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## Proceedings

# Third National Conference

# Workmen's Compensation For Industrial Accidents

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Chicago, June 10-11, 1910

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Including
A Brief Report of
The Second National Conference
Washington, January 20, 1910

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Copies may be had at fifty cents each from JOHN B. ANDREWS, *Assistant Secretary*, METROPOLITAN TOWER, NEW YORK CITY.

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Commissioner United States Bureau of Labor

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*Secretary* H. V. Mercer
Chairman Minnesota Employees Compensation Commission

*Assistant Secretary* John B. Andrews
Secretary American Association for Labor Legislation

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EXECUTIVE COMMITTEE.

(In Addition to the General Officers).

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Vice-Chairman, New York Commission

William E. McEwen,
Member Minnesota Commission

A. W. Sanborn,
Chairman Wisconsin Commission

Edwin R. Wright,
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Delegate from Michigan

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Member-at-large

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## CONTENTS

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# INTRODUCTORY NOTE.

The National Conference on Workmen's Compensation for Industrial Accidents was organized at Atlantic City, July 29-31, 1909. The second meeting was held in Washington, January 20, 1910. The third meeting, June 10-11, 1910, was in Chicago. The nature of the Conference is clearly set forth as follows:

BY-LAWS.

1. The name of this organization shall be the National Conference on Workmen's Compensation for Industrial Accidents.

2. Its purpose shall be to bring together the members of the commissions and committees of the various States and of the National Government, representatives to be appointed by the governors of the different States, and other interested citizens, to discuss plans of workmen's compensation and insurance for industrial accidents.

3. Its officers shall be a chairman, a vice-chairman, a secretary, an assistant secretary and a treasurer, to be elected annually and to hold office until their successors shall have been elected.

4. The business of the organization shall be conducted by an executive committee, consisting of the officers and of other members, said committee to represent at least ten different States.

5. The voting members of the Conference shall be the members, secretaries and counsels of all State Commissions or committees on the subject, one or more representatives to be appointed by the governors of different States, and ten members at large to be elected at any regular meeting of the Conference.

6. Individuals and associations of individuals may be admitted as associate members, and as such, be entitled to the privileges of the floor and to receive the publication of the Conference upon the payment of $2.00 per annum for each such individual member, and $25.00 per annum for each such association.

7. No resolution committing the Conference to any fixed program, policy or principle, shall be deemed in order at any of its meetings, except upon unanimous vote.

8. The funds of the Conference shall be derived from contributions from the commissions and committees on the subject, and from voluntary subscriptions.

The proceedings of the Atlantic City Conference are published in a volume of 340 pages, and copies may be had, at fifty cents each, from H. V. Mercer, of Minneapolis. The proceedings of the Chicago Conference (including as an Appendix on pages 124-135 a brief report of the Washington Conference, the proceedings of which have not been printed *in extenso*), may be had at fifty cents a copy by addressing John B. Andrews, Metropolitan Tower, New York City.

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# PROGRAM

[5]

**Third National Conference on Industrial Accidents and Workmen's Compensation**

Auditorium Hotel, Chicago

June 10-11, 1910

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*Chairman* CHARLES P. NEILL
Commissioner United States Bureau of Labor

*Secretary* H. V. MERCER

Chairman Minnesota Employees' Compensation Commission

*Assistant Secretary* JOHN B. ANDREWS
Secretary American Association for Labor Legislation

**FRIDAY FORENOON SESSION, 9:30**

BRIEF REPORTS FROM STATE COMMISSIONS

*Minnesota*: H. V. Mercer, William E. McEwen, George M. Gillette.

*Wisconsin*: A. W. Sanborn, E. T. Fairchild, John J. Blaine, Wallace Ingalls, C. B. Culbertson, Walter D. Egan, George G. Brew.

*New York*: J. Mayhew Wainwright, Joseph P. Cotton, Jr., Henry R. Seager, Crystal Eastman, Howard R. Bayne, Frank, C. Platt, George A. Voss, Cyrus W. Phillips, Edward, D. Jackson, Alfred D. Lowe, Frank B. Thorn, Otto, M. Eidlitz, John Mitchell, George W. Smith.

*Illinois*: Ira G. Rawn, E. T. Bent, Robert E. Conway, P. A., Peterson, Charles Piez, Mason B. Starring, M. J., Boyle, Patrick Ladd Carr, John Flora, George Golden, Daniel J. Gorman, Edwin R. Wright.

*New Jersey*: William D. Dickson, J. William Clark, Samuel Botterill, John T. Cosgrove, Harry D. Leavitt, Walter E. Edge.

*Massachusetts*: James A. Lowell, Amos T. Saunders, Magnus W., Alexander, Henry Howard, Joseph A. Parks.

*Ohio*: (Members to be appointed by the Governor.)

[6]

GENERAL DISCUSSION "Workers' Compensation Code"

(Outline for Discussion)

Representatives of the Federal Government, Members of State Commissions, Delegates designated by Governors of States, Representatives of Manufacturers' Associations and Trade Unions, Insurance Companies, Russell Sage Foundation and Association for Labor Legislation, and other interested organizations and individuals.

**FRIDAY AFTERNOON SESSION, 2:00**

WORKERS' COMPENSATION CODE (Discussion continued).

**SATURDAY FORENOON SESSION, 9:30**

SPECIAL DISCUSSION:

Classification of Hazardous Employments.
Repeal of Common Law and Statutory Remedies.
Contract vs. Absolute Liability.
Limited Compensation vs. Pension Plan.
Court Administration vs. Boards of Arbitration.

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# PROCEEDINGS

[7]

# Third National Conference
# Workmen's Compensation For Industrial Accidents
# Chicago, June 10-11, 1910

The third meeting of the National Conference on Workmen's Compensation for Industrial Accidents brought together from widely separated parts of the United States a large number of those who represent the serious thought of the country on this most urgent question. Members of State Commissions in Minnesota, Wisconsin, Illinois, New York and Massachusetts were present and submitted reports. Thirty-eight official delegates were appointed by the governors of States, and, in addition, representatives were present from manufacturers' associations, trade unions, insurance companies, the Russell Sage Foundation, the Association for Labor Legislation, and

other interested organizations. Many individuals from the shops, the offices and the universities, attended the various sessions and listened to the arguments of the speakers or participated in the discussions.

Among those present who took an active interest in the meetings were:

Jane Addams, Hull House, Chicago; T. W. Allinson, Henry Booth House, Chicago; W. A. Allport, Member Illinois Commission on Occupational Diseases and State Delegate; L. A. Anderson, State Insurance Actuary, Madison, Wis.; John B. Andrews, Secretary American Association for Labor Legislation, New York City.

James V. Barry, State Delegate from Michigan; William P. Belden, Cleveland Cliffs Iron Company, Mich.; E. T. Bent, Member Illinois Commission; John J. Blaine, Member of Wisconsin Commission and State Delegate; M. J. Boyle, Member of Illinois Commission; Frank Buchanan, Structural Iron Workers' Union, Chicago; Henry W. Bullock, representing Indiana State Federation of Labor.

Patrick Ladd Carr, Member Illinois Commission; Robert E. Conway, Member Illinois Commission; [8]
Clarence B. Culbertson, Member Wisconsin Commission and State Delegate.

Edgar T. Davies, Chief Factory Inspector of Illinois and State Delegate; Miles M. Dawson, Insurance Actuary, New York City; F. S. Deibler, Northwestern University, Evanston, Ill.; M. M. Duncan, State Delegate from Michigan.

Crystal Eastman, Secretary and Member New York Commission; Herman L. Ekern, Deputy Commissioner of Insurance, Wisconsin.

Henry W. Farnam, President American Association for Labor Legislation, New Haven, Conn.; John Flora, Member Illinois Commission; Lee K. Frankel, Metropolitan Life Insurance Company, New York City; Ernst Freund, University of Chicago and President Illinois Branch A. A. L. L.

John H. Gray, University of Minnesota and President of Minnesota Branch, A. A. L. L.; John M. Glenn, Director Russell Sage Foundation, New York City; George Golden, Member Illinois Commission; Daniel J. Gorman, Member Illinois Commission.

Walter D. Haines, Member Illinois Commission on Occupational Diseases and State Delegate; Alice Hamilton, Expert Investigator Illinois Commission on Occupational Diseases; Samuel A. Harper, Attorney Illinois Commission; Leonard W. Hatch, Statistician, New York State Department of Labor; Charles R. Henderson, Secretary Illinois Commission on Occupational Diseases and State Delegate; J. C. A. Hiller, Missouri Commissioner of Labor and State Delegate; Frederick L. Hoffman, Statistician Prudential Insurance Company, Newark, New Jersey.

Wallace Ingalls, Member Wisconsin Commission and State Delegate.

Sherman Kingsley, United Charities, Chicago.

Thomas F. Lane, Missouri State Delegate; Julia Lathrop, Director Chicago School of Civics; James A. Lowell, Chairman Massachusetts Commission.

Charles McCarthy, Chief Wisconsin Legislative Reference Library; Edwin M. McKinney, Chicago; Ruben McKitrick, University of Wisconsin; Floyd R. Mechem, University of Chicago; H. V. Mercer, Chairman Minnesota Commission and State Delegate; H. E. Miles, National Manufacturers' Association and Racine-Sattley Company, Racine, Wis.; John Mitchell, Member [9]
New York Commission; William H. Moulton, Sociological Department, Cleveland Cliffs Iron Company, Mich.

Cecil Clare North, De Pauw University, Indiana.

Irene Osgood, Assistant Secretary American Association for Labor Legislation, New York City.

Joseph A. Parks, Member Massachusetts Commission; P. A. Peterson, Member Illinois Commission; Charles Piez, Member Illinois Commission; Ralph F. Potter, Attorney Ocean Accident and Guarantee Corporation, Chicago.

Samuel Rabinovitch, Milwaukee Relief Society; G. A. Ranney, International Harvester Company, Chicago; Benjamin Rastall, University of Wisconsin; A. Duncan Reid, Ocean Accident and Guarantee Corporation, New York; C. T. Graham Rogers, Medical Inspector New York Department of Labor; David Ross, Secretary Illinois State Bureau of Labor.

Amos T. Saunders, Member Massachusetts Commission; A. W. Sanborn, Chairman Wisconsin Commission and State Delegate; Ferd. C. Schwedtman, National Association of Manufacturers, St. Louis; Henry R. Seager, Member New York Commission and President of the New York Branch, A. A. L. L.; A. M. Simons, Chicago; Geo. W. Smith, Member New York Commission; John T. Smith, Secretary Missouri State Federation of Labor; Mason B. Starring, Member Illinois Commission; H. Wirt Steele, Charity Organization Society, Baltimore, Md.; Ethelbert Stewart, United States Bureau of Labor; Charles A. Sumner, City Club, Kansas City, Missouri.

Edward G. Trimble, Employers' Indemnity Exchange, Houston, Texas; James H. Tufts, University of Chicago.

Paul J. Watrous, Secretary Wisconsin Commission and State Delegate; Agnes Wilson, United Charities, Chicago; Edwin R. Wright, Member and Secretary Illinois Commission.

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## FIRST SESSION, FRIDAY, JUNE 10, 1910, 9.30 A. M. [10]

In the absence of Commissioner Charles P. Neill, of the United States Bureau of Labor, who was detained in Washington by urgent official matters, the first session of the Chicago Conference was opened by the Secretary, H. V. Mercer, Chairman of the Minnesota Employes Compensation Commission, and he was unanimously elected temporary chairman for the Chicago meetings.

In formally opening the Conference and assuming the chair, Mr. Mercer said:

CHAIRMAN MERCER: According to the program here, the first order of business for this meeting is brief reports from the different state commissions. I understand there are seven States that have commissions working on the question of compensation for industrial accidents, or perhaps, more properly speaking, for injuries occurring in the course of and arising out of the industries in which they are employed,—for "accidents," according to the courts in some States, do not mean what we want to cover. Some courts use that term in the popular sense; some use it as including, and some use it as excluding, any idea of fault or negligence.

In view of the fact that you have made me temporary chairman, it would hardly be proper for me to open this meeting with a report from Minnesota, and hence I will call upon the other States first.

(Upon the Call of States by the Chairman, the following responses were given.)

WISCONSIN.

SENATOR JOHN J. BLAINE: Our Committee is a legislative committee made up of three members of the Senate and four members of the Assembly. The committee was appointed at the last session of the Legislature in 1909. They have been diligently pursuing the course of their investigations with the object of arriving at a bill which the committee can recommend to the Legislature for its adoption. It was a few months before we got to work after our appointment and it was not until last April that we drafted the first tentative bills.

I would state briefly that the first tentative bills were drafted with the object of drawing out discussion on the part of the employers and employes. We had held some meetings previously, and those who appeared before us were somewhat in the dark as to just what we intended to do and wanted to do, and therefore we drafted tentative bills to which they should direct their fire of criticisms and suggestions. [11]

The first bill presented was a bill destroying the common law defenses, assumption of risk, the co-employe doctrine, and modifying contributory negligence to that of comparative negligence. The second of the first tentative bills was a compensation measure. The purpose of the first bill was to use a "constitutional coercion," as we have termed it, making the compensation bill practically compulsory, but not in the language of the bill declaring it compulsory, hoping in this way to bring it within the constitution. That destroyed the common law defenses and then gave the employer the right to come under the compensation act. Also in that bill the employe was presumed to be acting under that bill unless he contracted to the contrary at the time of entering his employment.

The matter of compensation and the details of the bill are not of particular interest to the Conference, because they are questions concerning which there is very little contention, and they resolve themselves practically to the point of working out the question of arbitration and the measure of compensation and the manner of arriving at compensation, and such court procedure as is necessary, in detail.

We found that our first tentative bills performed the exact object which we intended they should. Neither the committee nor any of its members, I believe, had any idea that the first tentative bills represented their individual ideas or even the idea of the committee as a whole; but they certainly resulted in bringing about discussion, and after those bills were sent about the State to employers and employes they all got busy and we had very valuable and helpful discussions upon those bills. We held a conference in Milwaukee lasting about a week. There appeared before the committee representatives of the Merchants' and Manufacturers' Association of Milwaukee, and from the northern part of the State representatives of the lumber and various other industries. We also had the State Federation of Labor.

After that meeting we met again in May and drafted our second set of tentative bills, the first bill destroying the defense and assumption of risk, and also the co-employes doctrine as a defense, but embodying the question of contributory negligence. That bill, if enacted into law, independent of every other act, would make all employers of every nature subject to the law, whether the employer was a farmer, a manufacturer or whatsoever he might be. The second bill provided practically the same as our other bill. [12]

We found at these public hearings that the question of who shall pay for the insurance, as it is called, is not a matter of great contention in Wisconsin. I think the larger manufacturers, and the great majority of all of them, favor paying the compensation themselves and either assuming the obligation, or organizing mutual insurance companies or protecting themselves with liability insurance policies. There are a few who believe that the employes should contribute a small portion toward the compensation, but I do not believe that is the general sentiment among the employers and manufacturers in Wisconsin.

I think the only serious problem we have to meet is whether we shall take away the common law right from the employe. The Federation of Labor of Wisconsin is very much opposed to that feature of our bill, and personally I am opposed to it. I have expressed that opposition at all the hearings and directed many questions along that line to ascertain the sentiment of employers and employes.

Our bill creates the presumption that an employe is acting under the act unless he contracts to the contrary at the time of his employment, and of course the idea of that is to get around the constitutional provisions; therefore, there will be consent to act under the law, and consent to arbitration, and hence it will no doubt be constitutional. But the employes, through their representatives, believe that they should have the right of selection after the injury has occurred. The Federation bill that they have prepared, follows practically the same lines as the English act, giving the double remedy of a common law right of action, and then also compensation in case of their failure to recover under the common law; but they have gone so far, through their representatives, as to state that they would not ask for that provision in its entirety. While I am not going to speak authoritatively as to just what they will or will not do, I think it is their idea that if they are given the right to elect at the time or within a reasonable time of the injury, [13] whether they shall proceed under the common law remedy or accept the provisions of the compensation act, that they will be willing to waive the double remedy, and whichever act the employe chooses to proceed under, will be a waiver of all other remedies.

That question is going to be debated by both sides and I think if we are going to meet with any danger of defeat in promoting this legislation it will be upon that one subject, and personally I hope that the employers will find that under a reasonable bill, with reasonable compensation and protection drawn about them, so there will be no danger to mulct them in any great damages, that they will be willing to accept some provision giving the employes the right of election at the time of the injuries.

Under the second tentative bill we have had public hearings throughout the State, particularly in the industrial centers, and concluded those hearings last Friday. We expect to meet as a committee, redraft our bills and get them into substantial form, and then I suppose, after we have determined what the committee intends to do as a committee in submitting its report to the Legislature on the essential points, we will then have public hearings and the questions that are debatable will be debated before that committee at these hearings, and then we will make our report accordingly.

## New York.

Miss Crystal Eastman: The New York Commission is in a peculiarly fortunate position. Our bills have both passed and one of them has already been signed by the Governor, so that to-day our labors would be all over and we could return to rest, except for the fact that we still have to inquire into the causes and prevention of industrial accidents, the causes and effects and remedies of non-employment, and the causes and remedies for the lack of farm labor in New York State. You will see from this that we received a life sentence on the New York Commission. The Legislature evidently thought it would give to us the solution of all the problems of modern industry and keep the reformers quiet for fifty years. However, we have finished up the Employers' Liability part of our job and we feel that we have done our part of the work in that regard and now have put it up to the Legislature.

When I was planning what I should say here, I rather thought I would discuss the two bills which [14] we have introduced, and passed, and leave out the discussion of how we did the work, but since I have come here I believe it is more important to tell you how we did it, and take it for granted that you know about the bills and are familiar with them.

Our work, to my mind, is divided into five different sections. In the first place we had reports specially prepared for the Commission, one on the Employers' Liability Law in New York State and the other States. That was prepared by our counsel and sent to every member of the Commission early last summer. Then we had a report prepared on the Foreign Systems of Compensation and Insurance: That was mailed to the members of the Commission for their information. Then we had a report on Relief Associations in New York State, which was very voluminous and was not generally mailed, but was kept in the office for reference.

The next section of our work was printed inquiries sent to all the employers whom we could get the names of from the State Department of Labor, and to all labor unions on record. These inquiries were just about the same as those sent to the employers, and in a general way we asked both the labor unions and the employers what they thought of the present law on employers' liability, how they thought it met the situation; and we asked them how they would like a law on workmen's compensation, describing it very briefly. We received replies from only a small proportion of the inquiries we sent out, but a large enough number to give us some general idea of the feeling of both the employers and the laboring people in the State on this subject. I can say positively, however, that we found no satisfaction; practically nobody liked the law. The employers disliked it for one reason and the workmen disliked it for another, and so nobody was satisfied with it.

Another printed inquiry we sent to the insurance companies. This was more in the line of investigation, however, as we got from them not opinions so much as figures showing how much they had received in premiums from employers for liability insurance, and what proportion of this had been spent in paying actual claims, thus showing us what proportion was, so to speak, wasted in the business of defending claims.

We then wrote letters, not printed inquiries, but letters containing a list of questions to a great many lawyers, and to all the judges in the State, asking their opinion about the constitutional [15] questions involved. That, I think, ended the inquiry section of our work.

