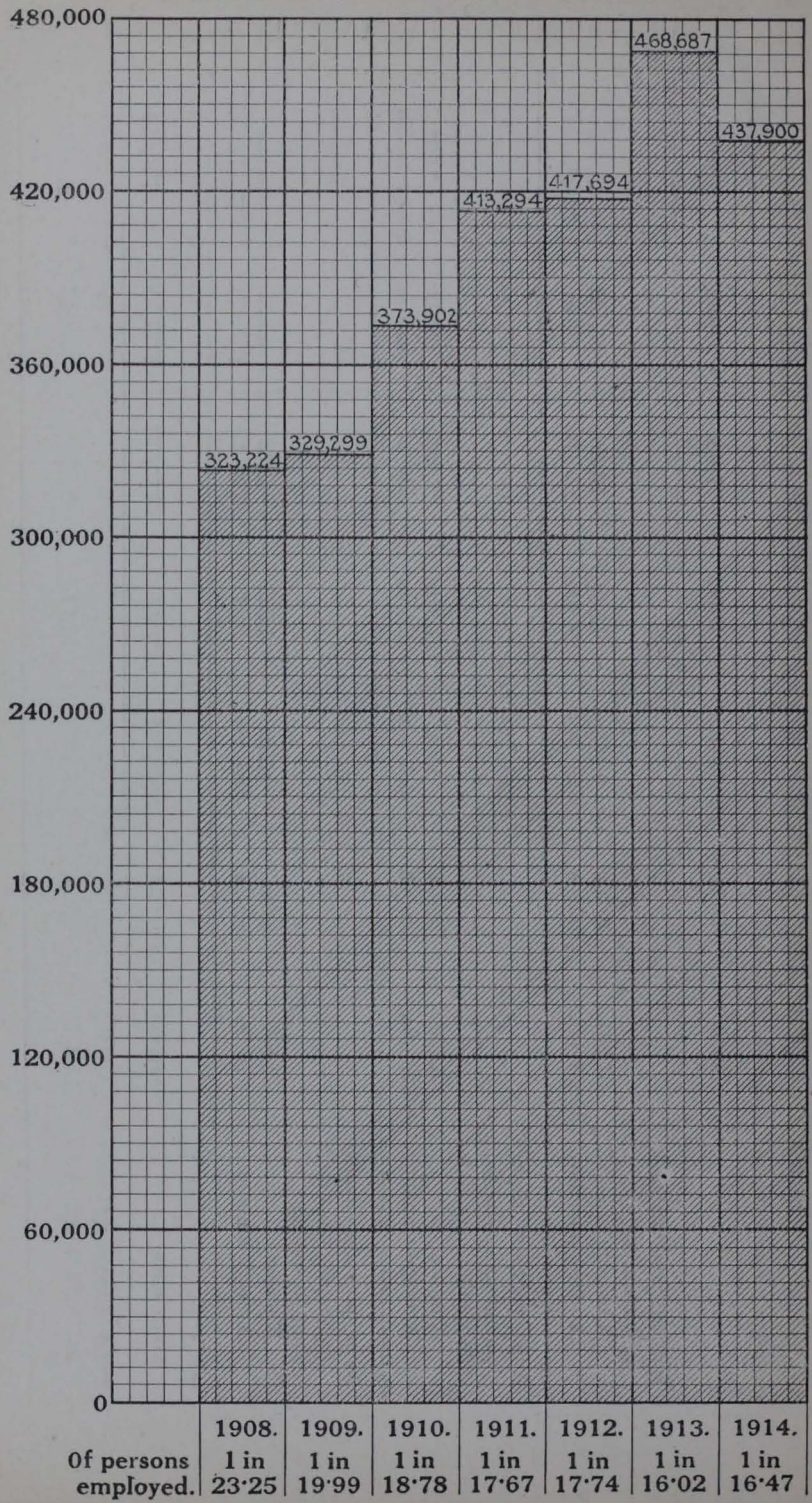


CHART NO. 2.—CASES LASTING LESS THAN TWO WEEKS.

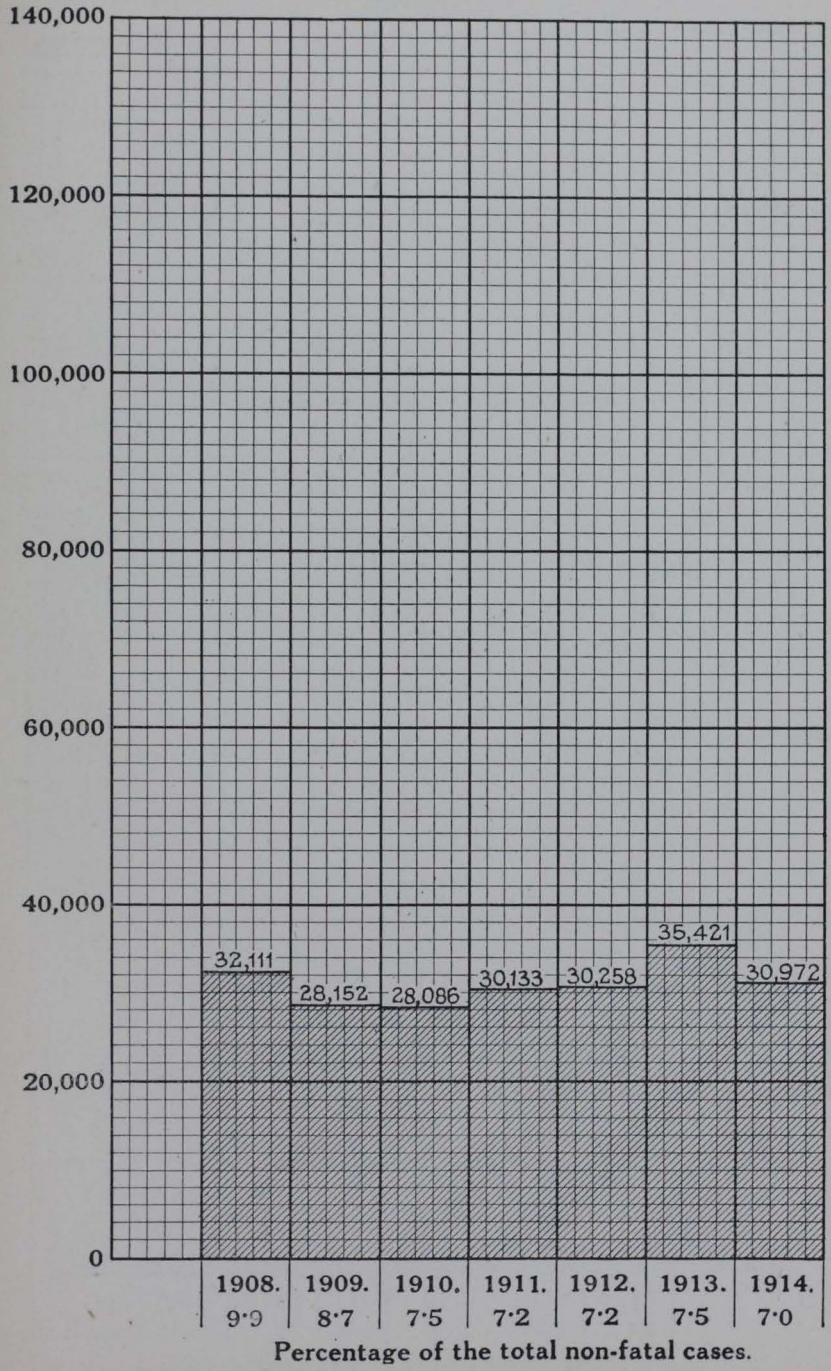


CHART No. 3.—CASES LASTING MORE THEN TWO AND LESS THAN THREE WEEKS.

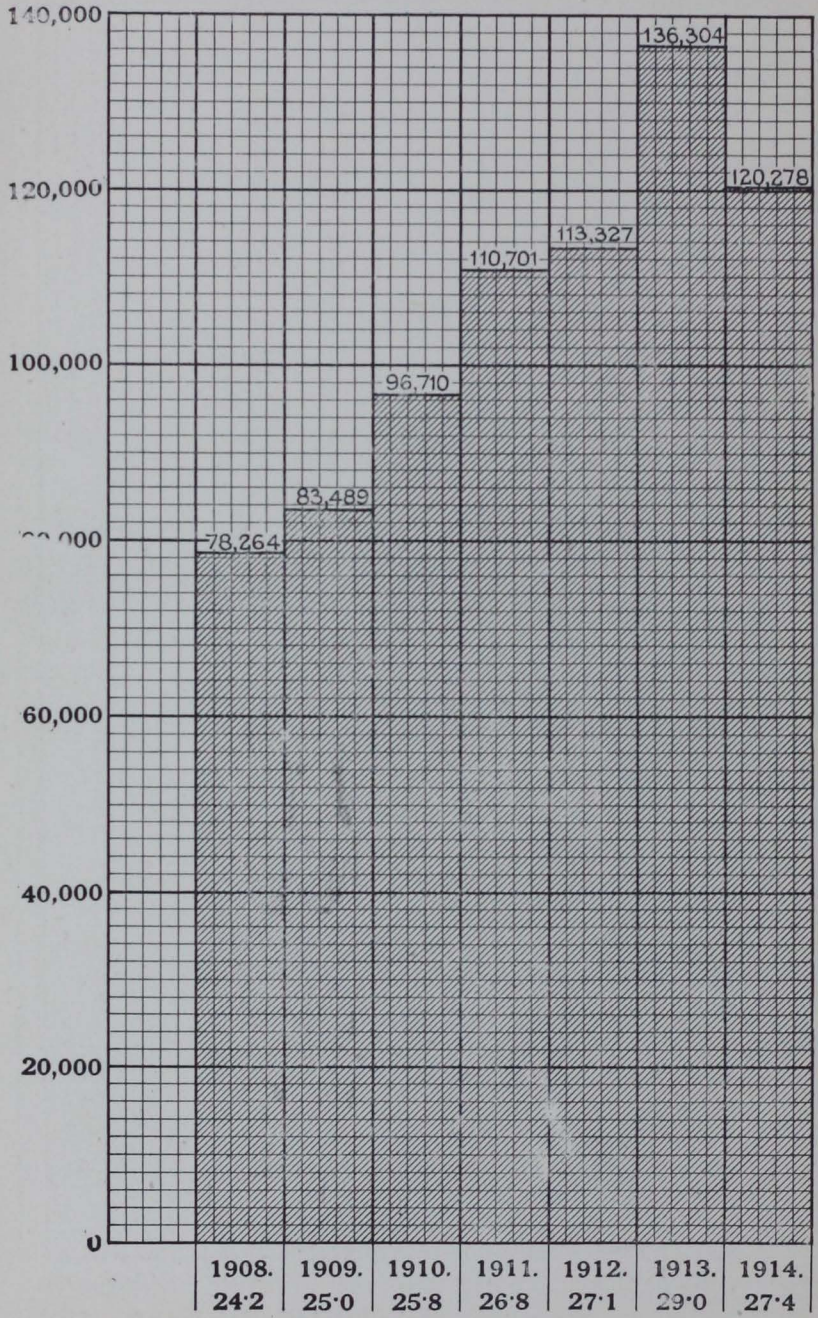


CHART NO. 4.—CASES LASTING MORE THAN THREE WEEKS AND LESS THAN FOUR WEEKS.