Then we held public hearings, five or six up the State and as many in New York City, and tried to make the invitations as general as we could. Many of us felt that those hearings were not going

to be important and perhaps were a waste of money, but after we had them I believe we all felt that they were worth while. They perhaps did not furnish us with any definite statistical information, but they did put us in touch with the feelings of the people of the State on this subject, and gave us a more concrete view of the subject than we could have gotten by correspondence or by any statistical inquiry, and brought us in touch with the people on both sides of the question, who were interested in the problem. But quite apart from the value to us, of these written inquiries and of the public hearings, in informing us on the situation, they were valuable in arousing interest all over the State, and in educating the public in regard to the problem.

We were particularly gratified to see the way in which labor unions seized the opportunity to become interested and to educate themselves in regard to employers' liability and workmen's compensation. When we started out last fall most of the labor unions that answered our inquiries did not know what we were talking about, and now I hardly think there is a union of any size in the State that is not in a position to know what it wants in the matter of employers' liability and workmen's' compensation.

The next section of our work was statistical inquiry—a regular statistical investigation. The bulk of this was done for us under Mr. Hatch's direction at the New York State Labor Department. A study was made of some fourteen hundred actual industrial accident cases, both injury and death, to show what was the loss of income to the man injured, how much he received from the employer, how much he paid to a lawyer and what was the effect of the accident upon his family; in other words, a study of the economic cost of work accidents.

In addition to that Mr. Hatch conducted an inquiry into the cost of industrial accidents to some three hundred employers, showing how much they paid in a year on account of industrial accidents and into what different channels that money went; how much of it went to employers' liability and insurance premiums; how much went to the workmen and how much to the hospitals [16] and so forth. All of this was exceedingly valuable in giving us information as to the conditions in our own State.

In addition to this the Commission conducted a similar investigation of three hundred fatal industrial accident cases to determine their economic effect upon the family and the income loss, of compensation received and all that. These fatal accident cases we secured in a perfectly impartial way by taking a year's fatal industrial accidents reported to the coroners of Manhattan Borough and Erie County, where Buffalo is situated. As a result of these two inquiries we have a mass of statistics on this subject. We were able to put into our report a statement, from the statistics, of just about what proportion of workmen who were injured received anything to compensate them for the income loss, and with regard to the workmen killed, what proportion of the dependents received anything. Those four divisions, I think, cover our preliminary work.

Then came the business of preparing and writing the report. The rough draft was prepared by two or three members of the Commission, and the counsel, in different sections. When it was in printed proof for the first time, Senator Wainwright, the chairman, called the whole Commission together and informed us that he intended to make us read the whole report aloud, all sitting together, so that every member of the Commission might feel that he had written the report and that it was his report. That idea astounded me, I will admit, when I first heard it, because I thought it was going to take us the rest of the year to do it; but it turned out to be a very excellent plan, and we actually did that. We sat down for three days without stopping, except for meals, and read the report aloud, and there is no member of the Commission who did not make suggestions, and valuable suggestions, and I think I may say that we all feel that it is our report.

When it came to the bills which we introduced we followed somewhat the same plan. We went over every line and word of the bills, of course in much greater detail than we did the report, and the bills are the result of a giving in here and a giving in there, as you can readily imagine. They did not represent just exactly what every one of us wanted to do, but they represent what we could agree to do, and the Legislature has done us the honor to take our advice.

And now just a word in regard to these bills. The first one is called the Optional Bill. It does two [17] things: It remedies the glaring injustice of the present law on the basis of negligence by modifying the fellow-servant rule, by making all fellow-servants in positions of authority vice-principals instead of fellow-servants; by doing away with the extreme application of the assumption of risk rule which allows an employe to assume the risk of an employe's negligence by remaining in employment, and changes the burden of proof of contributory negligence over to the defendant. Those three things we felt it to be necessary to change in the employer's liability law on the basis of negligence, even if we never changed it in any other particular. In addition to this feature of the bill, there is afforded to the employes and employers, if they wish to escape this situation, by an amendment to the employer's liability law, the opportunity of making a contract. That is the option feature of the bill; there is nothing particularly interesting or original about that. Some members of the Commission were for it because it would force the employers into compensation, and some members were for it because they thought it remedied an injustice in the present law which they could not stand for, but, at any rate, all but two of us were able to agree on that.

Then the second bill, which we call the Compulsory Compensation Act for dangerous trades, is our solution of two difficulties which we met and which, no doubt, all of the other commissions are having to meet. These two difficulties are the constitutional difficulty, the fact that we have written constitutions limiting our powers along all these lines; and, secondly, the interstate competitive difficulty, the fact that in this country our laws are made by States and we have state

legislative lines, but no state competitive lines—the old cry of the manufacturer, that if you put a burden upon him in New York State he cannot compete with a manufacturer in Pennsylvania and New Jersey, and will, therefore, either have to go out of business or out of the State. That difficulty of interstate competition we felt to be a real one. Whether it would actually drive the manufacturer out of business or not, it would inevitably hinder the passing of our bill, because the manufacturers of the State in a body would oppose it.

The constitutional difficulty, to be a little more definite, in our case seemed to be pretty serious; we had only two lawyers in the State who wrote us that they thought a general compulsory [18] compensation act similar to the English law would be constitutional, but we had a great deal of advice to the effect that if we could draw our bill so it would apply to the risk of the trade, and make the compensation depend upon the inherent risk of the trade, that that would be constitutional.

With these two difficulties in mind we drew the bill applying to dangerous trades. As you know, it provides compensation for all workmen injured in eight specially dangerous trades, if they were injured either through the fault of the employer or any of his agents, which is plainly perfectly constitutional; or if they were injured in any sense through any risk inherent or necessary as a risk of the trade. The bill does not take away any statutory or common law rights that the workman now has, but he must choose between one or the other. If he begins proceedings under the compensation act, he loses his right to sue and *vice versâ*.

The importance of this bill, in my mind, is very great. I think that is the way to go at it in this country. If the employer and the workman both profit by the enterprise they should both assume the risk of the trade, and that principle, I think, is what is established by our compulsory compensation bill.

I want to make clear that the list of dangerous trades in this law is not an inclusive list of dangerous trades by any means. There is no reason why we should draw the line where we did draw it. Our reason in selecting these dangerous trades instead of all dangerous trades, as we originally had our list drawn, was a purely utilitarian opportunist reason. It was our solution of the second legislative difficulty in this country; that is, the interstate competition. We thought that it would be a good plan to get our entering wedge in on the industries which did not directly compete with other industries outside of the State. For instance, the builder in New York State competes with the builder in New York State, generally speaking; and the railroad in New York State competes with the railroad in New York State, generally speaking, and not with the outside railroads. We are quite frank in saying that we thought we could get this bill passed if we did not make it hit the manufacturer to begin with. We intend that it shall cover him in time, and just as soon as we can, make it cover him; but it seemed a fair as well as a wise thing to introduce the principle and get the employers used to the burden, and get the insurance rate adjusted for [19] injuries, so that it would not be a serious competitive difficulty.

Those two reasons, then, explain this bill; we limited it to the risks of trade instead of having it cover all accidents in the course of employment, as the representative list did, because we believed that that was the constitutional line for us to act on, and we limited it to those dangerous trades which, generally speaking, are not involved in interstate competition, because we thought we could pass it easier and it would be fair to try it out on those employers first.

Prof. Henry R. Seager (New York): I should like to add just a word along the line of the practical difficulties that all of our commissions face when it comes to getting legislation. Some members of the New York Commission felt that it would be a mistake to try to make any report at all this last winter when the proposal was first advanced. We felt that we had a very big problem. That, in addition to studying the experience in this country and getting reports on European laws, we ought to send some one over or go over ourselves to the other side and see just how the European laws operate. The consideration that finally led us to make a report, and try to get legislation, was the political situation in New York.

As the winter advanced it became very clear that it was a highly opportune time to get through legislation that had popular sentiment behind it. The legislative members of our Commission were so impressed by that aspect of the matter that they were impatient, some of them, to bring in bills without any report at all to back them up, and that consideration finally led all of us to feel that we should hurry as much as we could and get in the best report we could in the short time that was allowed, with the hope that the bills we recommend, if reasonable and fair, would be passed. It was that situation that led us to make a report which at some points was not altogether satisfactory to the members of the Commission; and that consideration, I think, justified our action because, as it turned out, the Legislature was in a mood to act on our recommendations. The voluntary law was a bill, aside from the compensation feature of it, that had slumbered in Albany for five or six years in spite of the efforts of the labor representatives to have something done. That it was a favorable situation was shown by the comparative ease with which that bill was passed, in somewhat modified form, when we put ourselves behind it.

It is those practical considerations, gentlemen, it seems to me, that we must consider quite as [20] much as the ideal solution of this question for many years in this country. I say that because as a professor of political economy, as a theorist, I perhaps would not be expected to take that view of the matter.

George W. Smith (New York): I was sort of a moderate edition of the employers' representative on the New York State Commission. I was one against about thirteen. Of course, you can imagine that my advice could not have been considered very seriously, but I am willing to say that they certainly did give me considerable consideration, for the reason that I was not really a radical

against any legislation that would be fair; and I feel that the employers of New York State felt largely as I did.

I cannot help but remark, however, about the point that Professor Seager raised, of the opportunity that seemed to present itself at this session of our Legislature. I do not suppose I ought to criticise, but I hope that similar conditions will not exist in other States at the time this legislation is up, because I think it is of a very important character, and should not be put through for any personal reasons or in order to bring political capital to any of the legislative members. I suppose it is pretty well known that there were a great many shattered reputations in the Legislature of New York State this year, and it is always a pretty handy thing to have around an opportunity to do something for the boys that work hard for a living. I do not blame those that were in favor of this legislation for taking advantage of that very favorable opportunity, but it certainly was a good opportunity and was well taken advantage of.

I had to smile, however, on a number of occasions at the attitude of some of the labor representatives. They did not seem to realize, a good many of them, how important this legislation was and how beneficial it was to them; but if they could have gone behind the scenes, and had a heart-to-heart talk with some of the employers, they would have realized that the employers did not like it very well.

As for one of the bills being designated as a voluntary or optional bill by the removal and absolute wiping out almost of all of the employers' defenses, it practically makes that almost a compulsory bill. However, I believe that all the employers in the country realize that the time has arrived [21] when some fair legislation must be enacted, and the only thing that I think should be well considered is not to go so far that you are going to put the country in a bad financial state.

Prof. Seager: If Mr. Mitchell would say something about the labor situation when we started out I think it would be very interesting.

John Mitchell (New York): The measures have been discussed so thoroughly by the other members of the Commission that I shall not attempt to discuss them now. When this Commission was first appointed in New York State, as Miss Eastman stated, the workmen knew very little about the systems of compensation in Europe, and they knew little about the principles of workmen's compensation. The Commission was appointed not because of a demand for workmen's compensation, but because of a demand for a comprehensive system of employers' liability. But after the Commission was appointed, and it was suggested that they go into an investigation of workmen's compensation, the unions took the matter up and made investigations on their own account, and drafted bills which they thought would cover the matter to their satisfaction. Of course, as was to be expected, they asked for a rate of compensation that was very much higher than anything that prevailed in Europe.

While I, personally, was in sympathy with the workmen in their desire to have the very best system of compensation that it was possible to obtain, and one better than any they have in Europe, yet I think that the more conservative of the trade-union workmen recognized that we could not go very far beyond the system prevailing in England or in Great Britain until other States, and particularly the adjoining States, should also take up the matter. The consequence is, however, that as the matter was developed, and as the workmen were brought into the discussion of the matter with the Commission, that very many of them modified their original demands and were willing to accept the principles laid down both in the optional and in the compulsory bills which have passed the Legislature.

It is, of course, not to be expected, either in New York or anywhere else, I assume, that the bill passed by the New York Legislature meets at all the desires of the workingmen. That is to say, they will continue to ask what they will eventually succeed in having, a compulsory law that will include all the trades. I think there is no special demand for a bill to include agricultural and [22] domestic service.

The great difficulty right now in New York is concern as to the scale of compensation. The New York workmen are not satisfied with one-half wages. They have asked recently that the bill be made full wages. I think, however, that somewhere between one-half wages and what they are asking will be accepted as a final solution of the difficulty.

I want to make this one personal observation about these measures, and in this respect I think my views are not quite in accord with the views of all of my fellow-workers. I think the purpose of all this legislation should be first to do substantial justice to the workingmen, and I think the second consideration should be to take out of the courts all this long and expensive litigation, in order that the money that is not paid by employers, or whatever is paid by them, may be used for the relief of those who are suffering from industrial accidents. I do not believe, however, that the workmen should have the right to sue his employer, and, failing to win his suit, to go back and receive his compensation. I differ with most workmen in that respect, because I think if he has the right first to sue, and, failing to win his suit, to then accept the scale of compensation, that it is a temptation, an almost irresistible temptation, for him to sue, because it costs very little to enter the suit, and inasmuch as he knows in advance that if he fails to win the suit he will have his compensation any way, too many workmen would elect to sue perhaps on a contingent fee, and then go back if they failed to win and take the compensation. I do believe, however, that he should have the choice of suing under the employer's liability law or accepting the compensation, but, as I say, I do not think he ought to have both rights. I believe that perhaps the labor men who have made the most thorough investigation into the subject will agree with me that it is a fair proposition to give him his choice, but not both choices.

MASON B. STARRING (Illinois): The Chairman of the Illinois Commission, Mr. Rawn, is unavoidably absent to-day and probably will not be able to attend the conference to-morrow. This second Illinois Commission is young. The act creating it was passed at a special meeting of the Legislature, and the appointments to membership on the Commission are of very recent date. In [23] convening the Commission, the Governor of the State of Illinois expressed the hope that the members of the Commission would not indulge in deliberation or consideration of the features of a bill until first they had fully advised themselves as to the facts which would necessarily and properly govern the conclusions which they hoped to attain. Illinois, therefore, is in the position of being a student of this matter, and the progress and work of its Commission so far, I believe, to be largely that of investigation. We come here to learn. And were it not for the fact that the question of age destroys the illusion, when we heard the lady from New York (Miss Eastman) speak, we certainly would have felt that we were "sitting at the feet of Liberty Enlightening the World."

I want to suggest to this meeting, Mr. Chairman, that there is no one connected with our Commission so familiar with all its workings, looking at it both from the side of the employer and the employe, as is our secretary. The Commission is composed of six men chosen from among the most respected and eminent leaders of the workingmen in the State of Illinois, supplemented by a selection by the Governor of six men from the ranks of the employers. The Chairman is Ira G. Rawn, president of the Monon Railroad, and the Secretary is Edwin R. Wright, president of the Illinois State Federation of Labor. I would suggest, Mr. Chairman, that it might please the members of this meeting, and certainly it would please the members of the Illinois Commission, if you would ask Mr. Wright to speak to you.

EDWIN R. WRIGHT (Illinois): We have not in Illinois progressed far enough to make any report showing any particular progress. So far we have been trying to find ourselves, and to find a starting point from which we can work. It took us a meeting or two to become acquainted with each other, and another meeting or so to try and understand the different points of view.

For years and years we have been going to the Legislature in Illinois pleading for protection; a measure that would protect our lives, a measure that would protect those who are dear to us, and year after year we have failed, until at the present time patience has almost ceased to be a virtue. We expect this Commission will make an investigation into how the men in the State of Illinois work and the compensation that is paid the injured workmen when any compensation is paid at [24] all, and the relief that is given a man's family after the breadwinner is sacrificed on the altar of industry. The conditions are bad in Illinois; I do not believe they are any worse anywhere. I do not believe a man's' life is worth very much in Illinois. I am quite sure of it, and before we get through with the investigation I believe we can show that an employer owning a cart or a wagon, two good draft horses attached to this wagon and a good driver on the wagon, if an accident should occur blotting out the team, wagon and driver, that the employer, through our court system, values each of the horses attached to the wagon and the driver at about the same value; one is worth about as much as the other under our present court system. That is entirely wrong. At least, we believe so.

To the men who are injured at the present time there is very little being paid. I believe, and I am speaking my own belief, I am sorry to say, instead of speaking the opinion of the Commission, that we should have an automatic compensation law in the State of Illinois, where the man will know absolutely what he is going to receive if he is injured; what his family is going to receive if he is killed. It does not make much difference whether we have a double or single liability. I prefer, of course, a double liability, but I find that under our court system a man does not get nearly as much under the double liability as he could expect to receive under a single liability law, and that if we would insist upon a double liability in this State we would have to cut down the other provisions of the bill to secure it.

We have progressed far enough to put just exactly this provision in a circular form in the hands of every trades unionist in the State of Illinois at the present time, and we are going to find out what the rank and file of the workers want. Just as soon as the six labor members on the Commission find out what the workers of the State want we will then try to incorporate it into the bill. A circular has also gone forth from the Commission to the employers of the State, trying to crystallize their ideas into a concrete proposition, and then the six members of the Commission representing the employers and the six members representing the workingmen will sit down at a table and thresh this out just as a committee would do that was trying to settle a wage scale, and I believe we will arrive at some understanding; and when we arrive at an understanding with our [25] employers who represent organized capital in the State of Illinois, and six trade unionists representing the organized workers in the State of Illinois, I believe that that position will be accepted by both sides, and that when we go to the next Legislature they will incorporate that into law, and it will be signed by the governor and put into full force and effect.

I want to say just a word as to why we were anxious to have the Commission organized as it is. The original plan of the provision provided that the public should be represented, but the public is not particularly interested in this matter, not nearly so much as the other parties. The life of the employer is at stake in this matter. If we build up conditions so high that he will have to leave the State or abandon his property, he cannot afford to pay wages to the workingmen. We, on the other hand, have all we have to lose; we have not only our trade, but we have our lives at stake, and the public has no voice in it. Organized capital, through the Manufacturers' Association, the Mine Operators' Association, and so forth, has a voice. Organized labor has a voice, but if the public has any voice at all it does not amount to a great deal in the State of Illinois. We who have

put everything that we possess into the balance in this matter expect to get something out of it which is definite, just and fair; and we have good reason to expect that after we have taken this matter up and threshed it out from one end of the State to the other that it will be to the advantage of the Legislature to meet us half-way. I have been in the Legislature as a labor lobbyist for some years and I have had a little experience in such matters.

I do not know, Mr. Chairman, as I can enlighten you very much on what we are going to do. We have taken up the State Bureau of Labor report which we received from the secretary of the Bureau of Labor, who is here present, and we tried to get at the real meaning of that report. We intend to take up the state factory inspector's reports also, and try to get at and understand the real meaning of all these figures in these reports. It is one thing to publish column after column of figures which nobody reads and nobody pays any attention to, but it is an entirely different proposition to get back of those columns of figures and see what they stand for. These columns of figures stand for men's lives and they stand for the happiness of the family; yes, and they stand [26] for the prosperity of the employer as well.

In looking up a state report the other day I found an analysis that interested me. It showed apparently that every householder in the State of Massachusetts was paying $30 a year indirectly on account of the industrial accidents and occupational diseases that occurred in that State. That is where the public comes in; it costs the public too much. Should not that be shifted back upon the employer, and if it is shifted back upon the employer, the employer will, if possible, prevent the accidents, because it costs a great deal less to furnish suitable protection for the machinery than it does to pay damages to the injured employe or to the families of those who are killed.

I want to say this for the trades unions; we do not wish to rob the employer; we do not wish any bill that will materially injure the employer. We want to stop the accidents. We do not want damages from the employers; we want our brothers to remain alive and able to do their work.

Chairman Mercer: Is there any member of the first Illinois Commission present?