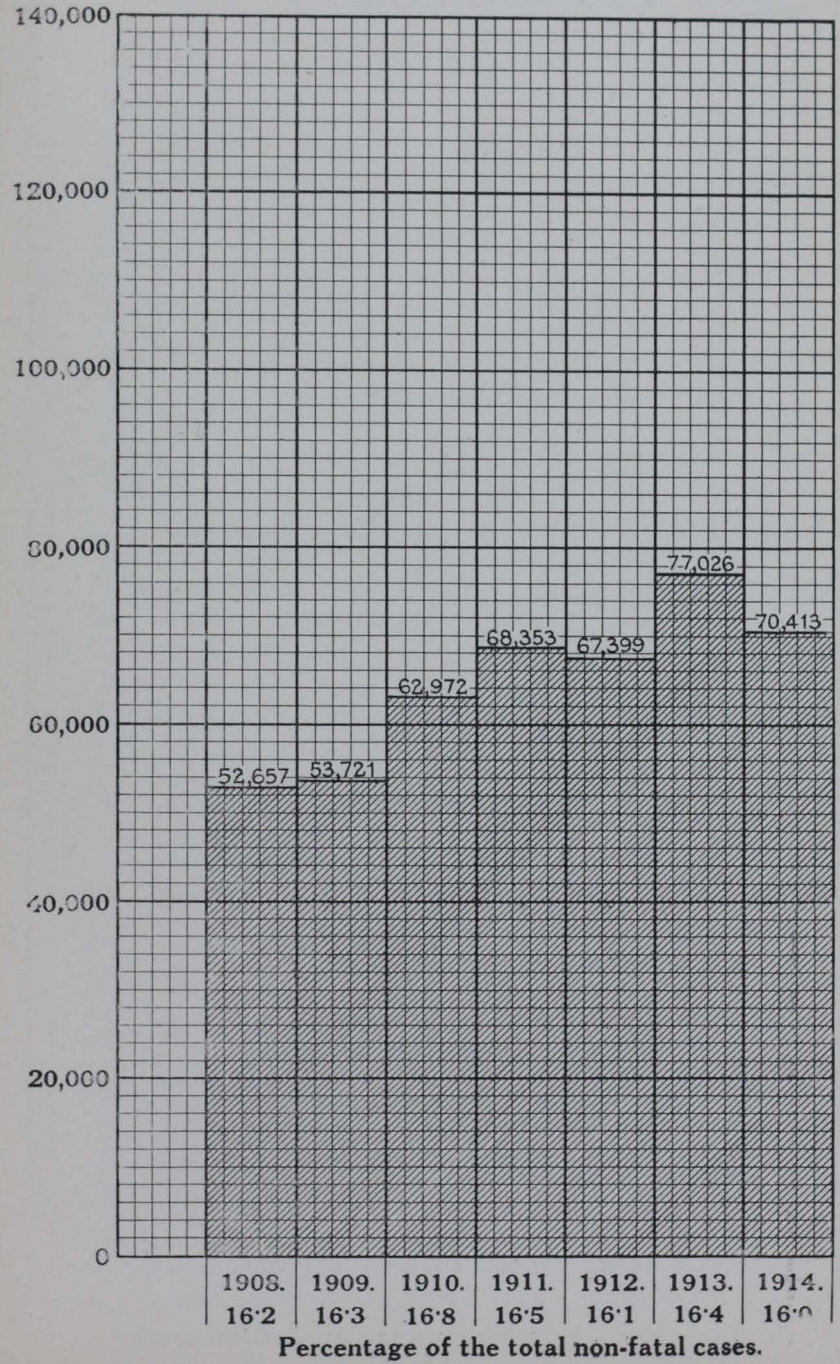


CHART No. 5.—CASES LASTING MORE THEN FOUR WEEKS AND LESS THAN THIRTEEN WEEKS.

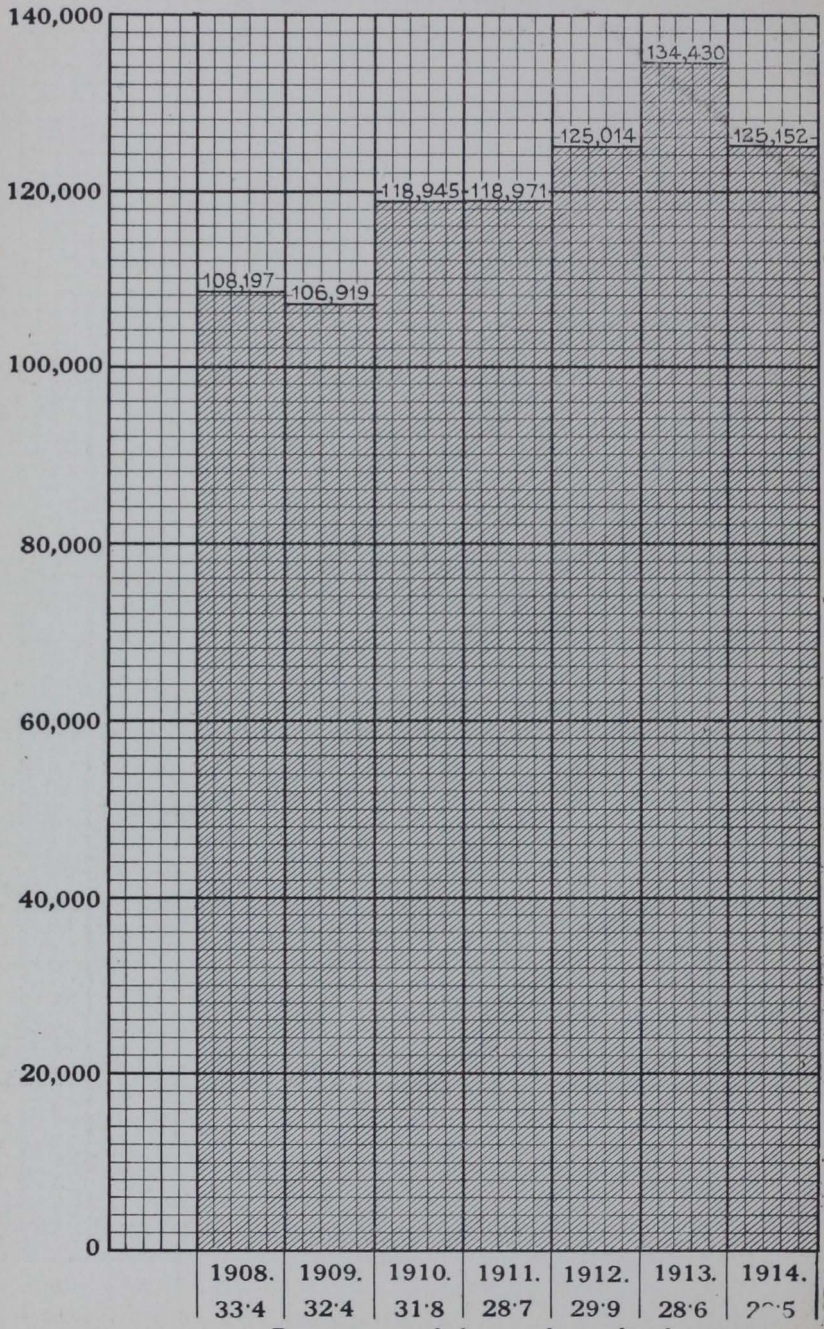
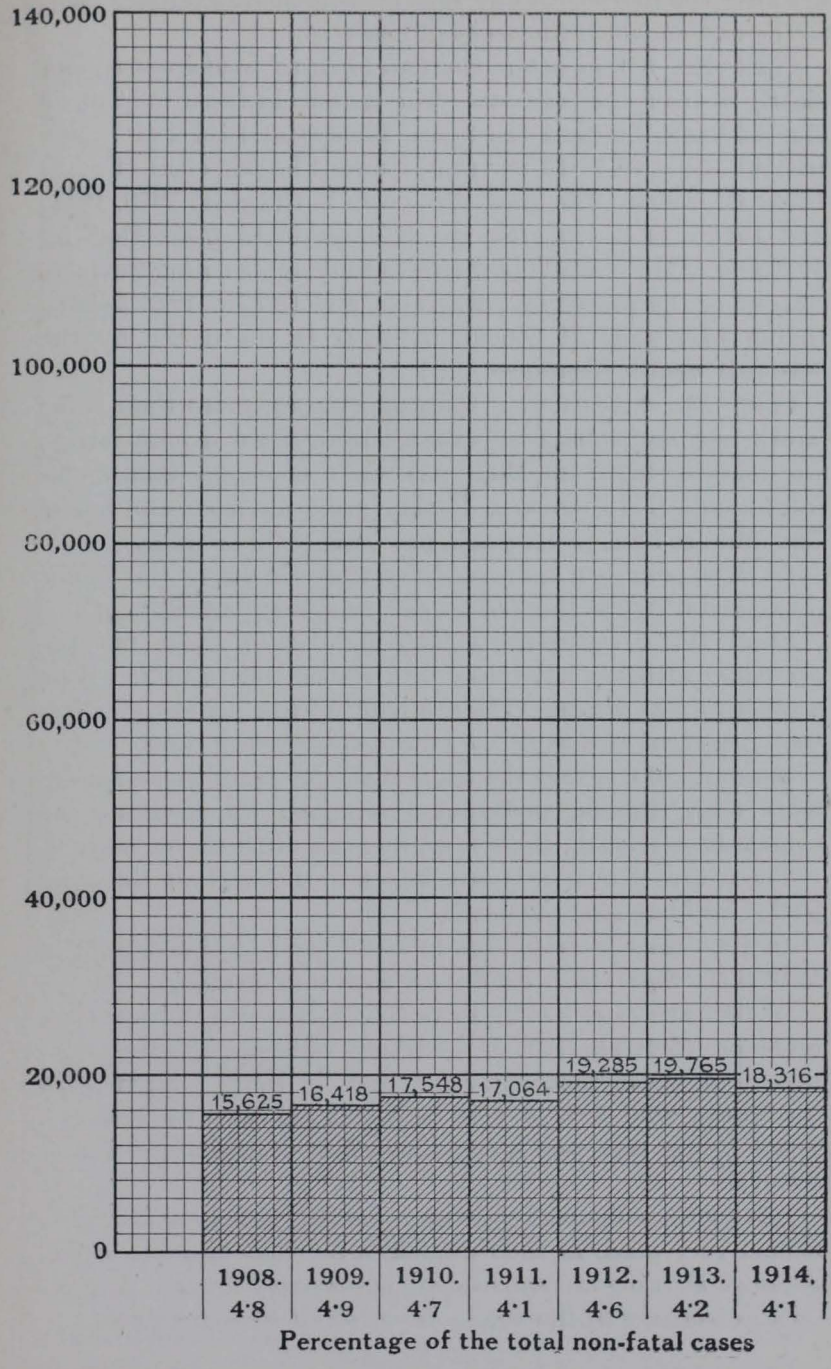


CHART No. 6.—CASES LASTING MORE THAN THIRTEEN WEEKS.



list after the fourteenth day that his compensation dates back to the day on which the accident occurred.

Chart No. 3 represents the two-to-three weeks cases, and clearly reveals the increase. The actual increase, 58,040, is the difference between the figure 136,304 in 1913 and 78,264 in 1908—that is, 74·15 per cent. increase in this class of cases in the six years. The great rises occur in the years 1910, 1911, and 1913. Is it too great an assumption to make that by 1910 and 1911 the working-man was fully appreciating the facts set out in the preceding paragraph, and that in 1913 he was taking advantage of benefits brought to his notice by the National Health Insurance Act ?

Chart No. 4 deals with the cases lasting more than three weeks and less than four weeks. Here again a great stride was made in 1910, and that level was rather more than maintained until 1913, when a further great advance was made. The increase here, in six years, has been 46·27 per cent.

At this point we may consider that we leave the minor cases, and arrive at those of a more disabling character.

Chart No. 5 represents a large number of cases, but the preceding divisions have been into weeks, whereas this covers a range of nine weeks. The rise here is 24·24 per cent., or less than one-third of that in the two-to-three weeks cases.

Chart No. 6 contains the really disabling cases, those lasting more than thirteen weeks; and although the numbers are comparatively small, there is an increase of 26·49 per cent.

The figures shown in Charts 2 to 6 do not include the cases settled by lump sum payments.

In 1908 there were 93 non-fatal for each fatal accident; in 1913 there were 126 non-fatal for each fatal accident.

In 1908 the cases lasting more than two weeks and less than four were 45·64 per cent. of the whole, while cases lasting more than four weeks were 43·17 per cent. of the whole; in 1913 the figures were 52·9 per cent. and 38·2 per cent. respectively. These figures represent a combination of Charts 3 and 4, and 5 and 6.

Having these figures before us, observing that fatal accidents remain very much at their original level, that disabling cases, although showing an increase, are appreciably lower as regards their percentage to the whole, let us see if we can deduce any

reasons for the state of things now existing. It has been suggested that the speeding-up brought about by modern methods is largely responsible. I think some weight should be allowed to this contention; it may possibly account for some of the all-round increase, but having regard to the fact, that whether accidents are fatal, serious, or slight, the conditions of labour under which they occur are identical, it is difficult to see why the very slight and the fatal should not proportionately increase.

Fatal accidents in the six years have increased by 7 per cent., very serious cases by 26 per cent., and moderately serious cases by 24 per cent.; why should moderately slight and very slight cases have increased by 46 and 74 per cent. respectively ? The increase in non-fatal accidents in 1913 amounted to 50,993; there could have been nothing in the conditions of labour to account for this tremendous advance on the already high figures. This increase is far in excess of that in any preceding year, and the only new factor of general application that can have had an effect is the coming into operation of the benefits under the National Health Insurance Act.

In 1912 the Home Office report suggested that the increase was probably due to the fact that the remedies provided by the Workmen's Compensation Act had become better known, and that workmen now stay away for injuries, who previously would have kept up with their work as best they could. I think this does account for a large amount of the increase, but I should rather put it that the workmen have now a greater tendency to make what they think is the best of an injury which befalls them—that is, get the most money out of it. It is hardly to be expected of human nature that a man whose injury incapacitates him for twelve days, thereby entitling him to five days' compensation, will return to work on the thirteenth day, when, by postponing his return for two days, he will become entitled to fourteen days' pay. In my view, the legislation in this respect is entirely illogical. One quite appreciates the reasons upon which this provision is based; but, surely, it is the more business-like proposition to pay for all time lost through injury, and to put no premium upon extending a trivial incapacity in order to get a higher rate of compensation for it. The decrease in the less-than-two weeks

cases, and the enormous increase in the two-to-three weeks cases, I suggest, provides a strong argument for an alteration of the Act in this respect. There would then be no semblance of an excuse for allowing a man to remain away from work a day longer than he was actually incapacitated, and much of the harm that is caused by permitting deception to reap a reward would be prevented. I have seen many cases of men with trifling wounds, who had been off work for eight or ten days, and were endeavouring to keep off until the fourteen days had expired. In fact, in more than one instance they have hinted that they would be well at the end of the fortnight.

If the State had boldly grasped the nettle, and had made the benefit payable from the date of the accident, the enormous increase in the two-to-three weeks accidents would not have taken place. This view is supported by the fact that, in connection with an important section of the industrial community, where the annual wages run into millions, an experiment has been made of paying compensation, not as provided by the Act, but from the first day of disablement, with the result that the amount paid per annum was actually less than would have been disbursed in satisfying the legal liability under the Act, based upon the experience of the payments previously made in accordance with the Act.

The obvious inference is that, with the absence of temptation to prolong the disablement during the second week, employees return to work after short periods of two, three, and four days, thus effecting the saving referred to.

Another consideration to be borne in mind, with regard to cases lasting not more than four weeks, is that in very few such cases would the amount involved exceed £5, and employers are not likely to go to much expense with regard to such a comparatively small sum—certainly not to the extent of entering upon expensive litigation. It is much cheaper to pay.

A consideration of the cases which result in litigation, to which reference has already been made on p. 37, throws a good deal of light on the subject. Of the entire number of cases in which accidents occurred in 1908, 99·3 per cent. were settled without recourse to the Courts; and the figures for the following years were 99·1, 98·99, 98·94, 98·7, 98·81, and 98·77

(in 1914), per cent. respectively—a remarkably stable proportion. The inference is obvious, that, if a claim for compensation is made, it is about 100 to 1 against its being contested.

Having regard to the average amount paid by way of compensation (something in the neighbourhood of £6 per head) and the well-known heavy cost of legal proceedings, these figures should not occasion much surprise. But when the cases *are* taken to Court, what is the result? The percentage of verdicts in favour of employers in cases decided by the Courts has risen from 18 in 1908 to 23 in 1913, but fell to 19·8 in 1914.

Now, that means that, if a workman was unlucky enough to be caught by the 100 to 1 chance of having his claim brought to Court, he still had more than a 4 to 1 chance of winning in 1908, and about a 3 to 1 chance in 1913. There has been a gradual but regular increase in the number of cases in which employers have successfully resisted claims, and those of us who are much in County Courts know well that the presence of the medical referee has been answerable, to a large extent, for this change. The number of times medical assessors were employed steadily increased from 145 (in 1908) to 1,044 (in 1913) in the period under review.

It has been suggested that these improved results are only apparent, and that they may be explained by fewer cases being now brought before the Courts. That this is not so is proved by the fact that the number of cases litigated has increased from 2,503 (in 1908) to 5,701 (in 1913). It is probable that employers have now found it *not* necessary to settle so many doubtful cases, knowing as they do that in a larger number of cases medical referees sit with the Judges. Further, County Court Judges are gradually appreciating better the nature of the class of case put forward; and, lastly, many doubtful points have finally been settled by the Higher Courts.

Unfortunately, Section 15 of the schedule of the Workmen's Compensation Act only enacts that a County Court Judge may refer the matter to a medical referee "on application being made to the Court by *both* parties." As might be expected from the class of litigant and the type of solicitor who acts for him, the number who exercise this option (so quixotically left dependent on the decision of a party whose last desire probably would be to have an independent medical

investigation) is lamentably small in proportion to the number of proceedings instituted.

To make provision, in case of sickness, by subscribing to a club is a desirable thing, and the payment of compensation for injuries received in the course of employment is just and proper; but when their combined effect is to make the workman's circumstances better when on the sick-list than off it, there is a likelihood of the moral fibre being weakened, and a heavy price paid for what should have been purely beneficial.

That there are a substantial number of cases of undoubted malingering is, I think, unquestionable. My experience of 8 per cent. based on 3,667 accident cases examined during the last nine years may not be a fair criterion, but affords, at any rate, a solid basis for my belief. The cases in which there is that exaggeration of injuries which is so nearly akin to malingering certainly constitute a most important group for consideration. It is extremely difficult to draw the line between the two classes of cases, and if one did not thoroughly understand the condition of mind into which many people, suffering from even trivial injuries, drift, one would be tempted to apply the harsher description in a larger number of cases. Fatal cases of accident cannot be exaggerated; in the other category of cases there is ample scope for exaggeration, and I fear the opportunity is frequently seized.

Taking the increase in the number of non-fatal cases together with the higher average amount paid, we find that for every £1 paid as compensation in 1908 nearly 33s. were required in 1913. It is therefore eminently desirable to consider in what way this serious position can be ameliorated. A cheaper means of litigating doubtful cases is probably unattainable; but even if it were possible, an extension of the litigious spirit would be very undesirable.

In considering what effect the amount of money receivable in consequence of disability has, the evidence laid before the Departmental Committee on Sickness Benefit Claims under the National Insurance Act is important. From that, it appears that, out of the 864,605 persons insured for State purposes in the three Friendly Societies for which the figures are given, no less than 594,354—that is, over 68 per cent.—are also insured in the private side. With regard to three other

societies, all the members are doubly insured, and in two others the percentage is 90 and 80 respectively. Numerous instances of multiple insurance are cited, wherein persons receive, when ill, amounts far in excess of their normal remuneration. Some examples are given, of which the following are noteworthy:

| | |
|---|---|
| Normal earnings, 18s. | Insured for 32s. |
| ,, 22s. | ,, 34s. |
| ,, 15s. | ,, 30s. |
| ,, 32s. | ,, 40s. |
| ,, 13s. to 14s. | ,, 18s. to 22s. |

True it is that these figures are set forth in connection with *sickness*, and that the statute provides that where a workman is receiving compensation for an *injury*, causing incapacity, he is not to receive sickness benefit when the compensation is equal to, or in excess of, such benefit. Yet, having regard to the fact that non-fatal accidents increased by 51,000 in the first year of the operation of an Act which, for the first time, brought the benefits of insurance to the cognizance of many, one is driven to the conclusion that not a few have been tempted to utilize incidents which would previously have been ignored, to experience the novel sensations of drawing allowances in lieu of wages, and receiving medical attention which, when it had to be paid for, was an unthought-of luxury. Although the deduction of compensation, in fact, takes place, the various inducements offered by the competing societies enable the sums received in the event of incapacity to approximate or exceed the wages which are normally earned. Obviously, many people, on being compelled to insure to a certain extent, have seen the advantage of fully covering themselves. It has been said that the insurance is "the best threepenny- or fourpenny-worth they have put their fingers on," and "they are going to make all they can out of it"; so it may well be that, if sickness does not come along, a very trivial injury will be made to serve the purpose.

Recently I was asked by an insurance company to report upon the physical condition of a so-called working-man, who two years previously had met with an accident, certainly not a serious one. He had wholly recovered, probably a year

before. I was informed that he did no work, but loafed about street corners, with a bottle of physic in one pocket and a copy of the Workmen's Compensation Act, 1906, in the other. The mere suggestion of a return to work of any kind made him very indignant.

I think the following tables, based on the returns of one of the largest Friendly Societies in the kingdom, with regard to the operation of the National Health Insurance Act, are abundant proof that an adequate performance of the medical man's duty, carried out in a properly systematized manner, insures that the payment of sickness benefit is kept within legitimate bounds. This society has more than a quarter of a million members spread throughout the country. Rather more than a quarter of its members reside in the district which is served by the society's own medical examiner.

TABLE IV.—SHOWING RESULTS OF MEDICAL SUPERVISION.

| | *Men.* | *Women.* |
|---|---|---|
| Amount paid per head, *outside* the district served by society's medical examiner (*i.e.*, left to haphazard medical attention) .. .. .. | 12s. 11d. | 13s. 10½d. |
| Amount paid per head, *inside* the district served by society's medical examiner .. .. .. .. | 8s. 2d. | 5s. 4½d. |
| Difference in the two areas, per head | 4s. 9d. | 8s. 6d. |

TABLE V.—SHOWING AMOUNTS PAID IN SUPERVISED CASES, COMPARED WITH PREVIOUS ESTIMATE.

| | *Men.* | *Women.* |
|---|---|---|
| Amount estimated to be required, per head .. .. .. .. .. | 11s. 11d. | 7s. 7½d. |
| Amount actually paid per head as above .. .. .. .. | 8s. 2d. | 5s. 4½d. |
| Actual saving per head on estimated amount .. .. .. .. | 3s. 9d. | 2s. 3d. |

As to the women inside the district, it will be seen that the figures are 2s. 3d. less than those estimated, and 8s. 6d. less than the actual figures in the outside districts. The figures with regard to the women are particularly striking; where they were not under efficient medical supervision, they exceeded the estimate by 6s. 3d. I think one explanation of this excess is to be found in the fact that the sickness payment to women is within a few pence of the average amount earned by women workers throughout the country; there is therefore very little, if any, inducement for them to disregard the minor ailments, but rather an encouragement to avail themselves of their anæmic and other conditions in order to obtain a temporary respite from the hardship of daily toil.