Prof. Ernst Freund (Illinois): Professor Henderson asked me a few years ago to give a little assistance in the drafting of the measure that the Commission had decided upon, and that is the only share I had in the work of that first Illinois Commission. That Commission was appointed for the sole purpose of reporting upon schemes of insurance. The whole matter of compensation was, therefore, only indirectly involved; at the same time the report as to insurance was unlimited, as far as I know, and not limited to accidents, but the Commission thought wise to confine their recommendations to an insurance scheme covering simply the matter of accidents.

They found that it would have been extremely difficult to recommend or try to secure some plan of compulsory insurance, and for that reason it was finally suggested that there should be an opportunity offered for the employers to make a contract with the employes by which the employers and the employes together might substitute for the liability under the common law or statute a plan of insurance which was worked out with some care, to some extent upon the basis of the English act, one of the main features being that the employers and employes should contribute each one-half of the insurance premium. But the whole scheme was a tentative one, [27] especially this feature, which was so much opposed, of the sharing of the cost of insurance between the employers and employes, and it was by no means suggested as a final solution. The whole matter was a tentative method of dealing with this problem, it being believed that in this way the plan of insurance might get a foothold in the State and might approve itself by experience.

At the same time there was a very strong opposition and perhaps Mr. Wright could speak to that point, because Mr. Wright was one of those who opposed that scheme very strongly, and nothing came of it. I may say that in the same year Massachusetts passed a very similar measure, and that measure has been in effect now for several years, I believe, with very little practical result.

I think the failure or lack of suggestion of the plan of Massachusetts was due to the fact perhaps that the public was not sufficiently familiarized with the scheme, and no determined effort was made to introduce it.

As I say, the matter was suggested in Illinois as a tentative solution, not by any means as anything final; and I think it was felt that a compensation scheme of some kind would probably be called for sooner or later, and that was the reason the Legislature was urged to make provision for a compensation commission, which commission is now studying the problem.

## Massachusetts.

James A. Lowell (Massachusetts): I am the last thing in commissions, together with these other gentlemen with me. We are just about a day old, and not quite that old. We were appointed in a great hurry when the bill went through, in order to get here to listen and find out what was being done by the other States, and in order to make up our mind what should be done in Massachusetts.

The only thing I desire to say now is to explain the kind of a commission this is. Massachusetts has got so far under the resolution appointing us that they say, "We want other laws." We are not to investigate the question of whether other laws would be good or not; the Legislature has said, "We want other laws. The present laws are not satisfactory, and we will appoint five residents of Massachusetts to look into the matter and to see what kind of other laws are proper," and it is their command to us that we report at the next Legislature before the middle of next January [28] some kind of a bill to change the law relating to injuries of workmen in Massachusetts.

As perhaps most of you know, there have been two commissions in Massachusetts, or, rather, one

Commission and a Legislative Committee. The first Commission sat in 1904, and Carroll D. Wright was the chairman. A great many things were referred to that Commission, not only this subject, but the subject of injunctions and the subject of blacklisting, and so on. That Commission reported a workmen's compensation act framed after the English act. That has come up before each succeeding Legislature since then. Then in 1907, I think it was, a Legislative Committee was appointed and a great many things referred to them, not only this present subject, but also boycotting and things of that kind. That committee did not report or, rather, the minority of it reported in favor of the same act which the former Commission reported in favor of, but it has never been passed, although it has come up at every session, and we have annual sessions in Massachusetts. So this Commission has now been appointed with the mandate to bring in some kind of a bill to change the law.

I might be pardoned for saying a word about what seems to me to be the Massachusetts situation as it differs from others. Our industry there is largely factory industry. Of course, we have cotton mills and woolen mills, and boot and shoe factories, and all that sort of thing. It is a kind of an industry where, take it by large numbers, the injuries are probably a good many, but not very serious, so that a bill which might work well with a State where there were a good many hazardous trades, such as mining and not much manufacturing, might not work well in Massachusetts. Therefore what this Commission has to consider is some kind of a bill which we must report relating to the industries of Massachusetts which will be financially possible.

Of course, we also have the same difficulty which everybody else has as to getting a constitutional bill. I suppose a voluntary bill would be constitutional, but, as Professor Freund has just said, we have had a voluntary bill in Massachusetts for two years which allowed, in the first place, the employers to propose a scheme for compensation and thereby get out from under our employer's liability law, and which the next year was amended so the employes could propose the scheme. That has been on the statute books for two years, and no one has ever made the [29]
slightest attempt to come in under it, so that as far as our present situation goes the voluntary system is of no use in Massachusetts. After a great deal of advertisement, nobody at the present time cares about it. It seems to me that some kind of a compulsory law would be necessary to effect anything, and the great legal difficulty is in getting one which will stand the test of the courts.

Joseph A. Parks (Massachusetts): I listened very attentively to the delegates from New York, and while they have done some work there, I was a little disappointed, on the whole. I do not think they have gone far enough to please your humble servant. I notice that they have not included any manufacturing establishments whatever. Of course, that touches me, because I happen to be a mill operative for about thirty years, and we have mostly mills in my State.

I have introduced the bill for workmen's compensation in the Massachusetts Legislature for the last four years, the bill Mr. Lowell referred to, and, as has been stated, they have reported two different measures in two different years, and no one took any notice of them. In the mills in the city where I live, and in all the mill cities in Massachusetts, they have a great many more small accidents than they do of the serious ones. That is especially true in the weaver room, and I happen to be a weaver. We have a lot of things that are liable to take a finger off or injure an eye, or the shuttle is liable to come out of the loom suddenly, or you are liable to slip and get caught in the machinery. The machines are all crowded together, and a girl is liable to get her skirts or her hand caught in the machinery, and when little things like that occur, injuries that will possibly lay the employe up for a week or two, or three or four weeks, the employe should be protected. The operatives do not care much about the loss of a finger or the loss of beauty, or any such thing as that. The particular thing that the operative is interested in is, if he is a man of family, how his family is going to make out while he is on a sickbed and unable to work. He does not make large enough earnings so that he can lay aside his little savings for a rainy day. Unfortunately, the mill operative is the worst paid employe in the United States, without any doubt. They contribute a good deal to the prosperity of the commonwealth which I have the pleasure in part to represent, but they get very little of the cream of the industry.

The industry in Massachusetts, as you all know, is a big success, and we are proud of it and want [30]
it to stay there, and do not want to do anything that will drive it out of the State; but we do want to do something for the mill operatives, at least I do, and I think that the Commission which has been appointed will bring about some system that will give them protection. They make all the way from $6 to $10.50 in the cotton mills. The average, I believe, is about $7 in Fall River to-day, so that you can see that a mill operative getting injured has not anything to fall back on. He wants to be assured that his family is going to be taken care of. The operative has recourse to the employer's liability act, but it takes too long. It is about two years before a case comes to court in our State, and while he is waiting his family is waiting for that income that has been cut off.

I hope the New York delegation will pardon my referring to their having left out the manufacturers. There is some reason, no doubt, and I suppose in part it is due to interstate competition, and that is something we will have to look out for. If we have the time, Mr. Chairman, before this convention is over, I would like to hear from the New York delegation in regard to that feature.

John Mitchell: I think perhaps Mr. Parks did not understand. As I remember it, both Miss Eastman and Professor Seager called attention to what was done for those employed in manufacturing in New York. While our bill did not include those engaged in manufacturing in express terms, it has provided for them. That is to say, we have taken from the manufacturer a great many of his defenses from suits for damages, so that those who are engaged in hazardous occupations may sue under the employers' liability law, and the employer sued cannot set up as a

defense the assumption of risk; while mill employes, not only in Massachusetts, but in all the New England States, are denied redress simply because they assume the risk of the industry. Those who are employed in industries where they get their fingers nipped off and other accidents which are not necessarily fatal, but nevertheless cause a loss of two or three or four months' time, under the New York law can bring suit under the employers' liability law, and, no doubt, in most cases would be able to make settlements without going through the slow process of the courts, because there would be a liability on the part of the employer in New York, whereas in the case of Massachusetts I understand at present there is no liability at all. So that we have, while perhaps not ample provision for them, yet so much better provisions than they ever had before that I dare say that nine cases will be compensated for in a suit for damages or settled because of the right to sue, where only one would have been compensated for under the old law. [31]

MR. PARKS: I was not aware of that. I thought the bill covered merely those "dangerous occupations" Miss Eastman referred to.

MR. MITCHELL: No, we have two bills in New York.

NEW JERSEY.

MILES M. DAWSON (New York): I am sorry to say that I do not know very much about what Governor Fort did in New Jersey, or what the New Jersey Commission has done, because I am a resident of New York. I do know, however, that a Commission has been appointed, and that several gentlemen prominent in labor circles are on the Commission, and an officer of the United States Steel Corporation, and an officer of the Public Service Company, which operates nearly all of the trolley lines and, I think, all the electric lighting systems in northern New Jersey, are members of the Commission. From the make-up of the Commission I should expect that they would do good work, but I do not understand that they have as yet completely organized. I have not heard of their appointing counsel even, although they may have done so, and I do not think they have yet got down to work. The fact that they are not represented at this Conference is an indication that such is the case.

I do not think there is anything peculiar about their appointment or any unusual situation in New Jersey, except, as I understand it, that the Governor particularly and the Legislature to a large degree, are interested as nearly everybody is becoming interested nowadays in this general question, and so the Governor considered that there ought to be something done in New Jersey.

FREDERICK L. HOFFMAN (New Jersey): I am not a member of the New Jersey Commission and so am not in a position to say very much about it. Mr. Clark, of the Clark Thread Company, is a member of the Commission, in addition to the gentlemen whom Mr. Dawson has mentioned. They have not as yet organized, so far as I know. They have not elected counsel, and they have not declared their plans, but I dare say when they get down to work they will follow very largely the methods of the New York Commission. [32]

OHIO.

Ohio was called, but the members of the Ohio Commission had not yet been appointed by the Governor.

MICHIGAN.

M. M. DUNCAN (Michigan): There is no Commission in Michigan. The Governor of Michigan, however, appointed a committee of seven delegates to attend this convention in order that we might learn of the progress that is being made and report back.

JAMES V. BARRY (Michigan): As Mr. Duncan stated, the Governor appointed seven delegates to this convention. We are here simply to observe what is taking place and to learn from the States that have made progress what report to make to our own State. We are not commissioned to prepare any legislation of any kind as are the States which have already spoken.

MARYLAND.

CHAIRMAN MERCER: Maryland had a bill at one time. Is there any one here representing Maryland? They had an act passed in 1902, and that act was declared unconstitutional by one of their lower courts in the spring of 1904, as I recall now, upon the ground that there were judicial powers delegated to the insurance commissioner.

H. WIRT STEELE (Maryland): That is true; that act was declared unconstitutional and is inoperative. We have no legislation in Maryland covering the matter of workmen's compensation, and we have simply been relegated to the old doctrine of master and servant. I believe, however, that out of this Conference will perhaps come a movement for a Commission similar to the ones represented here.

CONNECTICUT.

CHAIRMAN MERCER: Connecticut had a Commission that reported, I believe, last year. Is there anyone present from Connecticut?

PROF. HENRY W. FARNAM (Connecticut): I am from Connecticut, but I do not think there is very much to be said. I was not a member of that Commission, although I have read their report. It is rather negative, very cautious. [33]

CHAIRMAN MERCER: Is there any other State Commission represented? We cannot tell nowadays whether we will have a Commission the next day or not, and there may have been two or three appointed since this convention was called. If not, I will tell you briefly how we have studied the question in Minnesota.

CHAIRMAN MERCER: We have not pursued the same theory exactly in Minnesota that has been pursued in any other State. We did not commence as most of the States have commenced. The commencement of the study of this question in Minnesota was originated in the Minnesota State Bar Association. At their annual meeting in Duluth, in the summer of 1908, a paper was read having reference to the then unfortunate conditions at common law, and asking that something be done in the way, or along the line, of or on, some compensatory plan. Somebody made a motion that a committee be appointed to draft a bill and to report it back to the next Legislature. Some of them were afraid to have that done for fear the committee might draft a bill that would not be rational, that would not be fair, and that it might go through the Legislature as a bar association measure.

I was sitting in the front row, and I moved that the matter be referred to the Committee on Jurisprudence and Law Reform, knowing that I was not on that committee and could not be on it under the then circumstances. The motion passed and then the convention became frightened for fear that it had placed too much power in the committee and resolved to have that committee report to a special meeting of the bar association which would be called in St. Paul, in January, so that they might go over the recommendations that were to be made before they would be presented to the Legislature. Up to the 20th of October absolutely nothing had been done on the matter. Then it so happened that I was asked to resign from another committee and take the chairmanship of that committee, its chairman having resigned. The committee was composed of gentlemen whom it was supposed would well balance the sentiment on the question. There was one lawyer that had made a specialty of liability insurance defenses, there was one country senator, the dean of the College of Law of the Minnesota University, an attorney that earned [34] most of his living from the railroads and then I, neither a laborer nor a capitalist.

We took up the question, and found immediately after going over it with different theorists and by correspondence that there was no data in Minnesota or elsewhere that we could get upon which to draw a proper bill. We looked at the experience of Maryland, we looked at the reports, and the experience of New York down to that time, and found that they had not passed a bill which had been recommended for a permissive plan of contract; we looked at conditions in Massachusetts and found they had not accomplished very much there except a lot of work; we looked over the work of the Illinois Commission and corresponded with them, and found that their bill which had recommended a permissive plan of contract had been defeated. We found in New York the constitutionality had been questioned, and in Massachusetts it had been questioned by the Commission.

In Illinois the reports showed that the plan they wanted to adopt could not be adopted constitutionally, and they recommended the permissive plan in lieu thereof. Connecticut, I think, at that time had appointed a Commission, but it had not yet reported. The United States had passed a law known as the Act of June 11, 1906, which affected the comparative negligence rule and also provided certain obligations with respect to offsetting settlements, and the Supreme Court had declared that unconstitutional in January, 1908. Two important measures had been presented to Congress with able arguments to support them, and up to that time they had been practically limited in their discussion to leave to print in the *Congressional Record*.

Our philanthropic and other state institutions in Minnesota had no data from which we could get any intelligent idea, according to the correspondence that we had. The Associated Charities, both state and national, had no sufficient data. The labor unions throughout the United States had no sufficient data. The National Manufacturers' Association had no sufficient data. I say this because I wrote to the President, and the correspondence was referred to Judge Emory, and we never got any information, because, as I understood, they had not then studied the matter sufficiently. I wrote to Mr. Mitchell, and he answered that he had no sufficient data, and referred me to Mr. Gompers.

I wrote to Mr. Gompers concerning it and he answered practically to the same effect, sending [35] back a bill to establish comparative negligence and some other provisions somewhat along the federal lines that had been declared unconstitutional by the United States Supreme Court, because covering business within the State as distinguished from interstate business; that is, it related to both, as the court construed it.

From Eugene V. Debs, representing, as I thought, another group of men, I received an excellent letter explaining what had been done in other countries, and referring me to the data, he having evidently studied it considerably.

From James J. Hill, through his counsel, I received the answer that they favored such legislation if it could be properly made.

Andrew Carnegie had his secretary write that he favored an act along the lines of "Britain."

Now, I may confess to you that up to this time, neither the Minnesota employers nor the labor unions were in this, and not because I was a politician, but because I had had some experience, I concluded if I could get some expressions from these various interests that it might be valuable when we came to the Legislature with this bill, if some bill along this line was drafted. I ransacked the libraries at home, and communicated with the largest libraries in Boston and New York and all over the country to secure the books and magazine articles touching on the matter, but nowhere could we find any sufficient argument as to the constitutionality of such a law, nor any sufficient data to make an economic law. A paragraph by Professor Freund, in his work on *Police Power*, and an article by P. Tecumseh Sherman, a former commissioner of the State of

New York, were about all I found on the question of constitutionality.

Later we found that the Russell Sage Foundation had been looking into the matter abroad, through two able men, Dr. Frankel and Mr. Dawson. They were abroad that summer to study the matter and we afterward got in touch with them. The result was that our committee, or rather myself and one other gentleman, because we were not able to get any of the others to meet with us, reported to the bar association that we thought we ought to have three kinds of laws passed; one to appoint a Commission to educate itself, another which would require those persons who had accidents, both employers and employes, to report data, and the third, one that would require the insurance companies insuring such risks in Minnesota to make reports in detail to the [36] Commission, in order that they might study out precisely all the results.

We found that New York and Wisconsin had valuable articles, and so had Massachusetts and one or two other States, in their Labor Bureau reports. Our correspondence with every labor department in the United States did not develop very much more, except some valuable work by the Illinois Commission, and some valuable work by some professors in various institutions in the form of articles and a pamphlet, I believe by the Chicago *Record-Herald*, that was put out while the Illinois Commission had this work under consideration.

The bar association approved that report and asked us to send it on to the Legislature with recommendations for those three bills. Just prior to that we had arranged for meetings with the labor unions in our State for political reasons, to find out what their views were. Then with the president of the employers' association, again for political reasons, to find out what their views were. Finally we got the two together, and they had not been working together so well up there as they might have been in some other places. But by the time of the second meeting they passed a resolution which was to the effect that they would join hands in trying to get a compensation movement started in Minnesota, but that neither should undertake to take any advantage of the other in the Legislature, while they were both faithfully performing their part of that agreement, and they stuck loyally by it.

Then we took up the question of how we should present the matter to the Legislature, and the Governor said he would send a special message to the Legislature recommending our plan. That was done, and bills immediately began to appear in the Legislature from various motives, but we all three stood on the position that we were going to have an absolute plan on an intelligent basis if we could get it. Along toward the end of the session the Legislature passed the three bills which we had recommended.

Our Commission at the present time has thousands of reports of accidents in its possession, with the dates of the accidents and all the data concerning them, which we are not at liberty to make public because the bill does not permit us to do so. We wanted a bill that would prevent our doing so until we had our reports made, so that no one could get in and get hold of this information and [37] take advantage of it.

In addition to that, we have the reports coming into the labor department as to the actual injuries that occur. Those we have not yet tabulated.

The Governor appointed George M. Gillette, who was a large manufacturer; William E. McEwen, the State Labor Commissioner, and myself on that committee. One of the first things we did when we met was to take up the question of the foreign laws. We found that they were not translated into English. One of the first things we undertook then was to get the labor department at Washington to translate all that were not translated. It agreed to do so. When we held the Atlantic City convention a resolution was passed at that meeting requesting the same thing. We wanted not only some education, but some uniform action. So we started to correspond with the members of the other commissions, like the New York Commission and some others that had been appointed in the meantime, and asked them to meet us and discuss matters. It was finally suggested that invitations be sent out for a joint meeting. That was done under my own name, representing the Minnesota Commission. We met down at Atlantic City, and after that meeting was held, we held our second meeting down in Washington, and this meeting is the third.

Mr. McEwen and Mr. Gillette have been abroad to study the question and have just returned. I hoped they would be here, but they have not arrived.

We have taken up the matter through correspondence, we have asked special questions through the press, and we expect to get our bills in shape so that they will be intelligible for discussion through this convention and others, and then put them up to the public and ask the manufacturers and the railroads and the labor unions and all of the other representative bodies that will be affected by them, to appoint men who may study the questions sufficiently to come before us and discuss them intelligently, so that we may be educated to the best possible theoretical standpoint.