It must be remembered that before the passing of the National Insurance Act there were thousands of women, many of them badly underpaid, constantly employed in the hard grind of daily work, who were wholly unfit; and the passing of the Act was their emancipation, because it will ultimately entail their drawing permanently on the sickness benefit fund. It should also be borne in mind that low wages conduce to frequent sickness. A large number of women wage-earners do not earn enough to keep them in health. The Board of Trade returns show that 10s. to 15s. a week is about the average in the lace, hosiery, woollen, cotton-winding, and silk-weaving trades. Whether the societies to which these women belong were wise in admitting them does not now concern us, but who will blame these underfed, ailing, dispirited toilers if they claim the sickness benefit to which they have a right under the Act, and for which they have been compelled to make contributions?

It is highly desirable, in cases where the fraud is undoubted, that the perpetrator should be prosecuted; and this should be undertaken by the State, and not thrown as a burden upon the society or employer who has been the victim. I am sure most salutary effects would result from the prosecution of a few offenders, especially if the culprits' medical and legal aiders and abettors could be similarly dealt with.

As things stand, the whole matter really rests upon the conscientious and efficient performance of his duty by the medical man. In obvious cases of fraud, and in those which in due

time become obvious, his course of action is plain, and he generally pursues it. It is in those cases which are far removed from actual fraud, but yet are grossly misrepresented, that his difficulties arise, and call for the exercise of his best endeavours. It is upon him that the State and the community have to rely for the prevention of a particularly mean form of fraud, as well as for the exercise of that skill and discrimination which alone will enable the insurance of accident benefit to become a practical success. Insurance rates are rapidly rising; as they are not borne by the persons responsible for the increase this is not likely to check the evil effectively, but a point may soon be reached when the whole machinery of the system may be in jeopardy.

It is obvious, from the figures I have quoted, that thousands of employees who should be at work successfully claim sick-pay. No employee can obtain sick-pay without a doctor's certificate. In the vast majority of cases the responsibility of deciding when an injured workman shall return to work is cast upon the medical man in attendance. He may, if he has courage and independence, induce an unwilling patient to return to work when sufficient recovery has taken place; but too often he allows personal considerations to operate, or he may take what he thinks is a charitable view of the man's circumstances, forgetting that it is at the expense of the employer, who may not desire to dispense his charity vicariously. Hundreds of doctors are doing their duty faithfully in this matter, and are suffering for it. But is the medical profession as a whole doing its duty? Is a serious and painstaking effort being made by the profession to make a stand against the conscious or unconscious exaggeration of symptoms and the unnecessary prolongation of sick-leave by workmen? The figures of the Home Office returns prove conclusively that things are rapidly going from bad to worse, and, after studying the figures, it is difficult to escape from the conclusion that in this respect the medical profession has been weighed in the balance and found wanting.

The *morale* of the workshops suffers enormously as a result of the laxity engendered by the unnecessarily prolonged suspension of the beneficent discipline which attention to one's business entails. But who cares? Who ever even speaks of it?

That a very great deal can be done by the workmen themselves in the repression of unjustifiable claims is shown by the extraordinarily interesting experience of the South Metropolitan Gas Company. This is an enterprise in which the copartnership principle was introduced in 1897, and on December 31, 1912, 5,593 copartner employees held stock to the nominal value of £301,480, or an average of £54 per man. The effect of this is to give the men a direct encouragement to see that the utmost efficiency is maintained in working the factory, and all avoidable loss prevented. One of the arrangements made for attaining this end is that the circumstances of every accident are inquired into by a jury of the workers, with the following remarkable results:

TABLE VI.—SOUTH METROPOLITAN GAS COMPANY ACCIDENT FUND.

| Year. | Average Number of Subscribers. | Number of Accidents during Year. | Percentage of Men with Accidents. | Total Number of Days Absent, owing to Accident, during Year. | Average Number of Days Absent per Accident. | Average Number of Days Absent per Person employed. |
|---|---|---|---|---|---|---|
| 1898 | 3,664 | 299 | 8·16 | 6,403 | 21·41 | 1·74 |
| 1899 | 3,903 | 297 | 7·60 | 7,769 | 26·15 | 1·66 |
| 1900 | 4,488 | 318 | 7·08 | 7,650 | 24·05 | 1·70 |
| 1901 | 4,920 | 315 | 6·40 | 7,281 | 23·11 | 1·48 |
| 1902 | 5,019 | 259 | 5·16 | 7,250 | 27·99 | 1·44 |
| 1903 | 5,071 | 286 | 5·63 | 7,856 | 27·46 | 1·52 |
| 1904 | 5,359 | 267 | 4·98 | 7,119 | 26·66 | 1·32 |
| 1905 | 5,478 | 243 | 4·43 | 6,161 | 25·35 | 1·30 |
| 1906 | 5,674 | 210 | 3·70 | 5,585 | 26·58 | 0·98 |
| 1907 | 5,707 | 269 | 4·71 | 6,062 | 22·53 | 1·04 |
| 1908 | 5,568 | 192 | 3·44 | 5,621 | 29·27 | 1·01 |
| 1909 | 5,726 | 206 | 3·59 | 5,003 | 24·28 | 0·87 |
| 1910 | 5,933 | 221 | 3·72 | 6,155 | 27·85 | 1·03 |
| 1911 | 6,226 | 246 | 3·95 | 6,859 | 27·88 | 1·10 |
| 1912 | 6,476 | 261 | 4·03 | 6,227 | 23·84 | 0·96 |
| 1913 | 6,493 | 223 | 3·43 | 5,965 | 26·75 | 0·91 |
| 1914 | 6,384 | 247 | 3·86 | 7,540 | 30·52 | 1·18 |

In drawing deductions from figures based upon the occurrence of accidents, one has to recognize that certain fluctuations must arise from the nature of the subject-matter. One serious accident, entailing long absence from work, will have

a noticeable effect on the results; but, giving due weight to this factor, probably the most striking thing to be observed from Table VI. is that in the percentage of accidents there is a persistent reduction of about 0·5 each year from 1898 to 1906, and that from that date onwards the percentage has remained steady at from 3·5 to 4. This points to the conclusion that, in such an occupation, this is the extent to which accident may be regarded as inevitable. It will also be noted that this figure was reached by the time the Workmen's Compensation Act of 1906 was passed, and that it has been maintained since; the Act apparently has had no effect upon the figures in this instance. The slight break in the symmetry of the figures in 1907 is attributable to a somewhat different method of calculation with regard to cases of intermittent employment.

It will doubtless be conceded that the risks of the occupation to which these figures relate are in excess of the average; even so, the percentage of accidents for the past six years has been below the figure which represented the accidents in *all* occupations in 1908—viz., 4·3 per cent., a figure which has steadily increased, until it was 6·24 per cent. in 1913 (see Table I.).

Since the copartnership arrangement was instituted, the average number of days' absence per person employed has been reduced by practically one-half.

The steady diminution in the percentages and numbers in this case as compared with the general experience I have indicated is so striking that it not only goes far towards justifying all I have said as to the prevalence of fraudulent and unjustified claims under the Workmen's Compensation Act and the National Insurance Act, but suggests that in the general adoption of the copartnership principle the ultimate solution of this most difficult and pressing problem may be found. It is a fair inference that Mr. Lloyd George had some idea of this sort in his mind when he established the system of providing sickness benefit through societies in which the members would be mutually interested in preserving the funds.

I claim no credit for having predicted that the difficulties experienced under the Workmen's Compensation Act would be met with on a magnified scale under the National Insurance Act; it was obvious to all who had in any way considered the

matter. Under the last-mentioned Act the canker is showing itself in a particularly virulent form. Before the benefits of the Act had been in operation for eight months, the Departmental Committee, to which reference has already been made, was appointed to inquire into and report upon excessive claims in respect of sickness benefit. After careful consideration of a large body of evidence, the Committee have recently issued their report, which is to all intents and purposes an admission that, with regard to certifying claims for sickness benefit, the panel system has broken down. Section 198 of the report states: "The Committee is satisfied, in view of the evidence, that immediate steps should be taken to produce a firmer attitude on the part of the medical profession with regard to improper claims for sickness benefit." They unanimously recommend the appointment of independent medical referees to assist in the efficient working of that Act. Owing to the urgent necessities of the Royal Army Medical Corps, these cannot at present be appointed.

There should in the future be no difficulty in devising a scheme whereby whole-time medical referees should be appointed by the Home Office for the purpose of assisting in the more effective administration of both these Acts. These referees should be judicially-minded men between thirty and forty years of age, and of the consultant type. In Workmen's Compensation cases much delay is deliberately brought about in order that costs and damages may be piled up, and the litigant is kept out of work for many months so that this may be effected. One or more medical examinations by an independent official medical referee in the early stages of a case would greatly diminish the volume of fraudulent litigation. With whole-time medical referees it should be possible to arrange for a proper independent medical examination within a short time after the claim has been made, and this should prove of great assistance to the tribunal which ultimately decides the matter. In claims for sickness benefit where the medical attendant feels that the task of certifying fitness for work is too onerous, the burden could easily be shifted on to the referee.

It is worthy of note that, prior to the passing of the Workmen's Compensation Act, 1906, a Departmental Committee of

the Home Office recommended the appointment, as an experiment, of whole-time medical referees in certain selected areas. This was not given effect to. Under Section 8 of that Act (which deals with the industrial diseases scheduled as accidents), all cases are referred to the certifying surgeon of the district, whose decision (subject to appeal to the medical referee) is final. In practice this system of medical inquiry has been found to work smoothly and satisfactorily.

There are now two important Acts, involving the expenditure of many millions of money, which urgently call for the institution of a safeguard such as has been indicated; it is to be earnestly hoped that at the conclusion of hostilities steps will be taken to call into existence a service which experience in other countries has proved to be of inestimable advantage in securing the efficient, economic, and beneficent administration of measures which are essential to the well-being of the community.

We have seen that the appointment of independent medical referees under the National Insurance Act is unanimously recommended. General medical practitioners, owing to circumstances which it is unnecessary to discuss here, are found on the whole not equal to the task of independent certification as to their patients' fitness or otherwise for work. My sympathy is with the family doctor. The disagreeable task of formally reporting that, say, the head of the house must return to work, against his will and protest, should not be imposed on his usual medical attendant. I know that many hold this view and act accordingly. What has so soon been found imperative in regard to the National Insurance Act has long been necessary for the proper working of the Workmen's Compensation Act.

## CHAPTER XL

### RETURN TO WORK—LEGAL AND OTHER IMPEDIMENTS

THE medical advisers of injured workmen frequently experience considerable difficulty in inducing them to return to work after an accident, even in cases where such a course, instead of being detrimental to recovery, would be beneficial.

Return to work does not, as most workmen think, imply the admission on the workman's part that the consequences of a recent accident have ceased; for, obviously, in the event of his breaking down again as a result of his injury, he could successfully claim half-wages.

There are two occasions when difficulty might arise:

1. Where new and unthought-of symptoms declare themselves after return to work, and are due to the injury from which the workman supposed he had wholly recovered.