In the meantime I shall probably go to Europe in July. Our report will not be made until next January. The bill which passed the Legislature requires us to study the conditions in this country and abroad, and to report a bill or bills which we think are consistent with the necessities of the [38] case, and, so far as possible, to make the bill or bills constitutional. The report of the Atlantic City Conference, when it was printed, was sent to the Governor of each State, to the attorney-general of each State, and to the labor department of each State, and that report was quite a large volume. Bar associations throughout the United States have quite generally taken this matter up, and I should think in not less than eight or ten States they have it under consideration now. The labor unions in quite a number of States also have it under consideration. We sent out invitations to the governors, and nineteen of them appointed delegates to the Conference held in

Washington, in January. Fifteen States were represented. I do not know how many States are represented here to-day, but all these delegates were accredited to come to this convention.

We have done a lot of miscellaneous work up there, but we are trying to get all our work in shape, so that when we do draft our bill we shall know as nearly as we possibly can, at least theoretically, what we are doing, and we are glad to see that New York and Wisconsin and all these other States are moving ahead. You have good commissions and we glory in the work you are doing. We only hope that we may be able to profit a little by your experience and by your legislation. We hope that the movement can be made as nearly uniform as possible. Up to the present time we have been discussing very largely in Minnesota the sort of a bill which has been sent out for discussion this afternoon, and I shall not go into that matter at all, but as temporary chairman. I wish to thank both you ladies and you gentlemen for being present at this meeting and for taking part in this discussion.

PROF. SEAGER: At the last meeting of the Conference a committee of three was appointed to choose an Executive Committee of fifteen members. It appears that I am the only member of that committee of three present at this meeting, so I can offer a unanimous report.

[The recommendations of Professor Seager were accepted by the Conference, which accordingly elected ten members of the Executive Committee to serve as executive officials with the five general officers. The complete list as finally elected is printed on the second page of the cover of this volume.]

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## SECOND SESSION, FRIDAY, JUNE 10, 1910, 2.00 P. M.

[39]

Chairman Mercer called the second session of the Conference to order at 2 P. M., and announced that the Reports of Committees was the first order of business.

As chairman of the Executive Committee, Professor Seager submitted a draft of by-laws, which was, with slight amendment, adopted by the Conference. The final draft is printed in the Introductory Note to this volume.

The report of the Committee on Nominations was then presented by Miles M. Dawson, and upon motion adopted by the secretary casting the unanimous ballot of the Conference for the election of the general officers as printed on the second page of the cover of this volume.

This completed the order of business to come before the Conference, and the discussion of the "Workers' Compensation Code" was taken up as follows:

### WORKERS' COMPENSATION CODE.

CHAIRMAN MERCER: There is one further committee, I think, that was appointed to draft a bill for discussion, and we were so far apart that we never got together. One was sent out, however, in printed form, and I think all of you have had copies of it. A thousand copies were distributed.

I will say before we begin the discussion of that bill that it was meant to be drawn as an outline, and to be sufficiently broad in the different sections to raise all the points for discussion and not intended to be either technically correct, or what might be called an artistic measure. It was intended to be broad enough to provoke discussion as to all of the necessary elements of a bill. The formal program, as outlined, involves this one that was distributed, and if that brings out all the points which you want to discuss it might be best to take that up section by section and hear your views on that, or other schemes if you desire. It would seem hardly right, however, since there are a number of other bills here, and they might not all agree, to limit you to this specific bill, but you ought to be permitted to discuss, I suppose, the principle involved in each section as you take it up.

[The bill which was designed and used as an outline for the discussion which follows is here reprinted.] [40]

#### WORKERS' COMPENSATION CODE.

(OUTLINE FOR DISCUSSION).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. *Dangerous employment defined.* That every employer in the State of Minnesota conducting an employment in which there hereafter occurs bodily injuries to any of the employes arising out of, and in the course of, such employment, is for the purposes of this act hereby defined to be conducting a dangerous employment [at the time of such occurrence], and consequently subject to the provisions of this act and entitled to the benefits thereof.

Sec. 2. *Liability of employers.* That every such employer shall be liable to pay to every such employe so injured, or in case of his death, to the legal representatives, as hereinafter defined and apportioned for all bodily injuries received by such employe arising out of, and in the course of, such employment in this State disabling such employe from regular services in such employment for more than ten days and according to the schedule of rates contained in Section 3 of this act, on the condition

precedent only, that, in case of dispute as to the amount to be paid for such injuries, or the failure or refusal to agree upon or to pay the same, such employe or the legal representatives thereof shall comply with the provisions of this act.

Sec. 3. *Compensation allowed.* The compensation herein and hereby allowed, if established as herein provided, having arisen out of and in the course of such dangerous employment within this State, shall be on the following basis:

(a) For immediate death or for death accruing within five years as a result of such injuries, or for injuries causing total incapacity for that service for five years or more, 60 per cent. of the amount of wages the injured was receiving at the time of the accident for a period of five years, provided, such payment shall not continue longer than to aggregate $3000.

(b) For total or partial disability for less than five years, 60 per cent. of the wages the injured was receiving at the time of the injury so long as there is complete disability for that service and that proportion of the said percentage which the depleted earning capacity for that service bears to the total disability when the injury is only partial or after it becomes only partial.

(c) In addition to the foregoing payments, if the injured loses both feet or both hands, or one foot and one hand, or both eyes, or one eye and one foot or one hand, he shall receive, during the full period of five years, 40 per cent. of the wages which he was receiving at the time of such accident; or if he loses one foot, one hand, or one eye, the additional compensation therefor shall be 15 per cent. of his said wages; or if he be otherwise maimed or disfigured, then, for such maiming or disfigurement, during the time it shall continue, he shall receive therefor such proportion of 40 per cent. as such [41]
maiming or disfigurement bears in depleted ability in the employment to the relative loss of the members specified herein; *Provided*, That in no case shall all of the payments received herein exceed in any month the whole wages earned when the injury occurs, nor shall the said 40 per cent. when all received, or any portion thereof, and the said 60 per cent. when all received, or any portion thereof, continue longer than to make all sums aggregate $5000.

Sec. 4. *Repeal of other liabilities.* The right to compensation and the remedy therefor, as herein specified, shall be in lieu of all other causes of action for such injuries and awards upon which they are based as to all persons covered by this act, whether formerly authorized or allowed by, or as the result of, either state, statute or common law, and no other compensation, right of action, damages or liability, either for such injuries or for any result thereof, either in favor of those covered by this act or against such employer based on state law, shall hereafter be allowed for such injuries to any persons or for any of the injuries covered by this act so long as this law shall remain in force, unless, and then only to the extent, that this law shall be specifically amended.

Sec. 5. *Conditions precedent to right of recovery.* That as a condition precedent to such right to compensation, such employe or the legal representatives thereof, as the case may be, shall within ten days after knowledge of such injury, unless there be valid excuse for delay and then immediately after such excuse is removed, cause a written notice thereof in substantially the form designated in paragraph —— (form to be provided) of this act, to be served upon the said employer by leaving a copy thereof addressed to the employer with the person in charge of such employe while he was so working, if that person is still in said employ, or with some superior agent, officer or person in charge of said business at any office thereof within this State in the same way that a summons can now be served; and in case of a dispute between the employe and the said employer, or in case of the failure of such employer and employe to agree upon such claim or in case of failure or refusal of such employer to pay, such employe shall submit his claim for compensation hereunder, both as to the nature of the injuries and the amount to compensate therefor under this act, to a board of three arbitrators, as hereinafter specified, in substantial compliance with the form contained in section —— hereof.

Sec. 6. *Board of arbitration and awards.* There is hereby created a Board of Arbitration and Awards, known as "Board of Awards" with jurisdiction throughout the State of Minnesota to arbitrate the questions arising hereunder and make awards consistent herewith, which is now and shall remain subdivided into districts with the same numbers and co-ordinate with the judicial districts of this State as they now are and may hereafter be changed, which board shall consist of three members from each judicial district, which members shall be non-partisan in politics, appointed by ....., and hold their offices during a period of ..... years; except for fraud, or want of jurisdiction the findings and awards made herein shall be final and conclusive as to the nature of the injuries and the amount of compensation.

Sec. 7. (The law shall provide for compensation, expenses and secretary, and probably [42]
that the Clerk of Courts act as Clerk and make annual report to Commissioner of Labor.)

Sec. 8. *Remedy.*

(a) Every person claiming the benefits of compensation under this act, may issue to the employer from whom he claims the same a notice of claim in substantially the following

form:

First: You are hereby notified that ..... has this day filed the original of this notice of claim against you with the Clerk of the Board of Awards in District No. ..... and that you are required to answer the same with a copy served upon the undersigned within ten days.

Second: Said ..... was in your employ as a ..... at ..... on or about the ..... day of ..... 19.... and received an injury of the supposed general nature following: ..... by reason of the following incident (describe it) and that such injury arose in and out of the course of said employment and has lasted more than ten days and it is claimed that you are liable to pay compensation for ..... per cent. of the wages which were $..... per ..... at the time of such injury, and for ..... per cent. for maiming and crippling.

(b) Answer. The answer shall

1. Admit or deny the employment.
2. Admit or deny that an injury was received at the time and place.
3. Admit or deny that the injury, if any, was in the course of employment and that it arose out of the course of employment.
4. Set up the injury claimed if different from the injured's claim.
5. Admit or deny or correct the amount of wages.
6. Give notice of any special claim to be urged to defeat compensation.

(c) Reply. The reply shall so far as possible admit or deny the specific statements of the answer which contradict or bar the complaint.

(d) Hearing. As soon as the reply is filed with proof of service the clerk shall set such claim for hearing in its order at the earliest date possible and notify both parties by mail, thereof.

Sec. 9. *Award.* The Board of Awards shall make its award upon a full hearing, to both parties held after notice and shall consider the whole record and may visit the premises if within its district and make such award as it shall decide to be consistent with the spirit and powers of this act, and in the following form:

1. Title.

2. We find in the above case that the injured received injuries arising in and growing out of the course of such employment when he was receiving as wages the sum of $..... per ..... payable .....

3. That the injuries appear now to be and are as follows: [43] .....

4. That for ..... disability the compensation to be paid is hereby found and awarded against the employer ..... of ..... at ..... per cent. of such wages payable to the following persons in the respective proportions for ..... and as said wages were paid and (of injuries uncertain) ..... this proceeding is hereby adjourned to the ..... day of ..... for further consideration.

Sec. 10. *How risk may be insured.* That any such employer, or any association of employers, may keep the risks created by this law fully covered by insurance, in associations, or insurance companies approved by the insurance department of this State, for policies covering the full liability under this law, and thereby relieve themselves from any further responsibility with respect to paying such compensation, and if any such employer or employers shall so insure such risks they shall be entitled to take and keep from the wages of their laborers, on a pro rata basis, of the wages, ..... per cent. of the amount necessary to pay the regular premiums for carrying such insurance.

Sec. 11. All insurance and all benefits of compensation due or to become due to any employe under this act shall be and remain exempt from garnishment and all other forms of attachment.

Sec. 12. Provision defining the words and phrases, and covering all tenses, pronouns and both sexes.

Sec. 13. Of course the jurisdictional features and all matters of practice, rehearings, etc., must be worked out after we see what substantive provisions are to be made.

CHAIRMAN MERCER: The reason for heading that, "Workers' Compensation Code," was to cover the constitutional provisions in some of the States, which prohibit a bill from covering more than one subject, which shall be expressed in its title, and the fact that the term "code" means a system of law. By the adoption of that scheme it was our intention to raise the point, so that if you agreed to that general idea you could adopt a law with a heading sufficiently broad to codify the law of your State on that question, to allow you to repeal such portions of the common law as you wanted to repeal as a part of that chapter, and not be subject to the limitations of the constitutions of a number of States which would prohibit your covering more than one law. Do you care to waste any time on the heading?

MR. DAWSON: I would like to ask one question about the heading and that is why the word "workers" was used instead of "workmen?"

CHAIRMAN MERCER: Like everything else, that was used to provoke discussion. Workmen's Compensation, or Workingmen's Compensation, seems to have a technical meaning in this field [44] of legislation. It seems to be understood generally as covering this whole subject, and yet when you come to define your bill and outline it and cover it section by section, you must either leave something to the construction of the courts, or else you must make provision to the effect that workmen shall cover workwomen and children and boys and girls and everybody connected with it. It seems to me it would cover that point (although it seems to be revolutionary in form) if we used the term "workers," because that would include everybody.

MR. DAWSON: Your idea then was, Mr. Chairman, that the word "worker" is believed to have more comprehensive significance than the word "workmen," and that it would be certain to be so held by the courts?

CHAIRMAN MERCER: That was my own idea. I think I am sound on it, but I have tried enough lawsuits to know that a fellow is never sound until he is done. Shall we pass to the first section and leave it without any expression as to the heading?

MASON B. STARRING (Illinois): I would like to inquire in regard to Section 1, as to what extent that applies to farm workers. Supposing a man was driving a dredging machine in the field and his horses became frightened and ran away and killed him. Is the farmer liable under this act?

CHAIRMAN MERCER: He was intended to be, if you adopt that act.

JAMES A. LOWELL (Massachusetts): I should like to inquire why you say "every employer conducting an employment in which there hereafter occurs bodily injuries to any of the employes" shall be deemed to be conducting a dangerous employment? Is that from some idea that if you call an employment dangerous you thereby are allowed to change the terms of it by your constitution, and if you do not call it dangerous, you are not?

CHAIRMAN MERCER: The idea was that if you worded the first section the way we have, it would provoke discussion on all those elements. That was the first plan. The fundamental reason was that if the employer was conducting an employment which was capable of being dangerous, and he guarded his employes through the safety devices he employed and the grade of men he employed, so that the whole scheme of his business was conducted in such a way that he did not have any accidents at all, that until he had some accidents he would not be classified as being in [45] a dangerous employment. In other words, two men might run exactly the same institution with the same machinery manufacturing the same article; one set of men will run it so there will not be any accidents maybe in ten years; the other set may have ten accidents in the first year by reason of the way they rush, and their carelessness, and the grade of men they hire and their failure to protect their machinery and all that sort of thing. It was the intention to make that as broad as you possibly could make it, so as to provoke discussion as to whether you wanted to say every industry that had an accident should be liable, or whether you wanted to limit it to some of the industries as they have done in New York and in some of the foreign countries.

MR. LOWELL: Then it was not the idea that by calling a cotton factory dangerous you thereby are allowed to put on certain provisions of the law which, if you do not call it dangerous, might not be constitutional?

CHAIRMAN MERCER: Not exactly, except this: The idea was involved that it is within the province of the Legislature to declare an employment dangerous if there is a reasonable basis for argument as to whether it is a dangerous employment. That is our view of it. Now, if a court gets hold of that and should say that there was no basis for declaring that a dangerous employment, it would say that the Legislature acted arbitrarily.

MR. LOWELL: I should judge your idea was that you could not impose the law on a cotton factory simply as a cotton factory, but you could impose it on a dangerous factory.

CHAIRMAN MERCER: My idea was that it was a safer way to impose it on one that had accidents than to single out any certain line of industry that might not be as dangerous as some others.

MR. LOWELL: I do not know that you quite get my point. My point is that it may be impossible for the Massachusetts Legislature, we will say, to put a certain kind of liability onto a cotton factory, which it might put onto a powder factory. Would they, if that were the case, make the situation any different by calling the cotton factory a dangerous factory?

CHAIRMAN MERCER: Not unless there was some basis for it.

MR. LOWELL: They certainly do have dangers; we will assume that people are injured there.

CHAIRMAN MERCER: It is my view of the decisions of the court that that would be so. The reason that [46] I put that that way is this: If you have an industry that has one accident, as expressed by Mr. Roosevelt in one of his messages, that is a dangerous industry to that man and his family. If it kills one man, in his way of putting it, it is not much consolation to his family or to him before he dies, to say that you are crippled, or you are hurt, but not in a dangerous employment. It was dangerous in his case. By defining it so that every employment that has an accident is dangerous, and then making the liability as one of the subsequent sections, exactly in proportion to the accidents they have instead of defining certain lines as dangerous, and others as non-dangerous, I think you have a better classification.

PROF. SEAGER: To put a strong case, do you think that the courts would back you up in saying that the mere fact, we will say, that an employe in a cotton factory slipped on a banana peel in going

to his machine in the morning and was injured, constituted that a dangerous trade in a sense that would justify making an employer liable for the injury as the latter sections of the act hold? Under the latter sections of the act that would seem to be in the course of his employment; going to his machine would be a necessary part of his employment.

CHAIRMAN MERCER: If it grows out of the industry itself. In England in determining what is within the course of the employment, they have held that while two men might be working side by side in an employment, and one of them might be hurt while he was there, yet if he was hurt by reason of some horse play that he did on the side with some other fellow, that that was not really a risk of that industry, and that it does not grow out of the course of the employment. I should think your banana peeling case would be very close to the line, and it would depend upon whether it grew out of the employment.

JOSEPH A. PARKS (Massachusetts): Suppose that we use a bobbin instead of a banana peel.

PROF. SEAGER: There was a case where a man's eye was put out by the cork of a pop bottle when he was eating his lunch, and they held that was in the course of his employment. Would our courts, in your opinion, back us up in describing liability for accidents in that sweeping way? I do not question at all the desirability of doing it; it is only a question of the constitutionality of doing it.

MR. LOWELL: Do you think it is necessary in Minnesota to distinguish between hazardous and non- [47]
hazardous employments? Apparently our friends in New York think that it is constitutionally necessary; that with certain risks, such as tunneling and railroad building and bridge building, which every one knows are hazardous, that a law applied to them would be constitutional, whereas if it applied to things that were not so hazardous it would not be constitutional. Is that your opinion of the law of Minnesota?

CHAIRMAN MERCER: In a measure, yes; that is, so far as classification is concerned; you must have a reasonable basis for the classification. If you do not cover all the accidents then you cannot cover part. It would be my judgment, unless you have a reasonable basis for the classification, that that would be true.

MR. LOWELL: The basis of classification would not be the fact then, that accidents happen, but that a good many happen. That is, it is not a hazardous business, but is a light business, as the insurance people call it.

CHAIRMAN MERCER: I think that the courts in some of the cases would maintain the idea that if you picked out the industries that had a large number of accidents and were sure they would have accidents, they would maintain that classification. But if you picked out an industry that had a great many accidents and classified it as dangerous, and let one alongside of it go that had fully as many accidents, I think possibly the courts might hold that you had acted arbitrarily, and therefore knock out your legislation, to use a street phrase.

SENATOR A. W. SANBORN (Wisconsin): If I understand that first section, it would include every employer, whether he is a farmer or a man who keeps a house servant.

CHAIRMAN MERCER: It was meant to be broad enough, Mr. Sanborn, to raise that question.

MR. SANBORN: That is what I understand this section, as now worded, would embrace.

CHAIRMAN MERCER: Yes.

SENATOR JOHN J. BLAINE (Wisconsin): The point that worries me as much as anything, is the question as to whether it is a dangerous occupation. This first section provides that every employer conducting an employment in which there hereafter occurs bodily injuries is defined to be conducting a dangerous employment. Is there any substantial difference between saying it in [48]
those words and saying that every occupation is dangerous, because I do not believe that we can conceive of any occupation that is not dangerous or in which no accidents occur. Even a school boy stubs his toe on the street. It is not in and of itself a dangerous occupation, but he accidentally gets hurt. Now, where an employment in and of itself would not be dangerous, but where through some unforeseen circumstance an accident should occur, would that fact of itself make an industry a hazardous industry?

CHAIRMAN MERCER: When they covered that matter in England, I understand the definition was that the accident might occur in the course of the industry and not occur outside of it; it might occur outside of it and not occur within it. For instance, you might start to go to work, if you are a laborer, and after you got on the ground you might be traveling along the same as any other member of the public. You would be going to your employment but you would not be within the course of it. That is the way they defined it over there, and in that case the accident would be treated simply in the same way as an accident to any other member of the public. They might suffer an accident and yet there would not be a liability to the employer.

SENATOR BLAINE: The point I can't distinguish is this: That the mere fact that an injury happens to an employment, that in and of itself makes that employment dangerous, any more than every industry is dangerous.

CHAIRMAN MERCER: It has got to occur within the employment; that is, it has got to be a result of the employment to make it dangerous.

SENATOR BLAINE: In the first place, is it possible to conceive of any employment where there is not a hazard growing out of the employment? If that is true, why not say that every employer shall compensate under the terms of the act, regardless of whether he is engaged in a hazardous occupation or not. In other words, can you define a hazardous occupation by a legislative act? Will not that in the end be the point around which the whole question will revolve; *i. e.*, is it not

as a matter of fact from the evidence produced, a dangerous occupation, no matter whether accidents have or have not resulted?

For that reason is it not quite impossible to define a hazardous occupation?

CHAIRMAN MERCER: That question in fact is first determined by the Legislature, as I understand it, as to whether it is a dangerous employment. [49]

SENATOR BLAINE: Can the Legislature intrude upon the judicial functions of our government? Can they say that is a fact or must not the courts do that themselves?

CHAIRMAN MERCER: No, the courts, as I understand it, take judicial knowledge of the history and conditions out of which the legislative act may grow, and I believe would follow the rule the power of the State it is valid, although the judgment of the as laid down in Lockner *vs.* New York, 198 U. S., where the Court said: "This is not a question of substituting the judgment of the Court for that of the Legislature. If the act be within Court might be opposed to the enactment of such law."

The reason why we did not cover every employment was that it did not seem to us every employment was dangerous, and if it was not dangerous and we were relegated to the police power of the State to define it, the law would be held invalid. But it seemed to me individually, and I do not want anybody to think that this is the judgment of the committee, because they could not all get together, that if we based it on the fact that injuries did occur, nobody could ever stand up in a courtroom or sit in comfortable court chambers and write an opinion on the theory that this employment, when an accident has occurred in the case, is not a dangerous employment if the Legislature find it so. The idea was to cover all the States so as to leave it as safe as we could get it.

SENATOR BLAINE: Certainly the section will do what you contemplated, bring about discussion.

MR. DAWSON: On the point that has just been raised I would like to say that this matter of the power of the Legislature to define a thing was before the United States Supreme Court in an oleomargarine case, originating, I think, in Pennsylvania. There had previously been an act passed, I think, by the New York Legislature, which, though not declaring oleomargarine deleterious to health, imposed certain regulations amounting almost to prohibition.

That was tested through the various courts to the Supreme Court of the United States, I think, and it was definitely held by that court that the case had not been made out that it was deleterious. In other words, it was virtually held that it was not, and so that the law was not a proper exercise of the police power. Following this the Legislature of Pennsylvania adopted a [50] similar bill, containing a declaratory provision that it is deleterious to health. That was carried to the same court and the Court held that the Legislature was entirely within its rights and had power to so declare. I think that might have some bearing upon this question.

I would like to ask the Chairman if the effect of this is not virtually to declare all occupations hazardous occupations in view of the following facts: That the law would in any event be a nullity if no accidents happened in any given employment, and the moment an accident does happen in that employment, it is declared to be a dangerous employment; and would not the law cover that very accident.

CHAIRMAN MERCER: The proposed law as I have since changed it has this provision: "That every employer in the State of —— conducting an employment in which there hereafter occurs bodily injury to any of the employes, arising out of, and in the course of, such employment, is for the purposes of this act hereby defined to be conducting a dangerous employment *at the time of such occurrence*." That was not in the original draft and I do not know whether it is in the one you have or not. I put it in recently. When I came to read that section critically I concluded that the criticism you make is a good one.

I do not want to take your time, but there are two or three short sentences here by the United States Supreme Court on that question which I think are authoritative, and I would like to read them. In the case of Holden *vs.* Hardy, 169 U. S., page 365, the Court says: "The protection of the health and morals as well as the lives of citizens is within the police power of the State Legislature."

Then again, on page 789, the Court said: "Of course it is impossible to forecast the character or extent of these changes, but in view of the fact that from the day the Magna Charta was signed to the present moment, amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose they will not continue and the law be forced to adapt itself to new conditions of society, and particularly to the new relations between employers and employes as they arise."

That was a case of regulating the hours of work in mining. After reviewing a number of the decisions upon the police power and establishing that it was within the power of the Legislature to judge of those matters, the Court said: "These employments when too long pursued, the [51] Legislature has judged to be detrimental to the health of the employes, and so long as there are reasonable grounds for thinking that that is so, this decision upon this subject cannot be reviewed by the Federal Courts."

I take that as pretty conclusive, and they have followed that rule since.

SENATOR SANBORN: In discussing a bill like this, section by section, it strikes me that we are going to reach practical results. There are three fundamental principles that underlie this whole subject that we ought to determine, or else we should proceed to draw either two or three bills based

upon the different views upon those underlying principles:

First: Shall we prepare a bill that is compulsory upon the part of the employer and optional as to the employe?

Second: Shall we prepare a bill that is compulsory upon the part of the employer and compulsory upon the part of the employe?

Third: Shall we prepare a bill that is optional both with the employer and with the employe?

To my mind those are fundamentals, and if we are going to get at what is known as a uniform bill that will meet with the approbation of the different States and meet the constitutional difficulties that we find in the way, we must prepare a bill along lines that will meet the different situations in the different States, at least in those States that compete from a manufacturing point of view.

I am here for information and I feel that we want light along those lines. While I am willing to concede for the sake of argument that under the police regulation you can make this law compulsory on the part of the employer, as New York has done, I am not yet willing to concede that you can make that law compulsory on the part of the employe. I think there is something yet there that must be overcome before you can reach that result.

To illustrate what I mean for a moment, if you can imagine for a minute that I own this building, I should contend that the Legislature of the State of Illinois could not authorize you by your negligence to destroy this building and give me in compensation ten dollars; to make that the law. Of course my right arm may not be as important to me as the building, but I do not yet believe that the Legislature of Illinois can even authorize you by your negligence to destroy that [52]
and thus destroy my means of livelihood and say that I shall receive no compensation, or say that it shall be ten dollars or say that it shall be one hundred dollars, or that it shall be one thousand dollars which I shall receive for that arm; to destroy my usefulness to myself and my family and fix the compensation at one hundred dollars or a thousand dollars, without my consent. I have cited that as a mere matter of illustration, that there are difficulties to overcome if you are going to say that that is a compulsory law upon the part of the employe without any election.

If we are drafting a bill that is compulsory upon the part of the employer the first question we have to consider is in Section 1 of this bill; we have got to define the dangerous employment. You can see then it is very material in that form of bill to define a dangerous employment. If, on the other hand, we are drawing an optional bill we have no interest in any such definition at all.

I just offer these as suggestions, if we are going at this subject from a practical standpoint, and if we can I am perfectly willing to go to the extent of saying that we will work along all three lines and then determine which is the more likely to stand up and effect the purpose that we are trying to accomplish.

Samuel R. Harper (Illinois): On the question presented by the first section of the tentative bill presented this afternoon, the rule, as I understand it, is that the declaration by the Legislature that a certain trade is hazardous is merely an indication of the legislative judgment on that proposition and nothing more; and that that judgment is revocable by the courts and is not conclusive unless the declaration is based in some way on some reasonable classification of hazardous trades and industries. If the classification is based on some reasonable ground arising from the hazards of the business then the courts will say that is a reasonable classification, that the legislative classification is conclusive.

On the points suggested by Senator Sanborn, I agree with him that the fundamental to adopt at the outset is whether or not we shall adopt a compulsory system or whether it shall be elective. If it is compulsory it must rest entirely within the police power of the State. If it is an elective system then it is a matter of contract and option with both parties. We ought to determine first what we are going to do about that because if we have an elective system we need not worry at all about the constitutional problem or the question of police power.

I agree with the Senator on the proposition that a State under its police power may establish a [53]
compulsory system of compensation so far as the employer is concerned. It seems to me, however, when we attempt to shift the basis of our present system from that of tort to compensation we are simply reading into the oral contract of employment between the employer and employe a guarantee on the part of the employer that up to a certain limit he will protect and insure the employe against the hazards of that trade. We all of us, of course, are familiar with the doctrine of *respondeat superior*, and that doctrine arose in exactly the same way over two hundred years ago and it has never been questioned as yet. That arose not out of any theory of natural justice, but upon the theory exclusively that it was a proposition of safety, and that if the employer wished to delegate his business or that part of it conducted by servants, to those servants, he certainly should be responsible for their acts as long as they were in the discharge of their duties.

Now, why isn't it, Mr. Chairman, just as reasonable to assume and why is it in conflict with any theory of natural justice to say that if an employer seeks to employ a man in a hazardous trade or in any trade, he shall compensate him to a reasonable extent; he shall guarantee to him a limited compensation and that he shall guarantee him against the consequences of an injury while he is engaged in that employment? Will not the courts read into that bill practically that contract of guaranty?

We are talking about judge-made law on this proposition. The Legislature has never attacked this proposition at all. The courts have established this doctrine of respondeat superior and as to the safety appliances, etc., is the form of a Workmen's Compensation Law.

Prof. Seager: The suggestion contained in this first clause seems to me a very valuable and helpful one; that is, that judicial opinion in this country may be ripe for taking this view other doctrines of that kind, and we do not know what the courts would do if the proposition were presented to them. I believe we lack courage a little bit on that subject. I should think that the courts would welcome the co-operation of the Legislature in changing this system. I believe they are in hearty sympathy with the movement, as indicated by recent decisions of the courts throughout the country. I believe that they are themselves out of sympathy entirely with the worn out doctrines which they are obliged to follow because of the precedents before them; and if the [54] Legislature would step in and give them a chance I believe that they would be with them.

Chairman Mercer: In making this draft of a bill we fully appreciated that the outlines which Senator Sanborn has given substantially represents the different theories; but this bill was drafted on the theory of bringing up for discussion the whole subject as to whether or not you wanted to define your dangerous employments and make them compulsory against the employer; to say that the employe should not have any common law liability; that he should comply with this law before he had any remedy; that he should be compelled to go before a committee of awards and that the award when given should be conclusive as to questions of fact, leaving the legal liability and the jurisdictional questions open to the courts on appeal. That was the scheme on which this was drawn.

Prof. Seager: The suggestion contained in this first clause seems to me a very valuable and helpful one; that is, that judicial opinion in this country may be ripe for taking this view that a few years ago would have seemed rather revolutionary; the view that any industry in which an accident occurs is to that extent a hazardous industry, and therefore subject to special regulation under the police powers of the States, and that the form of regulation that should be adopted along with the regulations as to the safety appliances, etc., is the form of a Workmen's Compensation Law.

The New York Commission, while some of us perhaps were inclined to agree with the optimistic views that Mr. Harper has just expressed, was not able, as a body, to believe that the courts would go quite so far as this first clause contemplates. It was for that reason mainly that we contented ourselves with enumerating extra-hazardous occupations which came clearly under the police power of the State, and limited the compensation in those employments to risks of those employments as distinguished from accidents that merely happen in connection with the employment or that might have happened in any employment. I hope very much myself that the other States which are working on this problem will be more courageous than we were, and that they will place the matter before the courts in this extreme form and determine what the courts will do with it. I think perhaps there is more reason to expect a favorable decision from some of the courts in the Western States than from the New York Court of Appeals. Looking at the matter [55] as a national problem, I think it would perhaps be better to have the question come up first in some of the middle Western States before the courts there rather than to come up in some of our Eastern States.

At the same time I agree with the suggestion that Senator Sanborn raised as to the necessity of protecting the rights of the employes. I do not see how, on the basis of the whole scheme of property rights, we can take away from the employe his right to sue for damages when the injury is due directly and clearly to the negligence of the employer, without a constitutional amendment. But that difficulty can be met by a saving clause that in practice need not interfere very much with the efficiency of the system. That is the plan we adopted in our New York bill, merely putting in a clause to the effect that except where the accident was due to the personal negligence of the employer the compensation bill should apply, leaving it to the courts to decide just how far that would go. A safety clause of that kind in practice, in my opinion, would be largely disregarded. After this system came into operation, the advantage of getting a certain compensation would appeal to a great majority of injured workmen as preferable to the gamble of a law suit. So that from the point of view of the expense to the employer such a provision need not impose a serious additional burden along with the burden of the compensation law.

Mr. Parks (Massachusetts): In our State there is a bill before the Committee on Labor in the Legislature, of which I am a member, prohibiting the employment of minors under eighteen in trades which are dangerous to health. The committee decided to refer the bill to the State Board of Health, and an investigation by the State Board showed that continuous employment in such industries as the manufacture of cuff buttons and collar buttons, and so forth, was deleterious to the health on account of the small pieces of bone and other substances which had an injurious effect upon the health of the operatives. One factory in particular was alluded to at a hearing which we had on the matter, and after we passed the bill, and it became a law, I understand that that factory changed over their whole system, so that that particular industry instead of being as before this act was passed a dangerous industry to health, it became a safe industry to the health of minors. That was one effect of the naming of a particular industry as a dangerous trade, so far [56] as health is concerned.

Prof. Ernst Freund (Illinois): It seems to me there are two things to be sought for in this matter, and that is, first, to find some principle of classification and then to see what portion of that principle we can reasonably hope to cover by legislation. When I look at this section it does not seem to me that the principle is what I could call a sound one, and I mean by that, one that appeals to our sense of justice. It is true that the English act is very comprehensive, but it has never appeared to me that the rule of the English law by which the head of a household is liable to a domestic servant for that domestic servant's carelessness is really a reasonable and just principle of law. Therefore we ought to have some particular reason for putting the liability upon

the employer, and that reason might well be some particular element of danger. By calling an employment dangerous, I think, we do not make it dangerous even if now and then accidents occur in it. I think there are certain elements of danger which we could all point out, and that there are some elements of danger which we could all agree upon as making an occupation extremely hazardous.

We should also consider whether it would not be wise for the present to confine the liability to concerns of some magnitude. I know that it is very much questioned whether you can confine this extraordinary liability to large concerns, because it is open to the criticism that you simply make those pay who can afford to guard themselves through liability insurance. However, I think there is a real difference of principle based upon difference of size, because the relation of the small concern to the employe is totally different from that of the large concern, and it is only in the large concerns that these conditions prevail which, under modern conditions, seem to demand a shifting of the responsibility from the employe to the employer.

If you wish to be conservative, and not cover all the industries that have some element of hazard, you have to decide the very difficult question where to draw the line. When I read over the list of employments singled out in the compulsory bill recommended by the New York Commission, I was very much puzzled by the obvious fact that certain obviously hazardous employments were excluded, until I was informed that the principle was that of the non-competitive industry. Now, if you say that these industries are selected because they cannot get away from the law by moving [57] across the state line, the discrimination looks objectionable; if, however, you say they are selected because they are not exposed to competition from industries operating under laws more favorable to the employer, the discrimination looks much more plausible. Even so, it is doubtful whether the principle of selection would approve itself to the Supreme Court of this State.

Dr. W. H. Allport (Illinois): It is evident we have in contemplation here two methods of arriving at a tentative solution of this question. (1) One method suggested by Professor Freund, which looked to me like a modification of the German method; that is, the method by which certain occupations have been gradually selected as being more and more hazardous, and gradually including the less hazardous occupations, until, I believe, in Germany the law covers all occupations and almost all employments. That is, it now covers farm employes, agricultural employes and the employes of our small establishments. (2) The other method suggested by Senator Sanborn, as a tentative law, follows more or less the English method, where the law was made right away to cover practically all employments; that is, the farming industry, domestic industry and other industries.

In considering this first clause of the tentative code, it would seem to me as though it would be possible to arrive at some definite definition. The English law has a section devoted entirely to the matter of definition, and defines employer, employe, dependent, and so forth, and some interesting questions have come up recently as to what are dependents under the English law. But the English law omits altogether to express what are hazardous employments. I will read the first section of Chapter LVIII of the Workmen's Compensation Act of 1906, which is now the law of England:

"If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule to this act."

That covers all forms of employment, but it does not define any employment as being hazardous or non-hazardous.

I suppose the basis of our effort in this tentative "workers' code" is to arrive at something which will go behind our present courts and bring us in line with the state and federal constitutions, [58] which will give the power to a State to enact a law which under ordinary circumstances it would not have, and so, therefore, the effort is made here to define dangerous employments. It is interesting to note the ingenuity with which that point is reached; *i. e.*, that any employment becomes dangerous after an accident happens. In the Wisconsin law the effort is made directly; there is no definition, so far as I can see, in the Wisconsin law nor in the New York law. There are certain employments which are defined as extra-hazardous and, therefore, subject to state regulation.

There is another point in Section 1 and that is this: "An employment in which there hereafter occurs bodily injuries to any of the employes arising out of." To again recur to the English law, and also the German law, the English law covers other points besides bodily injuries; it covers in certain schedules dangerous diseases and trades accompanied by dangerous diseases. The question, therefore, which would arise in my mind is whether or not we should not in this tentative law embody a consideration of certain dangerous diseases. I happen to be a member of the Illinois Commission on Occupational Diseases, and, therefore, perhaps would be expected to see that in the bill, but aside from that fact it does seem to me that that is a matter for careful consideration. That the bill should cover diseases arising from mining work, diseases from deposits in the lungs where men are engaged in the woolen industry and the lead industry and in the match industry, and certain other dangerous occupations which are dangerous not on account of the personal injuries sustained by the employes, but on account of the danger to the health.

Chairman Mercer: Section 12 says. "Provision defining the words and phrases, and covering all tenses, pronouns and both sexes," should be put into the bill when it is finally drawn.

Frank Buchanan (Illinois): I am a structural iron worker by trade and have worked at it for many

years, and I guess there would not be much trouble in defining it as an extra-hazardous trade. We have a large number of men injured and killed at that trade, and because of that fact I have given this question of employers' liability much thought and study. For that reason I am here as an interested party to-day.

I am not in harmony with that part of the law as drawn up here which takes away the rights of a [59] workman to bring an action in the courts. I take that view, first, because I believe it is the constitutional right of every worker to have action in the courts if he sees fit to do so. Secondly, I believe that when we do have that right of action, due to the negligence of an employer, that it is going to cause the employer to be more careful of how he conducts that particular kind of work, and the most important thing about this whole matter is to secure something that will act as a preventive of accidents.

PROF. JOHN H. GRAY (Minnesota): Would you be in favor, Mr. Buchanan, of a bill which gave the choice to the workmen?

MR. BUCHANAN: No; I favor the English law that gives him the right to bring suit if he sees fit and then take the compensation if he fails in his suit.

I had hoped, in view of the fact that they have brought this law about in European countries, that some of our States might take it up in the same manner. We have a problem here to confront and overcome that they do not have in European countries, in that we are largely governed by the laws of the various States, which, of course, differ widely. In the manufacturing industry, that gives ground for an argument against one State creating a law that does not apply to another State, the claim being made that the competition is not equal, and, of course, there is some ground for that argument. I believe, however, it is going to take a long time and be a very difficult thing to bring about the necessary uniform legislation throughout the States. For that reason I had hoped that we might be able to find some way to create a law affecting only those industries that may not be in competition with the industries of other States, such industries as have been referred to, as the building industry and construction work, and so forth. There are more men killed and injured in that industry than any other two, but due to the fact that there is no competition in that industry it is possible to make a law affecting that and let it be tried out. It might be a starting place to find a way to cover the other industries without affecting those industries in each State which are competitive or obstructing them in any way.