2. Where a man having had an injury has admittedly not fully recovered, returns to work, *receives* but does not *earn* his full wages, and then again breaks down, or who still has an obvious physical disability although *earning* full wages.

**1. Where new and unthought-of symptoms declare themselves after return to work, and are due to the injury from which the workman supposed he had wholly recovered.**

In no sense is reference made here to wilful malingerers, nor even to those who obviously endeavour to shirk work, but to a large class of respectable working-men who entertain a very natural reluctance to do anything which might interfere with their right to compensation.

A return to work (provided the employer has had notice of the accident and a claim is made, or a weekly sum is paid) cannot affect a man's right to compensation if he is in fact afterwards found to be incapacitated as a result of the accident. I have no hesitation in stating that there is no ground

for the reluctance to return to work which too many working-men display, and it is the duty of the medical man, when such cases arise, to point this out.

I have known cases where delay in resuming work has proved prejudicial to the workman's rights. I refer, of course, to work of a suitable character. Obviously it is a man's duty to endeavour to work in order to preserve his rights to compensation, as the following cases demonstrate.

> In the case of Pearson *v.* Pimms and Sons, Ltd. (p. 550), the employers were willing, if the injured woman returned to work, to pay her full wages or as much more as she could earn at her work. But she declined to accept the offer. Evidence was given that she was fit for work. The Judge stated that he must hold that the compensation must cease, as the evidence showed she was fit for work except in regard to timidity; and he thought it was " strong conduct " on her part that she had not tried to work, and gave costs against her.
>
> In Turner *v.* Brooks and Doxey, Ltd. (p. 551), the County Court Judge found that the refusal to return to work was due to nervousness which an average reasonable man could overcome, and he therefore declined to allow compensation. Upon the hearing of the workman's appeal against this decision, the Court of Appeal upheld the County Court decision.

The haunting fear of an indefinite, chronic disability coming on in the distant future without any warning, without either the workman or his doctor having any idea of the likelihood of its incidence, is one which is greatly exaggerated by working-men, and, although sometimes advanced in litigious cases, is not really shared in many cases by their medical advisers.

It is important, therefore, that working-men should appreciate that, in order to keep the door open, as it were, and to maintain the right to compensation which an unexpected incapacity would carry with it, he will be well advised to resume work when able.

If I were a working-man under the circumstances referred to, I would go to a medical man whose judgment I trusted, preferably the hospital surgeon whose skill I had relied on when injured, and ask his unbiassed opinion, and do exactly as he advised. Unfortunately, what usually happens is that, instead of going to his doctor, the man consults a lawyer who specializes in running-down cases. The effect which litigation has upon the mind of a workman, and the nature of the advice

which he so frequently receives from his solicitor, are factors which profoundly influence him in his attitude towards return to work. The result is that it is very difficult in many instances to satisfy a man, recovering from an injury, that his rights will not be compromised if he returns to work before complete recovery. His idea frequently is that the evil effects of his injury will unexpectedly face him after his return to work, and when, as he thinks, his claim is for ever closed. I sometimes wonder what legal advice working-men get on this point.

**2. Where a man having had an injury has admittedly not fully recovered, returns to work, receives but does not earn his full wages, and then again breaks down, or who still has an obvious physical disability although earning full wages.**

It is not an unusual thing for an employer to take back into his employ an injured workman after he has more or less recovered from the effects of an accident, and to pay him his ordinary rate of wages, although he may not be able to carry out his duties to the full extent. In this way he *receives* although he does not *earn* his full wages. This arrangement is often satisfactory to both parties—to the workman because he receives as much as he did before the accident, and to the employer from charitable motives, or because, at no great addition to what he would have had to pay as compensation, he is able to insure his employee regular employment.

There is no doubt, also, the employer expects, and has a right to expect, that he will by this service receive the employee's good-will; for a man partially incapacitated would probably be unable to find, or might experience much difficulty in finding, employment in the open market before his restoration to full working capacity.

It will be an evil day for the working-classes when large employers cease to give what they now so frequently do, a helping hand to men who are recovering; for no one knows better than the working-man that half-wages mean semi-starvation where there is no club money, or where sick-benefits have run out, as is so often the case in prolonged illnesses.

There is, however, another suggestion, although I am convinced it is not of frequent application. It is alleged that an employer sometimes takes back into his employ at the old

rate of pay a workman who is not in fact able to earn full wages; and although the employee receives that sum, after a time, with a view to ridding himself of liability, the employer discharges the man, and contends that, as he paid full wages to the workman, it is evidence of his ability to earn them—in other words, that the workman has recovered from the effects of the accident, and therefore liability is at an end. There is then cast upon the workman the onus of proving the contrary. It should be borne in mind that the Workmen's Compensation Act does not give a workman any right to compensation in respect of his injuries, but only in respect of *wages which he is unable to earn as a result of the accident.* The effect of casting upon the workman the onus of proof of continuing incapacity in some cases may prove a distinct hardship to him, although it seldom happens in practice that the man is unable to prove his incapacity if in fact it exists.

Then, again, a working-man may have returned to work comparatively well, the ultimate disabling effect of the accident lying, as it were, dormant. The effects may not show themselves for a considerable time after the injured man returns to work. The difficulty from the workman's point of view might be increased if, upon his return to work, he has been actually receiving, or even earning, full wages.

In such a case the workman's interests can be protected by filing in the County Court what is sometimes called a " declaration of liability " or a " memorandum of agreement." There appears to be no reference in the Act to such a document as a " declaration of liability," although the Courts have given countenance to such an expression. The filing of a " memorandum of agreement " is, however, clearly recognized by the Act, and by this means the fact of an accident having happened is recorded, and the workman's right to compensation thereby kept alive, a nominal sum of one penny a week as compensation being usually agreed upon by the parties. The fear (which I feel sure keeps many men from working when they might) that they will be paid full wages for a short time, and then dismissed, would then have no foundation. The following cases confirm this view:

F. Z.—A mate of a sailing vessel was ruptured in the course of his employment, and an agreement was entered into for the payment

of past wages during incapacity. Some time afterwards the employers applied for a review of the weekly payment on the ground that the man had recovered, and the County Court Judge found that he was now wearing a suitable truss and was able to resume his work as a mate, and he terminated the weekly payment. The case came before the Court of Appeal at the instance of the workman, and the appeal was allowed, and an order made for a weekly payment of one penny. The Master of the Rolls said: "The County Court Judge was asked to make what is sometimes called, not quite accurately, a suspensory award; that is to say, to award a nominal sum of a penny a week, or to make a declaration of liability—it does not matter which way you put it. I feel no doubt whatever, in the case of an accident of this kind, in the case of a rupture—when at the very moment it came before the County Court Judge the workman was wearing a truss—a suspensory award ought to be made."

Lord Justice Fletcher Moulton expressly agreed with the Master of the Rolls' views, and said: "To enable the workman to get proper compensation it is therefore necessary to assess a nominal amount so long as the injury to the earning power is not actual, but only latent."

Lord Justice Farwell said: "If, although the man had recovered sufficiently to earn full wages for the time, he was in a condition which might probably render him unable to do so in the future, it was the *duty* of the County Court Judge to diminish the weekly payment to a nominal sum, because it was necessary to keep the application alive in order to retain jurisdiction so as to enable justice to be done if and when further consequences of the injuries again showed themselves" (Owners of s.s. *Tynron v.* Morgan, 1909, 2 K.B., 66).

In the case of Taylor *v.* London and North-Western Railway Company (1912, A.C., 242), the House of Lords recognized the practice of reserving a merely nominal weekly payment to keep the workman's right alive. The Lord Chancellor, in giving judgment, said "there was nothing to prevent the County Court Judge from ordering that the weekly payment be ended until further order"; and also said: "The same result is, we are told, attained by a practice of ordering a merely nominal payment in order to keep the question alive. In my view either of these methods may be lawfully adopted." Lord Atkinson also expressed the view that liability might be kept alive by an order to reduce the weekly payment to a nominal sum, or by some other device.

Lord Justice Kennedy in Green *v.* Cammell, Laird and Co., Ltd. (109 L.T., 202), said "he was strongly of opinion that, in cases of a permanent physical injury, the arbitrator, if satisfied that the incapacity has for the time ceased, ought, as a general rule, to make an order which keeps alive the employer's liability, either by directing the weekly payment of a nominal sum or by a suspensory order," and referred to the case of Taylor *v.* London and North-Western Railway Company as the highest authority for this.

An army of working-men now partially disabled, but certainly capable of much, though not of full work, and who are

living miserable existences on half-wages and in a state of semi-starvation, might be living in comparative happiness, receiving full or something approaching to full wages, if they would either trust their employers, or arrange for a memorandum of agreement to be filed with the Court.

This spirit of distrust is unfortunate from the workman's point of view, for *light* work and employment for men not wholly fit for work, except for disabled soldiers and sailors, is becoming more and more difficult to obtain.

If the course suggested, of filing a memorandum of agreement reserving a nominal weekly payment, is followed, and if it should subsequently be found that the workman is suffering from the effects of the accident, he is entitled, upon satisfying a County Court Judge, or an arbitrator under the Act, of his incapacity, partial or otherwise, to have the weekly payment reviewed—*i.e.*, by increasing the weekly payment according to the necessities of the case. On the other hand, the employer is entitled to claim a review—*i.e.*, the termination of the weekly payment. The effect of this procedure is to reserve to both parties all the rights they possessed at or after the accident, notwithstanding the lapse of time since it happened, and precludes any questions arising as to whether or not the accident was one to which the Act applied, or as to notice of the accident to the employer, or other such-like questions.

From the point of view both of the employer and the workman, it is more in consonance with the Act that the agreement to be filed should reserve payment of a nominal weekly sum; for, as before pointed out, the Act gives either party power to have a weekly payment reviewed, and unless there is some weekly payment reserved, difficulties may occur, inasmuch as there will be no weekly payment to review! The following case is in point in this connection:

> G. A.—An agreement for payment of a weekly sum was recorded, and the employer applied for a review on the ground that the workman's incapacity had entirely ceased, and the County Court Judge terminated the agreement and ordered the weekly payments to be ended. Subsequently the workman applied for a review on the ground of incapacity; but the County Court Judge held that, as the weekly payment had been ended, there was nothing to review, and this decision was upheld in the House of Lords (Nicholson *v.* Piper, 1907, A.C., 215).

Assume that the time has come when a workman has wholly recovered and remained well for a long period: the employer rightly wishes his liability for an accident (the effects of which are now non-existent) to cease. When he applies to the Court to have the agreement removed from the register, it is obviously most desirable that a nominal weekly payment should have been reserved. He must, of course, be in a position to satisfy the Judge or an arbitrator that there is no possibility, or at least no reasonable probability, of a recurrence of incapacity on the workman's part, and this can only be done by medical evidence. Without a medical examination it is difficult to see how he could be in a position to prove his case, and the medical examination is therefore a *sine qua non*. Here the employer, unless he has agreed to pay a nominal weekly sum, may be met with serious difficulty; for, unless a claim for compensation has been made, arbitration proceedings commenced, or a weekly payment is being made, the workman is not bound to submit himself for medical examination, and it might therefore be contended that, if a mere "declaration of liability" and no memorandum of agreement reserving a nominal weekly payment is filed, there is no compulsion on the part of the workman to submit himself to medical examination.

What probably gives rise to the objection on the part of the workman to return to work is the provision which is contained in Schedule II. (9) (*b*) of the Act, which states that—"Where a workman seeks to record a memorandum of agreement between his employer and himself . . . 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 Judge of the County Court, under the circumstances, may think just."

If the workman first returns to work and is earning full wages, and *after his return* wishes to record an agreement, the employer may object; but he would have to satisfy the Judge that the man was actually *earning* and not merely *receiving* full wages, and that there was no reasonable fear of his again becoming incapacitated, otherwise the Judge can record a

memorandum, and so keep the employer's liability alive on such terms as he thinks fit.

Take the case, for instance, of the loss of an eye—not an unusual accident, in my experience. It is obvious, where the remaining eye is healthy, that after a definite period of time, amounting it may be to only a few weeks, the workman has wholly recovered as far as his working capacity at the moment is concerned. But he has now only one eye instead of two. If he returns to work with his old employer, and remains for the rest of his life with that employer, receiving the same wages as before the accident, well and good. But suppose that, either from fear, on the part of the master, of another accident to the remaining eye, reasonable timidity on the part of the man with regard to working amongst machinery with a diminished range of the visual field, or for some such reason, the workman finds himself without work in the industrial market, a permanently damaged article as a result of the accident, with diminution of working capacity which must be obvious to everyone to whom he applies for work, his chances of re-employment are small indeed. He is in such a case still entitled to compensation, if he has taken the proper steps to protect himself. It is elementary justice that such a one should have his right to compensation preserved.

If he has no memorandum of agreement recorded in his favour, he may at any time be a victim of his circumstances, and drift into the ranks of the unemployed or the unemployable. My experience with large public bodies is that, when this is pointed out—and I make the suggestion as occasion arises—they are prepared to arrange for the necessary memorandum of agreement to be filed with the Court, for this and similar disabilities. The following cases are authorities for the foregoing proposition:

G. B.—A workman received an injury necessitating the amputation of his thumb. He continued, however, to attend regularly to his work, and received the same wages as before the accident; but it was admitted that should he leave his employer's service his wage-earning power in any other employment would be materially decreased. It was held by the Court of Appeal (overruling the County Court Judge) that, as he had not actually earned full wages, he had been incapacitated within the meaning of the Act, and was entitled to have his rights protected in the future (Chandler *v.* Smith, 1899, 2 Q.B., 506)

A workman lost the terminal phalanx of his thumb in consequence of an accident, and after some weeks he returned to work at the same wages as he was receiving at the time of the accident, although he was not doing the same work, and was not, in fact, earning the wages paid. The County Court Judge held that he was entitled to an award of 2s. 6d. a week for life, as representing the diminished earning capacity arising from the accident; but the Court of Appeal reduced the weekly payment to one penny, so that the workman's right to a review, if circumstances justified it, was preserved (Irons *v.* Davis and Timmins, Ltd., 1899, 2 Q.B., 330).

The above two cases were decisions under the Act of 1897, but they are still in point under the present Act.

**Form of Memorandum of Agreement.**—A simple but effective form of memorandum of agreement to meet the circumstances of such cases as I have suggested is as follows:

### Form of Memorandum of Agreement.

TO THE REGISTRAR OF THE [1] COUNTY COURT.

In the matter of the Workmen's Compensation Act, 1906.

And in the matter of an Agreement between [2]
of in the County of and [3] of
in the County of .

Be it remembered that on the [4] day of 191 personal injury was caused at [5] in the County of to the above-named [6] , a workman under no legal disability and an insured person under the National Insurance Acts, 1911 and 1913, by accident arising out of and in the course of his employment; and that on the [7] day of 191 the following Agreement was come to by and between the said [8] and the said [9] —that is to say:

That the amount of compensation under the above-mentioned Act to which the said [9] is entitled is a weekly payment of one penny, such weekly payment to commence as from the [10] day of 191 , and to continue during the total or partial incapacity of the said [9] or until the said payment shall be ended, diminished, increased, or redeemed, in accordance with the provisions of the above-mentioned Act.

You are hereby requested to record this Memorandum pursuant to paragraph 9 of Schedule II. to the above-mentioned Act.

Dated this [11] day of 191 .

[12] .....

.....

Witness: [13]

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[1] District in which accident occurred.
[2] Name and address of employer.
[3] Name and address of workman.
[4] Date of accident.
[5] Place of accident.
[6] Name of workman.
[7] Date when agreement was come to.
[8] Name of employer.
[9] Name of workman.
[10] Agreed date.
[11] Date when memorandum is signed.
[12] Signatures of employer and workman and addresses of each.
[13] Name and address of witness.

It is only necessary for the memorandum to bear a sixpenny stamp, and no fee is payable at the Court for filing it.

**Notice of Accident.**—I have referred previously to the necessity of notice of an accident being given to the employer, and it may be useful to refer to the requirements of the Act in this respect.

Section 2 provides that proceedings for the recovery of compensation shall not be maintainable unless notice of the accident has been given as soon as practicable after the accident, and before the workman has voluntarily left the employment in which he was engaged at the time it happened, and unless the claim for compensation has been made within six months from the date of the accident. The want of, or any defect or inaccuracy in, the *notice*, however, does not bar the workman from recovering compensation if it be found that the employer is not prejudiced thereby, or that the want of, or defect or inaccuracy in, the notice was occasioned by mistake, absence from the United Kingdom, or other reasonable cause. The failure to make a *claim* within the specified time is not a bar if the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

The *notice* must give the name and address of the person injured, and state in ordinary language the cause of the injury and the date at which it happened, and must be served upon the employer by delivering t, or sending it by registered post addressed to the employer's residence or place of business, and must be in writing.

The *notice of accident* and *claim for compensation* must not be confused. They are entirely separate matters. The notice should be given as soon as possible after the happening of the accident, but the claim is a matter which is usually one for the lawyers at a later stage. When this becomes necessary, it is generally because the employer has refused to recognize liability.

Payment of compensation prevents the employer from relying on failure to give notice, as such payment has been held to be a " reasonable cause " for not giving notice (Griffiths *v.* Atkinson, 1912, W.C. Rep., 277, and 5 B.W.C.C., 345).

The object of an employer having due notice of an accident for which he may be called upon to pay compensation is, of

course, that he may be in a position to make proper inquiries as to the justness of any claim that may be made against him, and it is therefore important that the requirements of the Act should be carefully complied with. It is not necessary that any particular form of notice should be used, so long as it contains the particulars prescribed by the Act as before mentioned, neither is it necessary that the notice should be signed by the workman. Obviously, in some circumstances it would be impossible for him to do so, and it is sufficient if the notice is, in such circumstances, given by someone on his behalf; but in cases where the workman is able to sign the notice himself it is best for him to do so. When the notice is given it is advisable, although not absolutely necessary, that a claim for compensation should at the same time be made; and this can be done by the addition of a few words to the notice.

**Form of Notice of Accident.**—The following form of notice of accident, which also embraces a claim for compensation, is suggested as sufficient to meet the requirements of the Act:

**Form of Notice of Accident and Claim for Compensation.**

To [1]

Sir,—I hereby give you notice that on [2] , while in your employ, I met with an accident at [3]
through [falling off a ladder],[4] and I claim compensation under the Workmen's Compensation Act.

Yours faithfully,

[5].....

[6].....

[7] 191 .

---

[1] Name and address of employer.
[2] Date of accident.
[3] Place of accident.
[4] Or as the case may be.
[5] Signature of workman.
[6] Address of workman.
[7] Date when notice is signed.

## CHAPTER XLI

### THE NATIONAL INSURANCE ACTS, 1911 AND 1913

Those who have to advise insurance companies know that exaggerated and fraudulent claims are, at any rate, as old as the Accident Laws. And how far the incidence of malingering has been and will be affected by the provisions contained in the National Insurance Acts is an interesting question. Under Part I. of the principal Act (which deals with health insurance, and to which alone this chapter refers) some fourteen million working-people are compulsorily insured, and it is clear that the temptations to practise malingering have affected a far larger class than hitherto.

If we turn to the experience of foreign countries, more especially of Germany, we find that this has been the case, for since the passing of their Insurance Acts the amount of malingering has gone up by leaps and bounds.

It must be remembered that heretofore people who have been insured against sickness have insured themselves. They have been the best of the working-classes. In very many cases such workmen have taken a personal pride in the club to which they have belonged. This is more especially true in the rural districts, where it often happens that men who are seriously ill will not claim from the club, so that its funds shall not be depleted, and they pride themselves on never having taken sick-pay. It is to be feared that a proportion of these, resenting the compulsory deduction from their wages, have made up their minds to get their contributions back again by claiming sickness allowances.

The operation of the Workmen's Compensation Act has demonstrated that the incentive of gain has too often caused exaggeration of slight injuries and prolongation of disabilities resulting from accident. Now, under the National Insurance Act not only accidents but illnesses are included, and it is

obvious that disabilities arising from illness are far more easily simulated, and I fear cause more difficulty, than those resulting from accidents.

As sickness benefit is only payable from the fourth day of the illness, there will probably be a strong temptation to prolong slight ailments.

The French Republic, as is well known, owns part of the railway system. When these lines were taken over by the State, it was announced that every day of illness would be paid for. The influence of State ownership on what our neighbours call the " right to illness " is somewhat remarkable. Prior to this change, in the year 1909, there were 474,000 days of sickness, which, after the transference, in the year 1911, rose to 656,000 days. In 1911, 54 per cent. of the railway employees were " ill " at one time or another.

There are those who emphatically deny any tendency on the part of the working-classes to exaggerate or feign disease, and it may be contended that the amount which is received under the Act—viz., ten shillings a week—is a small one, and not likely to tempt men in good employment to claim sick-pay unnecessarily; but it must be remembered that there are amongst the insured a certain number of men who are getting beyond middle life, and who for many reasons may be tempted to prolong any illness that may befall them. A man who has been engaged in laborious and monotonous toil for fifty years or more finds it increasingly irksome, and naturally the desire to escape grows strong as time goes on. His physical powers are beginning to deteriorate; he is more easily tired, is often beginning to have rheumatic changes in his joints; and, as is well known, lumbago, sciatica, spondylitis deformans, and varicose ulcers occur more frequently to people of the working-classes as age advances. Although usually no one of the conditions is in itself crippling, all tend to render work more irksome; and in these days, when the tendency is to speed up the rate of work, it is small wonder that a man so afflicted should begin to turn his thoughts to how he can escape from his daily toil.

**Old Age.**—One has reason to be somewhat apprehensive about the working of the National Insurance Acts, seeing that even the Old Age Pension Act has in some cases had an injurious effect, as the following case illustrates:

*History*—D. R.—I was asked by an insurance company to investigate the case of a horsekeeper, aged seventy, who alleged that fourteen months previously he fell whilst ascending a ladder, that he had suffered with his back ever since, and was unfit for work as a result of this mishap.

It appeared that after being laid up for seven weeks D. R. resumed work for six months, when he gave up work on his own account, and put in his claim for an old age pension. He was allowed to live on in his rooms for three months, and then was sent to an infirmary, where he remained nearly three weeks.

I had an interview with the medical superintendent of the infirmary, who told me that no mention had been made by any relative of any accident.

*Examination.*—I examined him in the presence of his doctor, who, having attended him for years gratuitously, evidently looked sympathetically upon the claim. D. R. complained to me of pain in his back. When asked to indicate the exact spot, he pointed to a place which I marked with coloured pencil on the flesh, and subsequently he indicated five different places ranging over an area 5 inches square. In fact, his back appeared to be tender almost anywhere when it was suggested to him. It was pointed out to his doctor that when one asked D. R. to bend, and pressed one's fingers deeply between each pair of spinous processes, the vertebræ moved freely upon each other, which they certainly could not have done had there been any spinal disease. The back was not only not diseased, but was unusually supple for a man of his years.