I find, however, in reading the history of the British labor legislation that the secretary of the Building Employers' Association in one of the large cities there has stated that that law has not obstructed the business, decreased the wages or decreased the profits, and that the building [60] employers are not justified in any way in finding any fault with that law. It seems to me, therefore, there ought to be some way in which to pass a measure that would apply to that industry. Of course, it may be said that I am a structural iron worker, and interested in that craft which is a building trade, and am, therefore, more selfish about this matter. I feel, however, a great interest in securing better protection for workers in all industries. I know the dissatisfaction that is caused under present conditions; I know the women that are condemned to the washtub and the orphans to poverty, and, therefore, I am always willing to exercise my best efforts to secure better protection for those workers. In my opinion the present condition is the biggest blot that we have on our civilization.

Take my own trade, for instance, I have some figures here which I secured from our local secretary which may be of use to you. In 1906, out of a membership of about 1200, we had 29 deaths from accidents and 114 injuries. In 1907, when the work was very much reduced and our membership was greatly reduced, due to the panic brought on at that time, we had 132 injured and 12 deaths. In 1908, while still suffering from the effects of the panic, and not so many men working, probably seven hundred or eight hundred, we had 113 accidents and 7 deaths. In 1909, after we had recovered from the panic in our industry, we had 175 injured and 8 deaths out of a membership of about 1200.

In 1906, from the best information I could get, we paid out $12,060 in benefits to those who were injured or killed, and the average length of time of disability of those who were disabled was six weeks.

In conclusion, I believe I am expressing the sentiments of the trade-union people in the city of Chicago when I say that we are opposed to any law that will waive the right of action now in the hands of a workman. We think it should be as it is in Great Britain at the present time. Personally, I am in favor of going even further than that. I believe when a workman suffers an injury due to the carelessness of an employer or a superintendent, that that employer or superintendent should be sentenced to prison for that negligence. I mean by that those who are in charge of that work and who are responsible for that work. I claim that there should be a penal offense attached to that negligent act, and I believe that the majority of employers would have no [61] objection to it; that is, those who are willing to use the necessary care for preventing these accidents. I hope that in the very near future the people in this country will become awakened to the need of these measures, and I believe the present facts obtainable will show that there can be fair protective measures created without any hardship whatever on the employer, although it may be necessary for them to add a small price on the product or on the contract price when he is bidding on construction work.

C. B. CULBERTSON (Wisconsin): I will assume a case in order that I may ask the last speaker a question. Say that in Wisconsin last year there was a loss, including the expense of court proceedings and obtaining judgments and everything that you could put under that head, of $460,000; that during that time the laboring men to whom this money should have gone got only

from 18 to 25 per cent. of it; would he not prefer a law, if he could not get a better one, that would give 90 per cent. of that $460,000 to the sufferers, even if occasional large judgments should have to be waived?

MR. BUCHANAN: I always prefer getting the best we possibly can. We must consider the conditions under which we are laboring. I do not believe that the laboring people are willing to waive their right of action in the courts for something that they do not consider especially good. Of course, I am not here representing any laboring body, but from my association with them I am led to believe that I can speak as to their sentiments in the city of Chicago. I am a delegate to the Chicago Federation of Labor, one of the largest bodies of its kind in the country, if not the largest, and have heard those matters discussed there, and I would say that we are willing to accept nothing less than the best we can get, and we are willing always to accept that.

JOHN MITCHELL (New York): I do not know whether there will be any advantage in the discussion of the character of a bill that we should want to adopt or as to the measure that any group would desire. I hold no commission that gives me a right to represent the workingmen of the United States, notwithstanding that I am an officer of the American Federation of Labor. As a matter of fact, the American Federation of Labor, which is representative of practically all the organized workmen in the United States, has not itself decided formally upon the character of a compensation bill that they would favor. But I do have some knowledge of the general sentiment [62] that prevails in the country, and I think that in part I can say for the workingmen of the United States, and they, after all, the ones most affected by this legislation, they are the ones that are demanding it, and it is for their relief that it is going to be enacted. I believe I can say for them, as Mr. Buchanan has said, that the workingmen will not be willing to waive their right to enter the courts and sue for damages. To that extent, I think, he is correct, and that the workmen would not be willing to waive their right to sue.

On the other hand, I believe that if they understood the circumstances prevailing in Great Britain that they would not insist upon their right to sue, and then failing to win their suit to have their compensation. I do not have with me a table I have of statistics giving the amount secured in suits for damages and the average amount paid under the Workmen's Compensation Act of Great Britain, but my recollection is that the workmen of Great Britain, in cases where they have instituted suit under the employers' liability law or the common law, have received approximately $852, and that the average compensation paid under the Workmen's Compensation Act has been $848. My recollection is that the workingmen of Great Britain have received on the average more under the compensation act than they have under the liability act, and I think can we take it for granted that where men have sued under the liability laws of Great Britain it has been in cases where there has been a likelihood of responsibility on the part of the employer. Unless the workingman was convinced that he had a reasonably good case, he would not proceed under the liability laws, but would, on the other hand, proceed under the compensation act.

Now, if the workingmen of Great Britain recover a larger amount under the Workingmen's Compensation Act than they do under the liability laws, is it not likely that they would do the same thing in the United States? In other words, has not the right of the workingman of Great Britain to proceed under the liability laws simply been a temptation to him to sue in the hope, and the false hope, as it turns out, that he might recover a larger amount than he would under the compensation act; and if the figures I have given you are approximately correct, has the result not been that the workingman, lured by the false hope that he would secure a large verdict, has given a large part of the money he would have received under the compensation act [63] to attorneys, because he has had to pay the costs of the courts, he has had to pay his lawyers their fees, although possibly not in as large an amount as would be the case here, because in England the court fixes the amount of the attorney's fees; and has he not taken from the employer money that ought to have been used to compensate the men for accidents. Whenever a burden is put upon the employer that means nothing to the workman, it simply deprives the employer of the opportunity of paying a larger amount under the compensation act.

Now, it is not because of any particular sympathy I have for the employer in the matter, although I want to be absolutely just to him, but it is because I want to protect the workingman and see that he receives the largest possible amount as a reward or as a compensation for his injury, that I am not in favor of giving the workman the right to sue under the liability laws, and, failing to win his suit, to then proceed under the compensation act. I think it is holding out to the workman a false hope, and I know the practice in England has been simply a lure, and has caused him to waste his own money and waste the money of the employer without any benefit to himself.

On the other hand, when I say that I believe the workman should have the right to sue, I believe that because I believe there should be something done to cause the employer to prevent accidents, and I think the fact that a workman once in a while may secure a verdict of $5000, $10,000 or $15,000 is an incentive to the employer to prevent accidents. And when all is said and done, gentlemen, one of the principal purposes of this Conference should be to prevent accidents. Your compensation, quite apart from preventing accidents, is necessary, yet it is of a hundred times more importance that a life be saved than it is that some man or his dependents should receive $3000 or $4000 for his life. It is all very well to receive $1000 for the loss of an eye or the loss of an arm, but it is much better, not only for that man, but also for society, that the eye or the arm be not lost.

Gentlemen, this gathering, if I may just make this general observation, is perhaps one of the most important gatherings that has met in the United States, because it is going to give impetus to a great movement to change our entire system of employers' liability. I doubt not but that within a very few years our courts will so broaden their vision, and so broaden their decisions, that they [64]

will find means, even under our present constitution, to recognize the growing demand on the part of the people for relief from our iniquitous system of employers' liability law. I do not know how fast we can go; no doubt those of us whose lives have been spent among workingmen, and who have daily been brought in contact with those who are suffering either from accidents directly or the dependents of those who have been killed, may grow impatient in our desire to secure a remedy, but we cannot go faster than the courts will let us go, and we cannot go faster than the Constitution of the United States will let us go, but we ought to go at least as fast as they will permit us to go. If some State will take the lead and adopt a comprehensive system of compensation, and put it up to the courts and have decisions rendered, we would then know just what we could do. In any event, gentlemen, I believe that the workingmen will not be at all satisfied either with the suggestion sometimes made of a contribution on their part or with any law that removes from the employer the incentive to prevent accidents.

Sherman Kingsley (Chicago): Gentlemen, in my duties as superintendent of the United Charities of Chicago, I come in touch with a great many families where the breadwinner has been removed, and where the burden of supporting the family devolves upon the wife and the children. In this State, within the year, as you know, we have met with a very great disaster down at Cherry, where a large number of men were killed in a very spectacular manner. The press of this city and country was alive with the stories of that disaster for weeks. It was debated in our Legislature, it was talked about in university halls and preached about from the pulpits. I doubt if ever in the history of industrial accidents 267 men ever had as much written, said and thought and felt about themselves and their families as was the case down at Cherry.

I was asked to read a paper at the National Conference of Charities and Corrections at St. Louis, my subject being: "Compensation from the Point of View of What a Relief Society Would Consider Adequate." I tried to get a number of accidents equal to that of the victims of Cherry; that is, accidents that happened one at a time in the commonplace fashion, where, instead of having the press interested in it for weeks, the man will get three lines in a paper in an obscure corner, saying that So-and-so had his head cut off or had suffered an accident which cost his life. I got [65] from ten societies similar to the United Charities of Chicago, in ten of the largest cities of the country, something over one hundred accident cases, and I have a couple of charts which show the kind of compensation that was obtained by those one-at-a-time, obscure accidents, and then what happened in the case of the men down at Cherry, where they met their death so dramatically. One chart shows the compensation they received, either through court action or from the employer, and it shows what 50 families received where the man was killed in a one-at-a-time accident in ten of the large cities of this country. The second is a chart of 50 families in Cherry, and shows that they received $1800 apiece; while the 50 one-at-a-time families only received $8749, in amounts all the way from $3000 down to $7.

I suppose that a damage suit of $10,000 or $15,000 does have some compelling effect upon an employer with reference to protective machinery, but I think that the greatest thing in the world that will happen in the way of preventing accidents is to make it dead sure that every accident will receive some just measure of compensation. Instead of having 50 accidents get $8749, if they come to $3000 apiece, making a total of $150,000, that fact will have a great deal more effect in preventing accidents than has the present plan.

Now, I have another chart which shows the whole relief story of Cherry, and indicates the effect of public opinion upon the compensation received by the sufferers. The Red Cross Society, the Legislature and the whole community became interested in Cherry. The money contributed by the public, by the Legislature and by the community generally amounted to $87,240 odd dollars. In our one-at-a-time accidents something was done for the victims, of course; they were cared for in day nurseries, in orphan asylums, in hospitals and the county agents gave help and the charities gave some help, but not in any such amount as the Cherry sufferers received. Twenty-four of these one-at-a-time cases were cases where the children were taken out of school and put to work or to begging, or the family took in boarders, and in some instances the criminal courts had played their part. Whatever it was, it was a certain fixed amount. (Down in Cherry the amount contributed is to go to the families in monthly payments, spreading over some five years, and in amounts suited to the number of the children and the ages of the children in the family.) [66] The deterioration in the income of the families, resulting from the one-at-a-time accidents, was 64 per cent. Notwithstanding the wife and the children did everything they could, the income in these families has deteriorated almost two-thirds. In one case, where there was permanent disability, a man was awarded in one court $22,500. The case was appealed from court to court during a number of years, and finally the man received absolutely nothing.

Those are some of the general consequences, and I believe that in this matter of prevention nothing is going to have so wholesome and so certain an effect in the prevention of accidents as to have accidents cost money, and cost about what they ought to cost, and cost it with a certainty. You can see what happened in the case of these 50 families, where the accidents happened one at a time; those families only cost something like $8000, and some of that even, in fact, quite a large part of it, was a gift from the employer and not compensation.

(A motion was adopted thanking Mr. Kingsley for his graphic presentation of the facts.)

John Flora (Illinois): I see in this tentative "code" no provision for doing away with the defenses of the employers before the courts. The Chicago Federation of Labor, which I directly represent on the Illinois Commission, holds that any compensation bill in the State of Illinois is not worth the paper it is written on, unless we have a provision also doing away with the right of the employer to bring into the defense what is known in court decisions as assumption of risk, contributory negligence and the fellow-servant doctrine.

CHAIRMAN MERCER: Let me suggest that further down in this bill the common law remedies for all industrial accidents covered by this bill are intended to be repealed. If they are repealed, that would dispose of your question.

MR. FLORA: Very well. I want to say then in reference to this first section, that it appeals to me a great deal stronger than anything else. I happen to be a building trades man myself, and I want to say individually, as a member of the Illinois Commission, that I am in favor of a compensation law that will cover everybody. I do not favor taking out any class of industry and making that one class amenable to a certain law, and allowing another class to go without any protection whatever. I hold that the widow of a man who is killed in a non-hazardous occupation suffers just [67] as much as the widow of a man who is killed in a hazardous occupation. I do not know how the constitution would affect this matter in this State. That, I presume, is something that the Illinois Commission would have to look up, but nevertheless I think it is a great deal better than the New York proposition. I never have been very much taken up with the idea of having two different bills in New York. I feel that they might have gone further and have made one bill that would cover every occupation. I hold with the rest of the representatives of the working people that the working people will never agree to surrender their right to go into court under the common law.

MR. DAWSON (New York): I have not made up my mind at all as to this question, whether the right of the workingman who is injured, or of his family in the event of his death, to proceed under the existing law, should be taken away; whether he should be compelled to exercise an option and abide by it, or whether he should be permitted to proceed under the law through the courts, and in case he fails to establish that he has been injured by the employer's wrongful or negligent act, still be entitled to compensation under the compensation act.

There are, however, some considerations that arise in my mind. In the first place, the tendency of the proposed legislation in this country has been to do away with certain of the defenses, even though a compensation act be adopted. An argument in favor of that has been that by doing away with these defenses the employers will be made very glad indeed to accept a compensation act. I think the impression is that the bill which was passed by the Ohio Legislature, and since vetoed by the Governor, was intended chiefly to influence public opinion there in favor of abandoning entirely the old method of dealing with industrial accidents. Certainly in New York there is no question but that the weakening of the defenses was directly for the purpose of getting the manufacturers to take advantage of the permissive act. As I understand it, a similar proposition is now being brought forward in Wisconsin. If, in spite of this, by any chance the fixed policy in this country should ultimately be the same as in Great Britain; namely, to preserve to workmen their rights under the common law and under statute law relating to employers' liability, either in an optional form or in a form which would still give the benefit under the workmen's compensation [68] act, though defeated in the courts, it occurs to me that this weakening of defenses would be a peculiarly dangerous thing for us to do. The present situation in the United States is that the employers' liability theory, the negligence theory has, notwithstanding these defenses, in the main, been pushed just as far as the courts and the juries could push it, to cover many accidents. Notwithstanding that we chafe at these defenses, the courts and juries have gone just as far as they could go, on the theory that an employer was to be held liable *only* for his own fault. This is due to a strong sense of natural justice and a desire to compensate as many as possible.

It is safe to say that nine out of ten verdicts rendered in this country, and sustained by the higher courts when brought before them, are not cases where the actual negligence of the employer is clear at all, but instead it is reasoned out by precedents established by these same courts, under which employers have been held responsible; precedents which, of course, have been carried still further in the case of public liability; that is, to others than employes. If we pass a compensation law so that every injury is surely compensated, what resulted in Great Britain is what I should expect to find in this country if we do not weaken these defenses; that is, that after a compensation act is passed, the disposition of courts and juries will shift to the other side; namely, that instead of aiming to stretch the theory of employers' liability and negligence to the utmost limit in order to give verdict, they will tighten them by establishing new precedents until it will be nearly impossible to get a verdict for the negligence of the employer. This is true now in Great Britain unless an exceedingly clear case of actual personal negligence has been established, or such negligence on the part of those who have been appointed to perform the employers' duties in his business, that his agents' negligence is fairly attributable to him. It is by reason of that fact that the courts have gradually veered to the position, that the reservation of that right in Great Britain has done no harm. I say no harm advisedly, because I am told that the British insurance companies regard it as a quantity negligible in the computation of their rates.

Under those circumstances should we not be particularly careful how we proceed about weakening defenses? And should not the manner in which we proceed be definitely based upon what we suppose will be the ultimate form of these laws; that is, whether the right to proceed [69] under the employers' liability act will be wiped out entirely, whether it will be reserved as an option to be exercised only by abandoning the other right entirely, or whether, as in Great Britain, there would still remain the right when defeated, to claim under the compensation act.

There are reasons which appeal to me very strongly why the British principle should be accepted, but I am not clear that I shall be of that opinion in the end. One of these reasons is: This compensation, if it is given under a compensation act, will be for the purpose of trying to see that all persons who are injured in the course of carrying on an industry are taken care of. It has a public purpose; namely, to prevent the piling up of the burden upon public and private charity, the very things we saw set forth in the chart that Mr. Kingsley exhibited a few minutes ago. Is there any reason why, when we have tried to make that provision for the inevitable result of

industry, we should refuse to punish those rare cases of misconduct which mean that men have grossly trifled with the safety of their employes? I am not quite clear that there is any good reason. I am confident that an examination of the British decisions, since they put the first compensation act upon the statute books in 1907, would show that there have been very few cases, indeed, in which the employers have been held liable, where they ought not to have been actually punished for misconduct.

There is one consideration, however, that does not appeal to me which has been brought forward in the argument here, and I wish to speak about it. It is that by reason of such punishment employers will be more careful. I am sorry to say that such does not appear to be true. All the evidence to the present time is that employers are most careless where there is nothing for which they are held responsible but negligence. They are enormously more careful when they are held for every accident that happens. Experience all over the world has shown this to be true, and I want to add one thing that is almost more important still; they are still more careful in countries where they are not even held individually responsible, but are only held responsible for the payment of insurance premiums. The greatest amount of prevention and the largest amount of care exercised by employers anywhere in the world is in those countries which have compulsory or obligatory insurance laws. The reason is very simple: nearly every employer does not think that a catastrophe, due to his negligence, will ever happen. But when you hold him under a [70] compensation act for every accident, big or little, negligent or not, and accidents are happening every day, and there is a good deal of money being paid more or less continually, he will be much more careful. Again, when you introduce a compulsory insurance system, if his institution is not up to standard, he finds he is paying three times as big a rate of premium, perhaps, as another employer in the same business, and he does not wait for accidents to happen, but takes measures at once to prevent them, and so get a present and permanent benefit in a reduction of his rate. There has nothing been found yet which will cause so effective prevention of accidents as compulsory insurance; for it is, after all, the certainty that the want of it costs money that causes an employer to be more careful, and not the possibility that it may cost him a great deal more money or perhaps even ruin him.

MR. HARPER: Further, as to the right of the Legislature to take away from the employe his right of action at common law, in most of the bills which have been suggested, it is provided that some method of arbitration shall be substituted for the ordinary action at law, and, in my judgment, where the nature of the injury and the amount of the compensation only, and not the question of the liability, is left to the arbitrators and taken away from the courts, the courts ought to sustain it. It might be wise, however, in all cases to provide for an appeal to a court of record.