The old man's claim was a preposterous one, which in the interests of justice had to be resisted. There was not the slightest foundation for the allegation that the accident caused his incapacity for work. True, it would be impossible to assert in a court of law that there could be no connection between the alleged fall and any abnormal sensations he may have felt in the region complained of; but these sensations were in my opinion mental, not physical, born not of the disease, but of cupidity. He had made no complaint to anyone until he was asked to vacate his house. His doctor, however, held that if he had had no injury he would not have had backache, and that therefore the insurance company was responsible! It was apparent that the cause of his inability to work was not pain, but age, and this he himself had tacitly admitted by claiming an old age pension.

*Result.*—The solicitors acting on behalf of the insurance company denied liability, and no further action was taken by the plaintiff or his solicitors.

Under the Acts a working-man, if ill, receives ten shillings a week, and he may possibly have other sources of income. His grown-up children very probably contribute towards the expenses of the household, or his wife may make a little money by nursing, charing, etc. In short, to men between sixty and

seventy years of age there is a strong temptation to defer the return to work. There is the danger, too, of attempts being made to tide over periods of unemployment by going on the sick-list. A number of men who are past middle age are insured ; their employment is in many cases of an irregular and precarious nature, and the temptation to go on the sick-list for lumbago, sciatica, rheumatism, or similar complaints is great. The symptoms of these complaints are almost entirely subjective, and there is difficulty in refuting allegations made with regard to them.

The danger of old age and intercurrent disease complicating a claim for a comparatively slight accident is well illustrated by the following case :

D. S.—I was asked to examine a man, aged sixty, who was said to have fallen with a truck and two sacks of flour into a barge six weeks previously, and sustained a contusion of his right *elbow.*

*Examination.*—D. S. complained of pain in his right hand, inability to close it firmly, and some pain at the right elbow-joint.

There was a soundly healed scar on the arm, but the muscles of the forearm were slightly wasted, and the hand somewhat puffy. He was of poor physique, evidently in an impoverished condition ; he had received a genuine, though not serious, injury, and was likely to recover in about a fortnight.

He volunteered the statement that he had no intention of remaining on the sick-list too long, but, on the other hand, refused to come to my house on the plea that he was too ill, although he was quite able to do so. I advised the case should be watched, for, admittedly unconnected with the accident, he had a huge hydrocele, which alone would interfere with his work, and might cause a desire to prolong his convalescence unnecessarily.

My prognostication was confirmed, for he had not resumed work seven weeks later, and was sent to me, still complaining of inability to use his right hand, which presented no abnormal sign except the clean, pale appearance due to want of use.

To test the power of the right upper arm, he was asked to bend the arm at the elbow, and resist my straightening it, which he did successfully. When the hand was alternately pronated and supinated, he—thinking he ought to oppose everything done to him—exerted considerable muscular power to prevent the manipulation ! When asked to close his fist and prevent my opening it, he did so with considerable success.

This man, old for his years, had evidently made up his mind he would never work again, the real cause of his unwillingness being, in my opinion, the hydrocele (about three times the size of one's fist), which he owned was a great inconvenience to him. He was certainly not now justly entitled to further compensation on the score of the

accident, and I had good reason to fear his case would be a difficult one to deal with.

Three weeks later, when he was examined by a surgeon in consultation with me in the presence of his doctor, D. S. alleged that the hydrocele had *become larger since the accident.* This new allegation recalled to my mind a conversation I had had with him on the *first* occasion I saw him, when he had suggested (somewhat tentatively) that the hydrocele was *caused by* the accident.

Owing to prolonged disuse, the grip of the right hand was not now equal to that of the left, nor could he be persuaded to completely flex the first two fingers ; but it was obvious that if he returned to work at once he would recover the full use of the hand.

Three and a half months later, on examination, D. S. looked pinched and ill. Albumen was present in the urine in considerable quantity; there was no other evidence of active disease, but he had the appearance of a man who had recently come through some acute illness—probably influenza—without receiving proper care and attention. The hydrocele was even larger than before. When asked why he had not been to hospital to have it attended to, he said he had not sufficient money, at the same time admitting that it troubled him so much he was " afraid to do anything with it." He appeared to be obsessed with the idea that the hydrocele was made worse by the accident.

There was a tendency to commencing Dupuytren's contraction in the fingers of *both* hands, quite unconnected with the accident. There was also some difficulty in closing the first and second fingers on to the palm, due to old-standing rheumatoid arthritis.

As an old soldier he had probably lived hard, and, until his accident, worked hard in the docks ; his working days were over, and he knew it.

*Result.*—His employers felt sympathy for him in his troubles, but were of opinion that he would have been better advised if, instead of starting arbitration proceedings against them, he had asked their assistance. They felt reluctantly obliged to contest such an obviously unjust claim. He was, in fact, in no worse a position than thousands of other working-men who happen to be past their work.

The case was heard in the County Court, and the Judge (who was assisted by a medical referee), after hearing the evidence, stopped the case, deciding in favour of the employers.

As to the precautions which should be adopted to prevent any great increase of malingering resulting from the existence of this new source of income, the first thing I would suggest is that the medical man should be placed in a position of absolute independence. One welcomes, therefore, the provisions of the Act whereby, in the case of a man who belongs to a club instead of being attended by a " club doctor," he will have the opportunity of selecting at definite times one of the doctors on the panel in his district.

In addition to the payment under the National Insurance Acts, many men are in receipt of weekly allowances for accidents from one or more clubs, and the total amount of their incomes when ill may be actually more than when working.

Against the advantage of free choice of doctor must be set the danger that one member of the medical panel may be induced to give certificates too easily, and to put men on sick-pay too readily, in the hope of thereby winning popularity and increasing his clientèle.

**The Value of Medical Referees.**—It is therefore advisable that medical men should be appointed to whom doubtful cases could be referred. Such men should have a special training in dealing with doubtful cases of malingering; they should have no local associations, and each one should have a circuit which he would traverse at stated periods. If such appointments were made, a local medical man who is in doubt as to whether a certain individual is abusing the National Insurance funds would have the opportunity of advising a consultation with the medical referee of the district.

The odium of sending back to work a man (reluctant to resume it) would thus be removed from the shoulders of the doctor who was actually attending him, and who would naturally be averse to performing such an unpleasant duty. The mere fact that such inspectors were appointed would tend to counteract the laxity and favouritism which might otherwise be shown.

In Germany it has been found that it pays the administrators or managers of Pension Funds (which are equivalent to our Approved Societies) to appoint special doctors to examine persons in receipt of sickness benefit. Experience shows that they have saved the funds more than the amount of their salaries. Approved Societies in this country will probably be forced, within a short time, to appoint special medical men to examine members in receipt of sickness benefit in order to prevent abuse of their funds; for those who have the administration of the Insurance Acts must ever keep an open eye for the possibilities of fraud or quasi-fraud.*

* Since the first edition of this book was printed this has been recommended, but the changes brought about by the war have postponed the appointment of medical referees.

It is also no secret that in the competition between Approved Societies large numbers of weakly males, who ought to have been Post Office contributors, were eagerly sought after and enrolled.

Some striking figures with regard to the incidence of sickness benefit in one of the largest Friendly Societies in the kingdom are dealt with at the conclusion of Chapter XXXIX., p. 590.

The National Insurance Act, 1911, so far as it deals with health insurance, provides for payment at the rate of 10s. per week to men, and 7s. 6d. a week to women, in the event of their being incapacitated by sickness. No payment is made until the sickness has continued for more than four days. Persons entitled to compensation under the Workmen's Compensation Act, or from a third party at Common Law, are not entitled to draw sick-pay under the National Insurance Acts in addition. Where the weekly benefits under the Workmen's Compensation Act or from the other source or sources is less than that provided by the National Insurance Acts, then a sufficient sum is paid under the National Insurance Acts to bring it up to the amount of the National Insurance Acts benefit.

The National Insurance Acts, stated shortly, provide as follows:

1. Sickness or disablement benefit is not recoverable where the weekly payment otherwise due, or the weekly value of any lump sum, is equal to, or greater than, the sickness benefit under the Acts; but if it is less, then the difference only is payable as sickness benefit.

2. If a lump sum is paid under the Workmen's Compensation Act or by a third party, the weekly value of the lump sum may be determined by the society or committee, subject to the right of the insured person to have the matter determined by the Insurance Commissioners.

3. If an agreement is come to between the insured person and his employer as to the amount of compensation payable weekly, and the amount is *less* than 10s. a week, or as to the redemption of a weekly payment by a lump sum, the employer is required within three days to send to the Insurance Commissioners, or to the society or committee concerned, notice of the agreement with particulars of the facts and circum-

stances; and the Registrar of the County Court in which the agreement is to be recorded has the same powers in regard to recording or refusing to record agreements relating to such weekly payments as he has in reference to agreements for redemption of weekly payments by lump sums. (The powers referred to will be found on p. 564.)

4. Where an insured person appears to be entitled to compensation under the Workmen's Compensation Act of 1906, or from a third party, and the insured person unreasonably refuses or neglects to take proceedings to enforce his claim, the society or committee concerned may either (*a*) at its own expense, in the name and on behalf of the insured person, take proceedings to enforce the claim, or (*b*) withhold payment of sickness benefit. In the event of the society or committee taking and failing in such proceedings, it is liable to pay the costs as if it were claiming on its own account.

5. Pending the settlement of any claim for compensation, the society or committee may make advances to the insured person.

In order to protect the funds of the society or committee, it is the duty of the society or committee concerned to take such steps and make such arrangements as are necessary in order to insure, if the sickness or disability arises from causes for which an employer or third party is liable to pay compensation, that the proper person shall bear the burden.

Although the sum payable under the National Insurance Acts is in most cases smaller than under the Workmen's Compensation Act, many of the considerations which lead to inflated claims under that Act are found to operate with regard to health insurance claims.

## CHAPTER XLII

### LEGAL AID SOCIETIES

**Increase of Street Accidents.**—Mechanically propelled vehicles have much increased the number of street accidents. In the year ending December 31, 1911, over 15,000 people were injured and 410 killed in the streets of London. During the ten months ending October 31, 1912, 428 persons were killed by vehicular traffic in London, 304 of these deaths being due to mechanically propelled vehicles and 124 to horse-drawn vehicles. During the last ten years the annual death-roll from traffic accidents in London has become four times greater than it was.* To that fact, and the Workmen's Compensation Act, may be attributed the rapid growth of what is a serious evil. There are now, principally in London, but also throughout the provinces, a number of societies, many of which call themselves legal aid societies, or by some other name signifying that their business is to help people in need of legal advice and assistance. The sole business of some of these societies appears to be that of inducing injured persons to make speculative claims for damages, too often of an exaggerated, and sometimes even approaching a fraudulent, character. It is immaterial how trivial a claim may be, it is equally immaterial whether the claimant has the means to support the claim : the case is taken up on sheer speculation.

The affairs of some of these " societies " for the so-called assistance and benefit of the poor should be thoroughly investigated. In certain cases the title of " society " is simply used by firms of speculative solicitors as a cloak for advertising or touting for cases. The procedure is simple, impudent, and ingenious. An office is taken, sometimes consisting of only one

* These figures have been enormously increased recently, but for obvious reasons it is best to adhere to these pre-war statistics.

shabby room, and from this address large numbers of plausible pamphlets and circulars are issued broadcast, the purport of them being that when legal advice or assistance is required it can be procured free, at such-and-such an address, by joining such-and-such a society, and paying the very modest sum of one penny. The handbills referred to are circulated freely, and their inviting proposals appeal to the cupidity of the ignorant and credulous.

**Touting for Clients.**—Cases in which flagrant touting has taken place are occasionally reported in the public press, and quite recently an account appeared of how a man was arrested for hawking, at one penny each, coupons of a society which carried with them a promise that legal assistance would be obtained provided that 10 per cent. of the damages recovered should be deducted by the society. It appeared that the Magistrate had previously adjourned the case for the attendance of the secretary of the society, who, however, merely sent a representative, with whom the following conversation took place:

> The MAGISTRATE: Are these coupon books sold to men to hawk about the streets?
>
> The REPRESENTATIVE: No price is charged for the books. They are given, the object being to circulate the tickets for the benefit of poor persons.
>
> The MAGISTRATE: In one word, for advertisement?
>
> The REPRESENTATIVE: Possibly.
>
> The MAGISTRATE: Your society, with the object of picking up chance litigants, subsidizes street beggars all over London. A nice state of things!
>
> The REPRESENTATIVE: I don't agree. If the men choose to beg, we can't help it.
>
> In sentencing the prisoner to five days' imprisonment the Magistrate said he was sorry to find that there was a society like this to help beggars.
>
> The prisoner asked, "What have I got five days for?" and the Magistrate referred him to the secretary.

It is well known from what class of persons the ordinary tout is recruited. He is frequently an unemployed clerk of a solicitor, or a broken-down member of one of the two branches of the legal profession.

Cases are brought into the net by these persons haunting the side-doors of our large Metropolitan hospitals, and button-

holing the distressed relatives of those who have met with accidents, or by a ghoulish alertness in studying the newspapers for announcements of accidents in factories and streets, and in sending circulars to injured persons or their friends, and in following up the circulars with a personal call upon them.

In one case I obtained a signed statement from a woman to the effect that, as she came out of a hospital, a man whom she had never seen before approached her and asked if she had met with an accident. On being informed that she had, he said, " I'll take you to our solicitors'." He took her to a firm of solicitors who said it was an accident " worth taking up " !

At a recent inquest there was a striking instance of the procedure followed in such cases. A solicitor said he appeared on behalf of the relatives of the deceased man, but according to a newspaper report it transpired that a clerk had called upon the dead man's brother and induced him to " knock off " work and go to the solicitor's office. When it was stated that the relatives did not desire to be represented by the solicitor he withdrew, stating that he absolutely discountenanced the conduct of the clerk, of which he was in ignorance.

For their pains so-called Legal Aid Society touts receive a proportion of the commission deducted by the " society " from " damages " obtained, and the effect of these activities is to set employees against employers, and to accentuate the unfortunate antagonism that exists in some quarters between one class and another.

The following is an example of their tactics, which came under my personal notice some little time ago :

> D. T.—I was asked, on behalf of an insurance company, to examine a workman who had fallen several feet from a dock, sustaining slight injuries to his arm, foot, and back. He told me that he was nervous about beginning work again. On examination I found D. T. had wholly recovered. The workman, who impressed me as being perfectly straightforward, informed me that a stranger called at his house the day following the accident, saying he was the representative of a certain legal aid society. The visitor did not ask the injured man whether he was a member of the society, but when asked how he (the visitor) knew of the accident he gave a non-committal reply, and proceeded to fill up a membership ticket for the injured man. The society, he urged, would assist him in his case, adding that he " ought to get a decent sum." The workman protested, stating he had no desire for the society's help, and that he certainly did not

wish any proceedings taken, for he had been three years with his employers, and had a "good job." The stranger promised to take no action, but urged the workman to write to the legal aid society, which he represented, to tell the officials "how the firm behaved in the matter," and left a penny to defray the cost of postage.

A week later a well-known firm of solicitors wrote to the workman to the effect that his society had placed the matter in their hands, that they would be glad if he would give them a call, and that in the meantime he should not "negotiate with the other side."

Although he had on no occasion paid anything to the funds of the society, a membership card, which was presented to him, stated that he was a member of the society for one year from the day following the accident, by virtue of his having paid one penny. Shortly afterwards the society, in defiance of the workman's repeated instructions to the contrary, actually sent one of their representatives to call upon his employers, ostensibly on the workman's behalf!

In a recent accident which occurred in London, in which a considerable number of persons were more or less seriously injured, the majority of the injured had received on the morning following the accident as many as four letters from different legal aid societies, offering to take up their cases free of charge, and recommending them to have nothing to do with those responsible for the accident.

**Exorbitant Charges.**—The condition imposed on claimants, when this angling has been successful, is usually the deduction of 5 per cent. to 10 per cent. of the damages recovered; but nothing is said about the costs, which presumably also find their way into the coffers of the society or its legal satellites. In cases other than actions for personal injuries, advice can usually be obtained "on terms." The reason for this distinction is subtle. Actions for personal injuries can be instituted at little actual cost—*i.e.*, Court fees only. They are often tried before sympathetic juries; they can be conducted by counsel who may not have been paid the fees marked on their briefs; and the plaintiff has everything in his favour. It is the unfortunate defendants who have to find the money, for if they should win the case they have no prospect of securing payment of their costs.

No pretence whatever is made of keeping any record of the members of these legal aid societies, nor is it a condition prece-

dent to a claim being taken up that even the penny should have been paid for nominal membership. In many instances it may be that injured persons are quite legitimately assisted, and I do not suggest that claims made through the instrumentality of such societies are necessarily fraudulent, but it is obvious that the system is open to the gravest abuse. I believe in the majority of cases no balance-sheet is published, and the question naturally arises, "What is done with the percentage?" Of course, there can be no doubt that at least some of this is diverted into the pockets of the solicitors and their touts. I have before me the prospectus of one of these societies, intended for circulation amongst workmen, setting out at length a list of cases, with the nature of the injuries said to have been sustained, and the amounts received from the employers. That it is a very profitable business, and keenly sought after, may be gathered from the fact (already stated) that very many members of the working-classes, on meeting with accidents, receive by the first post next morning letters from some one or more of these legal aid societies offering assistance; and it is quite a common thing for a man who has been injured to be pestered by the representatives of these societies.

In this connection I remember a case in which both employer and employed were subjected to much annoyance by the importunities of a solicitor's tout trading under cover of a legal aid society.

Although employers of labour know how to treat these parasites, the ignorant working-man does not. He is insidiously taught to set a commercial value upon his misfortune, and to think more of what the unearned increment may be than of how soon he will return to duty.

D. U.—A rough, ignorant navvy, who could neither read nor write, was sent to me for examination. He told me that he was selling his furniture, for he had had no food at home, and though absolutely starving had walked a considerable distance to my house. Owing to the slipping of a tool, he had sustained an accident to his hand, from which he had recovered; indeed, he had probably been fit for work for some time.

From the papers submitted to me by an insurance company concerned, it appeared that his employers had had considerable correspondence with a solicitor acting for a legal aid society with reference to the case.

The accident happened on a Friday, and on the following Monday

the man was asked by the society to call at their office. He did so, and was asked by the society's representative "if he would take a lump sum, or what he would do." He said he did not want a lump sum, but would see his employer on the matter, whom he subsequently found had already been approached by a solicitor acting for the legal aid society. He was then informed by the legal aid society's official that "they could not help him so long as he continued to receive half-wages from his employers"!

I arranged light work for D. U., and enabled him to escape from the toils into which he might have fallen.

One sometimes hears of claimants who, some time after their cases have been settled, call on the defendant and ask what amount had actually been handed over to their solicitors.

The methods of some of these legal aid societies have at various times been commented upon from the Bench, but as yet nothing has been done. I sometimes wonder if organizations of this kind are, strictly speaking, legal, for their sole object appears to be the promotion of litigation, and this upon the terms of "no damages, no pay." One cannot help being surprised that this condition of affairs has not yet received the attention of the Law Society. The promotion of claims of a speculative character by solicitors must bring discredit to the legal profession. My chief concern, however, is that the system is productive of cases in which there is gross exaggeration, and it is a direct incentive to malingering and fraud. A perusal of the High Court jury lists from time to time will afford an instructive lesson on the question of actions for personal injuries which are set down for trial, and these lists, of course, take no account of the immense number of similar actions brought in the County Court. How instructive it might be if reliable figures could be obtained showing how many cases have been settled out of Court by defendants rather than risk the expense of defending actions, more especially cases settled for small sums and large costs which are nearly blackmail!

The truth is that the vast majority of successful defendants have no prospect whatsoever of securing their costs.

**Appointment of Poor Man's Lawyer.**—The appointment of a poor man's lawyer has now become absolutely necessary. If the present state of affairs, with its attendant evils, is to be remedied, the duties of the office of poor man's lawyer must be entrusted to some person of unquestioned integrity,

who might, I suggest, be appointed under the supervision of the Government. Excellent work in this direction is, I believe, done by the committees of certain religious bodies in the Metropolis, but, unfortunately, these committees are not nearly numerous or strong enough to adequately deal with the cases which arise.

There is now no reason why poor persons, who have a legitimate cause of action which can be pursued in the High Court, should become the prey of the speculative solicitor. By the Rules of the Supreme Court (Poor Persons) of 1914, officers are appointed in the High Court, and in the various district registries, to whom application can be made by persons who have reasonable grounds for taking proceedings, and who do not possess property (excluding tools of trade and wearing apparel) of the value of £50, or in certain cases £200, for leave to be admitted to take such proceedings as a poor person. When such application is made, it is referred to one or more of the solicitors or counsel willing to act in the matter (lists of whom are kept by the prescribed officer), who will report whether and upon what terms the applicant ought to be admitted as a poor person. Pursuant to the report so made, the Court may make an order permitting the applicant to take the proceedings as a poor person, and the prescribed officer will assign a solicitor and counsel (other than those who have reported on the case) to act for such applicant. When an applicant is admitted as a poor person, he is not liable to pay any Court fees or costs, except that the Court may order the payment, out of the sum recovered, of such profit costs as would have been allowed to the solicitor, on taxation, if he had been retained in the ordinary way, provided such profit costs do not exceed a certain proportion of the amount recovered. Counsel acting in these matters do not receive fees. When costs are to be paid to a poor person, if the Court certifies that the person ordered to pay such costs has acted unreasonably in defending the proceedings, the costs will include profit costs and charges. Provision is also made for the institution of a fund out of which certain costs may be paid to a solicitor who does not otherwise recover any costs. So far as solicitors are concerned, these seem to be terms which insure that the poorest persons should be able to command the services of

respectable practitioners. A very useful proviso to the Rules is that a solicitor accepting any reward for settling any claim without the consent of the Court shall be guilty of contempt of court. It may at first sight appear inequitable that no fees are allowed to counsel, but one remembers the origin and aims of the predecessors of the present-day barristers, and doubtless many flourishing practices will be founded upon successes obtained when appearing for poor persons.

At present, unfortunately, these provisions only apply to High Court actions; but they are so eminently practical and desirable that there should be no difficulty in adapting and applying them to matters which of necessity are dealt with in the County Courts. If there is any difficulty in regard to County Court proceedings generally, there appears to be no reason why they should not be extended to applications under the Workmen's Compensation Act, because a notable departure from the ordinary Rules of Court procedure has already been made by the Rules under the Act, which provide that, in addition to the right of any party to an arbitration appearing in person by counsel or solicitor, by leave of the Judge or arbitrator any party may also appear by—

(*a*) A member of his family.
(*b*) A person in his permanent and exclusive employment.
(*c*) In the case of a corporation, by any director, secretary, or officer in the permanent and exclusive employment of the corporation.
(*d*) An officer or member of a society or body of persons of which such party is a member or with which he is concerned.

Or, when death results from the injury—

(*e*) By any officer or member of any society or other body of persons of which the deceased workman was a member or with which he was connected.
(*f*) Under special circumstances by any other person.