I want to ask the Chairman and the other attorneys here, especially to discuss a suggestion I desire to make in regard to limiting the right of the employe to bring such common law action and substituting in part the compensation system. The suggestion is this: Under the doctrine of respondeat superior, which has been in vogue for two or three hundred years, the employe was originally given the right of action against the employer, not only for the negligent acts of the employer himself, but also for the negligent acts of his servants and employes while exercising the duties of their employment. That was a judge-made privilege extended to the employe. It is not a constitutional right, and might we not take that power from him and substitute therefore a compensation system? That is, might we not provide in a compulsory compensation act that the employe, where the negligence is attributable not to the master himself, primarily, but to his [71] servant or his employe, that his compensation in that case should be compulsory and the employe would not have a right to his action at common law.

HENRY W. BULLOCK (Indiana): We do not have a Commission in Indiana. At the last meeting of the General Assembly I prepared on behalf of the State Federation of Labor a bill for the creation of a Commission, which, unfortunately, was smothered. We are fortunate, however, in Indiana, in having a Governor who personally is in favor of compensation, so we have that much of a start on the future.

The question of employers' liability and workmen's compensation, I believe, has been more deeply studied by organized labor than any other class of people, and I frequently have been associated with them in the preparation of their legislative measures in Indiana, and I believe that I can express their sentiments as being in favor of compensation.

I also believe that at this time they would be opposed to any system that would take from them their common law right to sue for damages, and they would probably favor a double law, such as they have in England. However, they might be induced to grant some concessions if the employers were to be reasonable, which I hope they will be. Thus far, however, there has been much opposition on the part of the employers, not only to measures for compensation, but to all safety measures.

I think the question of safety is the larger proposition. One thing the trade unions have done, they have trained up competent workmen, and if the employers would be careful in the selection of their employes, that would do much to protect life and limb.

In regard to this "workers' code," I know I speak the unanimous sentiment of the legislative forces of Indiana when I say that they do not intend the operation of an employers' liability law to include agricultural and domestic services, but that the question is whether the law can be constitutional without that. All classifications must be based upon some reason. It might be that this could be evaded, and the law could be drawn generally with a proviso excluding certain persons from its operation. Then no one could raise the constitutional question perhaps. The person within the operation of the law could not raise it because he would be affected, and the

person excluded could not raise it because he would not be affected by it.

It occurs to me that perhaps the rates of compensation named here are not quite adequate. [72] Injured workmen, for instance, receive 60 per cent. during only five years. Thus the workingman not only gives 40 per cent. of his wages, but he gives it all after five years. I believe that the industry should bear the expense. As it stands, it makes the workingmen, who are usually young or middle-aged men, from 20 to 45 years of age on an average, and who have a long expectancy, contribute the largest share. As to whether or not we could constitutionally deny the workingman his right of action against a negligent employer I seriously doubt if that could be done, for why should the rule be different if the injury is caused by the employer and it falls upon the workingman, than when it falls upon a stranger? All persons should be liable for their carelessness and their negligence, and it occurs to me that there is not a reasonable basis for that classification. Negligence is a personal proposition with the employer, and for that reason, I think, there should be a right of action against the employer. Compensation is a matter of industry and occupation, and has no reference at all to carelessness or negligence, and for that reason the industry should bear the ordinary hazard, but the employer should bear that which is caused by his own negligence.

This bill, as I have read it hurriedly, makes no provisions for the important feature of the certainty of securing compensation. It provides that these payments shall be strung out for a period of five years. How are we to know that the employers will remain solvent for five years? There should be some security for those payments if they are not made in a lump sum.

It occurs to me also that this notice is a little bit strict. Ordinarily an employer knows when an injury occurs. The law in most of our States compels the employers to report, and yet if the injured person fails to report within a very limited time, his right of recovery is barred. That notice should be sent, provided the employer himself does not know of it, but if he himself has actual notice, then the employe's right to recovery should not be barred. In some one of the measures, I do not know which one now, it provides that there must be specific detail. That gives the employer the advantage of having the names of the witnesses and of all the details made by the employe, and it does not give the reciprocal advantage to the employe of getting a statement from the employer, when we all know that very often employers conceal witnesses and keep the [73] correct statement of facts from the injured workman.

Concerning Section 6, regarding boards of arbitration and awards, some constitutional question might arise. I am not sure that such boards might be called administrative, but, at any rate, we have a constitutional provision in our State that says boards of conciliation may be created, but not with power to act unless the parties submit themselves voluntarily. I seriously doubt, therefore, if you can have compulsory arbitration under our constitution.

I would favor abolishing all of the common law defenses as to contributory negligence, assumed risk and so forth, with the hope of bringing the employers into a frame of mind to adopt this law, and to that end if you cannot get a constitutional law without it, the Legislature would have the right to prescribe a standard form of policy for liability insurance, and in that they might prescribe a form to insure the workmen.

I believe if we do not have compensation, that the liability insurance company should be made a party to actions for damages; that the amounts should go to the injured parties rather than to the employers, as is the case over in England. They have a provision there that the employers may adopt some system of their own with the approval of the public authorities.

The main argument of the employers at Minneapolis last year was that any increased liability would add a burden to the employers, and would cause the employes to become careless, and on investigation I find that perhaps there has been an increase in the number of accidents reported, which is due to the fact that the workmen report better when they are compensated, and that a larger number of industries have come in under the law. From the American Federation of Labor officers I find that their estimate is that the dangerous machinery that now runs at high speed is also the cause of the increased reports of non-serious accidents, and from an insurance company of Germany I find that accidents of a trivial nature have increased, while those of a fatal nature have decreased, and that the employers are penalized for their negligence. It seems to me that where there is a liability to penalize the employer for negligence it causes him to be more careful in protecting the lives of his workmen. And, it seems to me, in conclusion, that the right of the workingmen to receive damages should be maintained, but personally I think it should be used as [74] little as possible.

Wallace Ingalls (Wisconsin): The Chairman and I have discussed the various fundamental features or principles which underlie the question of compulsory compensation under our law, and you will pardon me for any criticism, if I make any, of the right to enact an out-and-out compulsory system in any of the States of the Union, but this bill involves exactly that principle. While it is not so worded plainly in the first section, yet it means the same thing, because in the first section you characterize occupations without limit as dangerous occupations. When you do that, you put those occupations within what is called the police power of the country, and when you do that, then, of course, you can enact laws bearing directly on the subject. I think we ought not to forget in the discussion of this question that the underlying principles of our Government are different from those of any of the other countries which have these systems that we have been talking about. When our Government was founded it was founded on individual rights. At that time individual rights were unknown in the other countries, and technically speaking in the other countries they have not now got individual rights, while we have them here. In fact, our Government is based on them.

One gentleman suggested that the employes did not wish to surrender their individual rights to go into the courts, which is the only place they have to go. I believe that is fundamental, and I think they would accord the same rights to the employer. But we must not lose sight of the fact that individual rights exist in this country, and that in the older countries, such as Germany and England, they do not have individual rights that you can insist upon and go into court upon.

We are discussing a very important question, we are discussing a question whereby we can arbitrarily decide what course shall be granted to an individual without his day in court, whether it is an employer or an employe; that they shall take a certain amount of money fixed by arbitration for an injury, or for death, or whatever it may be. That is a serious question. Now, you can, of course, take away these defenses of the employer; there is no question about that. I am in sympathy with it, but under our laws and our system of government, I do not believe that any of us want to embark upon any dangerous system of jurisprudence, and I do not believe we want to [75] invade individual rights anywhere. In Wisconsin, after a careful discussion of what we could and what we could not do, we presented a plan whereby these defenses are practically destroyed and the other features of the bill are optional.

One phase of this subject has been the source of much discussion pro and con, and that is in regard to the matter of contribution. In Germany their system covers sickness, accidents, invalidity and old age, three different classes. There is no contribution for accidents proper. There is for old age and for sickness, and sickness includes the first thirteen weeks of the result of an accident. In England there is no contribution. Whoever will examine those two systems, and compare them, I think, will draw the conclusion that when you consider the subject of sickness and of invalidity, the question of mutuality must necessarily and naturally enter into it. But with purely accidental misfortunes, that is a different question, and to my mind the contribution has no place in it for this reason, if it is true that that should fall upon the industry, then it necessarily follows that the employe should not contribute.

The success of the German system, as I view it, is based upon the mutuality of sickness, invalidity and old age, all three being interdependent and interwoven under one scheme, and the mutuality being in that system. That is what makes it so perfect. It is really a self-operating principle, and it is based upon the only true and correct principle that ever will be arrived at in considering a scheme of that kind. We cannot do that at present. When our system broadens, and we get to the point where we handle sickness and invalidity, then the mutual feature of it will come in and will be very wholesome, but as far as we have gone now, it is not possible to handle it.

On the subject of litigation in continental countries under the liability laws, the statistics in England show that litigation has practically disappeared. They prefer to take the compensation. It is immediate and they get it at once, and they prefer that rather than going into long-drawn-out and expensive litigation. Of course, there is some litigation, but it is growing less and less continuously, and, as a matter of fact, most of the litigation there has been in connection with the construction of the law.

Amos T. Saunders (Massachusetts): It seems to me as though the reading of this first section might defeat its true purpose. I understand it is based upon the theory that constitutionally we can [76] impose certain remedies upon certain industries, because they are immediately dangerous. It is very obvious from the reading of this first section, following out that theory of law, that the man who drafted it had endeavored to say that every industry is a partly dangerous industry. Under this bill the servant girl in my kitchen who cuts her finger when she is cutting bread for breakfast, is entitled to recovery. It strikes me when you say everything is partly dangerous that you have landed about where you would have landed if you had not said that anything was particularly dangerous. That is, if I should attempt to say that every man in this room was a "Tom fool," as a comparison between the men in this room, I have not said anything, but when you say every industry in which there is an accident (and there is an accident in every industry) is a partly dangerous industry, and by saying that attempt to legislate concerning it because it is dangerous, we have simply piled up a number of words which, when the courts get to the construction of the bill they must disregard entirely.

On the proposition that in England a man may sue, and, failing to recover, may get his compensation under the compensation act, it has been suggested that that will work no harm, and I judge it was sought to convey the idea that the result would be the same in this country. I believe, however, that when you say that you lose sight of one thing, and that is that in England it is practically impossible for an employe to get what a lawyer in this country who is trying cases for the plaintiff would call a decent verdict. The verdicts from the English juries are very materially smaller than the verdicts from American juries. Therefore, when the English employe comes to compare what he can get under the compensation act with what he can get under a verdict from a jury, he is satisfied with a very much smaller amount than the American would be. One of the chief reasons for the compensation act is to prevent the waste of money in expensive litigation. The employe only receives perhaps 17 to 25 per cent. of the money which the employer pays out, and the rest of it, so far as the employer and employe is concerned, is wasted. Therefore, if we should provide a system which would allow the employes all the remedies they now have, and then, if they should fail in their suits, allow them to secure their compensation under the compensation act, will we not be increasing litigation and, therefore, be providing a [77] means to hinder the effect of this very act? In other words, would you not be doing away with the prevention of this tremendous waste in litigation?

There has been considerable discussion as to a choice of remedies. I know in the Massachusetts Legislature, before the Judiciary Committee, the first question that was raised at the hearing this year and the year before was whether the employe should not be obliged to choose before his

injury, so that he could make a wholly disinterested choice between the laws, and not be affected by his particular injury; that his choice should be between the system of compensation or the system of liability. No one has suggested a really workable method, but in Massachusetts, and, I think, in New England in its entirety, most of the actions which are brought by employes against employers are to-day brought to a very large extent under statutory remedies and not under the common law. I will assume that we will all agree that anything which the State has given to an employe by statute can be taken away by statute under the constitution, and it has seemed to me as though we could at least do this: That in providing a compensation act we could provide it as a substitute for our statutory act, and that would leave the employe his common law remedy and his compensation remedy. The fact that the common law remedy is not used now, from a lawyer's standpoint, at least, would force the employer and the employe, if he was going to bring an action, into a more or less unfamiliar proceeding under the old common law, and as between an unfamiliar common law procedure and a perfectly plain compensation act, it would seem that the natural course for both the employe and the employer would be to take the certain compensation act.

I think the question which troubles Massachusetts more than anything else has been touched upon very little here to-day, and that is the effect upon interstate competitive industries. We can pass a law in each State which will apply to specially hazardous risks which are not competitive between the States, and while it might be inconvenient, and it may cause a great deal of trouble to start in with, the effect eventually is not an injury to any particular industry or any particular set of people, because if it is not a competitive industry the employer very quickly contributes the extra burden upon the public. But when you strike the competitive industries between States, [78] when Massachusetts or any other State does pass a compensation act, we do not know what it will do until it is tried, and it may be a serious burden upon the manufacturers. We are in danger of placing that particular industry in such a position that it cannot compete with industries in surrounding States. It seems to me, therefore, that the vital question for this National Conference to discuss, and the one which would be the most effective and beneficial to all the different States, is what shall we do with our competitive industries. If we can all secure, approximately at the same time, at the end of a few years, and place upon the statute books of the various States practically the same scheme, then, even though it is not a perfect scheme, even though it should prove to be a burden upon the industry, that industry is not going to suffer, but the people who sell the various manufactured products will distribute that burden among themselves. That, it seems to me, is the practical question which should be discussed. I should like to have this National Conference discuss what we can do with those industries which are spread out over the country and which are competitive. I believe we must find some general solution of that problem before there can be successful compensation acts in any of the States.

Edwin R. Wright (Illinois): There is one question I should like to have some light on from the members of the various Commissions here. There has been a good deal of discussion upon the elective or compulsory systems of arbitration, and also upon the question of the double or single liability, and I do not know of any better place to ask the question than right here.

The American Federation of Labor sent out a letter bearing on the subject, and I was rather astonished to find the number of different lines of industry which the president of the American Federation of Labor and the officers wished to include in a compulsory law. I asked President Gompers the reason, and the matter over, and after hearing the discussion here to-day, he told me that he favored a compulsory measure. In thinking the injured person fails to report within a very limited time, his it presented a question to my mind as to why President Gompers was influenced in asking for a compulsory measure. After Mr. Buchanan and Mr. Mitchell and others spoke on the question, it seemed to me that this would be a point which we could discuss here with a great deal of advantage to ourselves. In England they have a double system. A man can go [79] back after failing in the courts and receive his compensation, and the question that arose in my mind immediately was, what would he receive, and the answer to that is something like this: He would receive $3000, of which the attorney would immediately take $1000. Then if there was $1000 left after the court costs were paid, he would get that $1000, but the court costs might be $2000 or $3000. Then where would the double compensation be?

In referring to the matter this morning, I suggested that it might be a matter of compromise as to whether there would be a single compensation or a double compensation, and I would like to ask some of the attorneys here what it costs to go through the Supreme Court, and if it is not the custom if a damage suit results in $4000 or $5000 damages to usually go through the Supreme Court and possibly come back to some of the lower courts and then go back to the Supreme Court again, and what that costs, and if it costs anything like $2000, what is going to be left of the double liability? What does the workman get?

I went over the English tables and I found that a man really received more if he took his compensation than if he went through the courts, and that when he got greater compensation after going through the courts, he had to pay the court costs and his attorney. There was not very much left for him.

Mr. Mitchell: The court in England fixes the attorney's compensation at a very low amount.

Mr. Wright: But it does not here, and the court costs here amount to a great deal more than they do in England, so that you must make a comparison between the court costs in England and the court costs in America, aside from the delay in the courts, before you will fully understand the question. If a double liability is of any advantage to the employe, I want that double liability. If it is not going to be of any material advantage to the employe, and will merely pile up the expense account would not it be better to pile up the expense account in the first place, and have that go

to the employe as an automatic proposition? I am not arguing on one side or the other, but I would like to know what the workingman is going to get when the thing is settled.

I might go a little bit farther. We were shown some charts here this afternoon as to what the workmen receive in an ordinary accident. Those charts bore out exactly the statement I made [80] this morning. The charts this afternoon show that the workman receives on an average something like $400, when he received anything. Now, is that right? Is the life of a workman only worth $400 on an average? Is that all the compensation he gets? It costs about $150 to bury a man and that leaves $250, and besides that you have the other expenses coming in. I am beginning to doubt whether the life of an able-bodied workman is worth anything at all.

G. A. Ranney (Illinois): I do not think the workman gets anything under the double compensation, but he takes the risk of a suit, and, I think, if he elects to take that risk, he should bear the loss if he loses.

Mr. Ingalls: I quite agree with Mr. Wright upon the practicability of the double liability. My observation is that the double liability is quite unimportant as a practical matter, because when you get into court it is the delay that is the most troublesome thing. The real expense in court is not so exorbitant. The charges of a lawyer to handle the case exceed the actual court charges many times. Even taking away the double liability will practically affect the workingman very little. Of course, there may be isolated cases where he ought to have that right, and where it ought to be preserved to him, but in drafting a general scheme, it has seemed to us necessary to preserve the double liability unless the employe agreed to waive it, if he could waive it.

Mr. Buchanan: In my opinion there would be very few cases of expensive litigation in the courts if we had a proper compensation law in this country. It has worked out that way in Great Britain, and from information I have I know that the trade unions there are discouraging action in the courts unless it is a clear case of wilful negligence on the part of the employer.

I want to call the attention of the Conference to an abuse which we have here in Illinois, and which our Illinois Commission have probably looked up and understand. If they have not, they should. The Appellate Court here has the power to pass on findings of facts. There have been a great many personal injury cases reversed under this system of passing on findings of facts. This court was created in 1878, and given this power. Very few courts in the United States have it. I believe the United States Court does not claim to have that power. We desire that that power be [81] taken away from them and that they have the right to pass on the law alone.

Another thing that should be given thorough consideration is the financial liability of the employer. I believe that where an employer insures through a liability insurance company, that that insurance, whatever it is, should be attached when damages are secured by an injured employe. We have cases here where employers have no financial standing, and the result is that they have defaulted in the payment of damages, although they have been protected themselves by means of liability insurance. The injured workman cannot secure that insurance through the courts. That is something that should be remedied.

(An informal discussion was then had as to a more specific program for the Saturday morning session. Chairman Mercer announced the following committee, of which the Chair, in accordance with Dr. Allport's motion, was *ex-officio* member.)

*Program Committee*—Dr. W. H. Allport, Chicago; Prof. John H. Gray, Minneapolis, Minn.; A. T. Saunders, Clinton, Mass.

(Upon motion of Professor Gray an adjournment was then taken until 9.30 A. M., Saturday, June 11, 1910.)

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## THIRD SESSION, SATURDAY, JUNE 11, 1910, 9.30 A. M. [82]

Chairman Mercer called the Conference to order at 9.30 o'clock, and announced that the Program Committee had submitted eight specific questions for discussion, the consideration of each question to be limited to twenty minutes, and the length of time of each speaker to five minutes.

The further discussion of the Workers' Compensation Code was then taken up as follows:

Chairman Mercer: The first question will be whether we want to cover all employments in this act, or simply the hazardous employments.

Mr. Dawson (New York): In opening this discussion I am going to pass the legal question, because if it is necessary to limit the bill to hazardous employments, there are not two sides to the question.

It would appear that it ought not to be necessary for us to repeat all of the baby experiments that have been made in other countries. In other words, having delayed nearly thirty years longer than Europe, why should we not begin where the European countries left off, instead of where they began. It may, however, be necessary for us to confine ourselves to certain classes of employment, but I do not think, personally, that those classes ought to be selected with strict reference to the question of their being hazardous. For instance, if it should transpire that the employers of domestic servants and the farmers are bitterly opposed to any system which will apply to them, it may be necessary to leave them out, but we ought, if possible, to cover all

manufacturing establishments, all mercantile establishments and all transportation industries, and generally to proceed on broad lines.

There is a practical objection to confining this sort of thing to the really more hazardous employments. It is this: The rates for employers' liability insurance are already very high in those industries, and they will probably be doubled or possibly tripled or even quadrupled. It would be difficult to imagine anything which would render workmen's compensation more densely unpopular than to apply the principle exclusively to the more dangerous manufacturing [83] industries of a particular State. On the other hand, an increase in the rate payable by a dry goods merchant, for instance, might not amount to an advance on the payroll of more than one-half of 1 per cent. or 1 per cent., and, therefore, might not seriously place the employer at a disadvantage in competition with employers of other States. That is not true where the hazards of the occupation are very serious. You then have the situation that every manufacturer affected may be able to establish that he cannot carry on his business at all in competition with these other manufacturers if he is thus burdened.

James A. Lowell (Massachusetts): This matter of how many trades shall be covered is a pretty serious one for Massachusetts, because I do not think a scheme in Massachusetts would work unless we covered practically all the trades. We have an employers' liability law in Massachusetts now which excepts agricultural employment, which is a small matter in Massachusetts, and domestic servants, and I should assume that those two exceptions would be made in any law which was passed, and incidentally that has been held to be a proper law. So I do not apprehend any difficulty on the constitutional part of it through leaving out those two classes of workers.

But in Massachusetts by far the greater part of the industry there is in manufacturing, the lighter trades, and, I think, in order to get a law which would be of much service in Massachusetts, we would have to cover practically all industries, so we are up against the proposition there that we cannot do much along the line that has been followed in New York.

The experience in England under the employers' liability law has been that the premium on insurance in mines is twice what it cost under their former laws. In hazardous risks, as Mr. Dawson has said, the rates are from three to four times higher, and in those lighter trades it is very much greater than that; it is six or eight times more than it was under the old laws, and the chances are that if we adopted a law in Massachusetts with anything like the scale there is in England, it would be six or seven or eight times as much for insurance as it is at the present time. So that is a very practical difficulty which we have to face in Massachusetts.

As I said before, in order to have a law there that is to be of any value, you must practically cover all of the trades, and the only way you can do that, as far as I can see, is that you would have to [84] have your scale of compensation under the law very low. I do not think that that would work out badly in Massachusetts, because most of the injuries which will be found in the factories will be minor injuries. There are not a great many very serious injuries in the cotton factories as compared with the mining and bridge-building industries, but there are a great many small injuries. If you put on some kind of a scale which would be relatively quite small, the result, it seems to me, would be that the workmen, as a whole, would be very much better off than they are now. As it is now, one man out of every twenty, we will say, or possibly one out of fifteen, will get a fairly good-sized amount, and all the other fourteen will not get anything. Putting it on a moderate scale in the cotton factories would give everybody something; probably not as much as we would like to give them, or as we perhaps should give them, but, I believe, the result would be much better than the present situation. For that reason on the point we are now discussing, I believe the thing for Massachusetts to do is to try and get some kind of a law which will cover practically all industries.

Charles A. Sumner (Missouri): I naturally would like to see the bill cover all industries, but the legal question arises, and unless we can get around it, as this tentative bill seems to succeed in doing, I do not know what we would do down in Missouri. Missouri is largely an agricultural State, and the Legislature is in the control very largely of the farmers and the representatives of the smaller cities in the agricultural districts. We have the initiative and referendum, however, and it occurred to me, in listening to the discussion here, that if it were the opinion of this Conference that it would be better to attempt to get a bill adopted which would include all trades, that it would be worth trying in Missouri, where the initiative and referendum are in existence. I believe that if a proper bill were put to the people direct, it would very likely get the support of the people in Missouri, particularly if it was a bill that the best judgment of this Conference had evolved. I believe, however, that we would prefer to have the bill include all trades.

Chairman Mercer: Mr. Sumner, the farmers may have a considerable influence in the Legislature, but so have the other interests, and legislation is very largely a matter of trade anyway, when you get into the majorities. Don't you think that would work itself out all right and take care of the farmers?

Mr. Sumner: As I understand politics in Missouri, the farmers there are strong partisans, and [85] unless you can get your bill adopted by one party or the other, as a party measure, which I think would be very improbable down there, because our parties are very largely in the control of the corporate interests of the large cities, they would have something to say about the bills and the farmers' representatives would simply go with the party. Still, with the initiative and referendum the people and the labor unions down there are not relying very much on the Legislature any more.

Chairman Mercer: If either party, or if both labor and capital wanted this proposition, then they

would vote for it?

MR. SUMNER: Yes.

CHAIRMAN MERCER: So if the employers and employes should agree on what was a proper bill in your State, you would not have any special difficulty, after all, would you?

MR. SUMNER: No, probably not. I should add that we have discussed this matter at the City Club in Kansas City, and the employers are just as much opposed to the present system as the employes. I was told by a State Senator last week that he has a bill now drawn up to be introduced at the next session of the Legislature, but I apprehend that the bill will not be acceptable to us.

PROF. SEAGER (New York): It seems to me in this matter that we are between the devil and the deep sea. If we begin this legislation by taking in all trades, we have got to scale down our schedule of compensation. We have got to recognize the validity of the argument, that you cannot put too heavy a burden upon competitive industries in one State when they have not the same burden in other States. That means a low scale of compensation. That means it would be very hard to get wage-earners behind our proposal, and for those reasons I anticipate that the political obstacle to getting a bill passed that contains an adequate scale of compensation and applies to all industries is going to be serious in most of the States.

I know it was our opinion in New York that such a bill could not be passed through the Legislature. The only certainty of getting a bill through the Legislature was limiting it to extra-hazardous trades and to trades that were non-competitive. That policy of course has this disadvantage: There is some doubt as to whether a classification along those lines will be upheld as reasonable by the courts, and I confess that we have some anxiety as to whether the bill we [86] have induced the Legislature to pass will be held to be constitutional on that account. On the other hand, along that line it is possible politically to make a beginning, and I am inclined to think that it would be easier, if we can, to get the thing started for extra-hazardous industries and then to extend our definition of hazardous industries and gradually take them all in as the public is convinced that it is a good policy and a great improvement over the Employers' Liability Law. That would be easier, I believe, than to work along the other line of trying to take in all the trades at the outset. Starting on that line would involve a very low schedule of compensation and then trying to advance our schedule of compensation to what we would feel was adequate.

CHAIRMAN MERCER: But how about the desirability of it in case you feel it could be done?

PROF. SEAGER: Oh, I assume that we all agree that that is what we want if we can get it.

CHARLES MCCARTHY (Wisconsin): In looking over the New York Bill, and after hearing the argument of Professor Seager, I cannot help saying something about this bugaboo of interstate competition. I have just returned from Germany and England, where I have been some months examining the workmen's compensation insurance scheme. You are now discussing the scope of the bill and I want to tell the delegates here that the idea here in America that we in Wisconsin cannot start this scheme because of competition from other States, has a parallel in the commissions in Europe.

Europe is about as big as the United States and you have all these countries competing, one with another. You have severe competition between Germany and England, and you find Germany not only bearing the burden of accident insurance, of sickness insurance and invalidity insurance, but the German manufacturer actually adds out of his own pocket to what he has been required by law to pay, sometimes to the extent of fifty or sixty per cent. more, in bringing about many improvements in the conditions of the workingmen, and I state here that that is one of the basic conditions of German prosperity. I want to put that on the record here because I want the manufacturers of America to send representatives to Europe, and they will find that what I am saying is true; that the reason why Germany is driving English-made goods out of the market is [87] because this very burden that they talk about is an asset and not a liability.

Books have been written about this subject and I have had the honor of reading the advance sheets of the book by Dr. Frankel and Mr. Dawson, which has not yet been printed, but these books do not really show why Germany is beating England, notwithstanding this so-called "burden" upon the shoulders of the German manufacturer. Germany is passing from an agricultural country into a great manufacturing country. In doing so it is necessary for Germany to extend her manufactories out into the small towns. You all know what that means. Some of you from Massachusetts have seen the shoe factory leave Brockton to go out and get some cheaper help somewhere, and then it comes back to Boston, because in Boston they can get the skilled and intelligent help which must go into the product in order to make the community prosperous and to make the goods of that community sell.

When a German manufacturer goes to a small town he says to the workman: "You come out to my town and live there. You will have your accident insurance, your old age pension and your sickness insurance, and besides that I am going to get a house for you out there, and a little plot of land, and I am going down in my pocket and add something to that invalidity insurance, and I am going to do something for tuberculosis prevention, and I am going to have a sanitary factory, and when you come out there you can settle down and marry and raise your children, and when they grow up I am going to put them into an industrial school after they have left the public school at the age of fourteen, and they can go to that industrial school until they are eighteen."

Now all of these things go to make up an intelligent population in Germany, where the children grow up under the conditions of sanitation and education, and with the contentment that comes from the fact that a man knows he can settle down and marry and have children. The

manufacturers in Germany realize that this is not a burden, but that it is the biggest asset they have in Germany. I wanted to point that out to you and have the delegates go back from here with the idea in their minds that there is more to be said upon this question of interstate competition than has been brought out as yet.

England is in a desperate condition because Germany is cutting into the markets of England throughout the world. England had to adopt her Workmen's Compensation Act, and she adopted [88] a compensation plan that Mr. Dawson knows is excellent, and it costs about four times what it does in Germany. I want to get it on the record that there are no adequate figures or facts presented as yet as to the difference between the mutual organizations of Germany and the private insurance organizations of England. I do not know why that is, but Mr. Mitchell said yesterday that the private insurance companies similar to those of England might prevent accidents. I want to warn you before you go back, that there is the greatest difference in the world between the mutual organizations in Germany in the safety and conditions of the workingman's life, as compared with the third party insurance in England. I have never found in England a private company having any inspection whatsoever of dangerous industries. I visited many factories and went into every insurance company in London and asked them what they did to prevent accidents, and they were doing practically nothing. I went into the sawmills in Germany and in England and compared the safety devices side by side, and I want to tell you that where the manufacturers in Germany combine under the law as they are compelled to do, they deal with their men with a hundred times greater humanity than under the conditions in England.

I am sure of what I am saying and I am going on record. I want every manufacturer and employer to investigate what I am saying here. I say that you can get insurance by mutually organizing and having some provision in your bills for mutual organization of employers a great deal cheaper and with a great deal more regard for humane conditions than you can by the private proposition, unless you compel all insurance companies by some other statute to make inspections before they place their risk.

I also want this suggestion to appear on the record. Some sort of provision should be made so that the private insurance companies will not knock out the old men on poorer risks. When they started in England they did knock out some of the old men in the employments, but now that thing has been settled. It ought to be put here in statutory form, because when you get the third party in here between the manufacturers and the employes, you are getting people who do not put their hearts into the thing.

I know this will be a matter of controversy, but I want to offer it here. I want to tell you not to fear this bugaboo of interstate competition. Nobody wants to see the State of Wisconsin more [89] prosperous than I do, and I am sure that if our Wisconsin manufacturers go forward and make that investment, they will put intelligence into the product and add a happiness to the people that will build up the State. If it were not so then the principle of tariff would be no good; if it were not so then China and Japan with cheap labor would have been beating us to-day; if it were not so slavery would have been the best thing for this country instead of the worst.

Mr. Dawson: An investigation as to the cost of insurance in the various countries of Europe will be undertaken by the United States Bureau of Labor, as requested by this Conference at its session at Washington.

Chairman Mercer: Gentlemen, is it not true that we have the best judgment of the great financial interests in this country to the effect that this interstate competition amounts to very little, and that that judgment is best evidenced by reason of the fact that nearly all of the big industries that are doing business both locally and throughout the United States are adopting a scheme that voluntarily places a greater burden upon their shoulders than the law has been providing?

Mr. Ingalls (Wisconsin): We have in Racine a perfect illustration of that. A very large concern there not only adopted the accident but the pension system as well, so that we do not fear anything of that kind.

Doctor Allport: It would seem to me that the question of whether we should attempt to adopt or recommend a tentative form of law or code of law in this matter is really a question of whether we have profited by the historical aspects of this subject. I think in a measure we are a little too much wedded to what people are wont to call the philosophy of individualism. Every State is passing laws of all kinds, and no State has any particular intention of following another State.

The historical aspect of this matter with reference to interstate competition and with reference to the selection of certain trades has already been threshed out abroad, to the satisfaction of the European governments, trades people and manufacturers, and it would not be a bad idea perhaps if for two or three minutes we consider the historical aspects of this subject, as applied to England and to Germany.

We all know the inception of this thing began in Germany, but they never formulated it until [90] about 1883. Before that time, however, Gladstone in 1880 had been forced to make up some kind of a law for England which was passed in 1880 as the Employers' Liability Act. That was based on what is now known to be the crudest and most unsatisfactory of all principles—principles which are bound to be local and unsatisfactory and which do not cover the situation, and which give the workmen practically no remedy except before the court. That is the stage which this country has reached if it has reached any stage at all. Few of our States have reached a point where they have anything like a satisfactory Employers' Liability Act. That is the initial stage when the child first commences to walk. Germany went far beyond that. She saw the failure of the Gladstone Act, and went to the bottom of the matter by deciding to abolish entirely all matters of liability

and put it altogether on another basis. Upon that basis European-Continental law has been modeled from that time to this; Germany always in advance but the other countries following as close as existing laws will permit.

In 1890 Germany adopted practically an absolute act, and every State on the European continent has now followed the lead of Germany. The question that has come to us historically and in an evolutionary manner, is whether we should follow the lead of European governments in this matter and do as they have done, adopt the lead of Germany, who ignored entirely the matter of interstate competition and passed a law placing every trade under the Workmen's Compensation Act, or whether we should undertake to work out this matter for ourselves in the crude indefinite way in which England has worked it out.

In England this matter of interstate competition came up. England worked for seventeen years under the Gladstone Employers' Liability Act, but finally Asquith and Chamberlain and a combination of the Liberal and Conservative parties, got together and formulated another act in 1897 which they called the first Workmen's Compensations. That act applied, as we attempt now to apply it in certain of our States, to certain limited trades and occupations.

Prior to that time the various counties and organizations of Great Britain appointed committees which investigated these matters to decide whether they should pass a law to collect statistics and decide whether they should adopt a law including all of these trades or only a portion of them. They decided, in view of the uncertain character of the legislative elements in England, [91] that they would apply it to a limited portion only of the trades, and so they passed the Chamberlain Act of 1896. But they soon saw not only the benefits that came to all of England from the application of the principle, but they saw that in order to satisfy the other workmen who demanded the same thing, that they must apply it to all of the trades, and so finally they passed the Asquith Act of 1906, which is now in operation, and applies practically to all of the trades in Great Britain. They were not so wedded to this unfortunate philosophy of ours which was the cause of our constitution, and I suppose which led America first to separate itself from England and which has dominated American life ever since—this philosophy of independence, this philosophy of individualism. If we cannot see the benefits that come to us from following the European systems, we will have to work one out ourselves. But in my judgment and in the judgment of a great many others more competent to speak authoritatively upon the subject than I am, it would seem as though it was the height of folly for us to ignore the example of Germany and twenty-two Continental Governments which have followed the lead of Germany.

CHAIRMAN MERCER: I would like to hear some of the employers discuss this question. Would the employers feel that they were treated fairly if we singled out a few of the more hazardous industries and did not cover all industries in the same way, in proportion to the number of accidents?

JOHN MITCHELL (New York): I think we must approach this subject as a practical proposition. I want to make this observation: If these bills include domestic and agricultural labor, we are not going to pass the bill. If we are going to work out a practical proposition with the hope of passing our bills, it seems to me we must exclude agricultural laborers and those employed in domestic service. I do not believe the farmers will favor this legislation if it affects them, and I think that the number of accidents occurring on farms is not sufficient to make their inclusion necessary for the success of the bill.

My judgment is that we should start with men working in dangerous employments, and then perhaps with a few years' experience under a bill of that kind, we may decide to include the agricultural industry. The industries which need it most are the ones in which there are the greatest number of accidents.

CHAIRMAN MERCER: What is the harm of reporting the bill complete to the Legislature, and then [92] when it gets in there as a practical proposition, let them pass it, and if they can not, let them cut out such industries as they have to?

MR. MITCHELL: The difficulty is, if the farmers are apparently justified, the men who represent the agricultural districts will vote against it, and the legislator who represents a manufacturing district and who personally might not feel hostile to the legislation, will vote against it, because he does not want to put the burden on the farmers.

CHAIRMAN MERCER: Supposing some fellow offers an amendment striking out these industries which you would leave out in the first place, can they not pass the bill just the same?

MR. MITCHELL: Yes, but I am getting at the best way to approach it.

MR. HARPER (Illinois): The experience in Illinois on Commission bills has been that it is vastly better to have no opposition at all, and to eliminate all possibility of amendment if it is possible. In other words, if the Commission submits a bill to the Illinois Legislature, they are inclined to take it as it stands, especially if both sides interested in the matter are on the Commission, because they say, "Well, this matter has been agreed to and we have no special interest in it. If it is all right we will pass it." Hence, if we put something in that requires amendment, it is liable to stir up discord and dissension; and my personal opinion would be that it would be wise to avoid that if possible.

On the subject of classification I think it would be wise to make a classification based upon the hazardous trades; not the non-competitive trades, but the hazardous trades, and make it inclusive and as broad as possible. Include in the hazardous trades the non-competitive trades, as they have done in New York, but do not start with any one especially, because our courts here have

gone further on class legislation than anything else, and I think it would be dangerous for us here to include merely non-competitive trades and call them hazardous or extra-hazardous. In my judgment it would be much better to call them extra-hazardous and include in that list the non-competitive industries.

EDWIN R. WRIGHT (Illinois): I wanted to suggest that it would of course be desirable to take in every occupation, but if we take in the farm labor and servants of Illinois, we cannot possibly secure the [93] passage of this bill. If we burden our bill with too many classifications and too many occupations, the moment we get to Springfield, interested parties, the farmers to start with, would ask to have the farm labor stricken out, and when you once start the snowball rolling down the hill, you would strike the meat out of the bill and lose the confidence of the Legislature, and the moment you do that you lose the bill as a whole. It would not make any difference if nine-tenths of the bill were correct, you would have overshot the mark one-tenth and you would lose the entire bill because they would cut it all to pieces.

We have a great many dangerous occupations in this State. A great many men are killed or seriously injured on railroads every day. Five men are either killed or injured in mines of Illinois every day, and the proportion keeps right up through the trades, so that it is pretty hard to say where the danger starts or stops, but must classify the different trades in this State if we hope to get anything at all.

In comparing conditions here with conditions in foreign countries, you will have to take this question into consideration: In foreign countries, as I understand the situation, they raise the workers there, and if we raised the workers in this State we would soon arrive at the conclusion they have arrived at in England and Germany. Here we import the workmen ready-made and grown-up. We do not grow them in this country, and most of the men who are killed are foreign born, or a large percentage of them. If we fail in securing the compensation law, and it has got to take its regular course, we can get the same results through a different channel. Stop bringing in the men who are grown up, and raise them here, and you won't have the workers to kill, but you will have to conserve the workers in this State and in this nation. Out of 220 firms reporting in Illinois, there are over 200 accidents a month.

MR. INGALLS (Wisconsin): The idea in this plan is to include the railroads and public service transportation company employes as a whole. Now, is it not wise to consider for a moment the distinction between those two classes of occupation? All the gentlemen here will agree perhaps that so far as railways are concerned, and public service corporations of that character, there isn't any question but what the Legislature or Congress can pass a compulsory compensation law. You do not have to classify either at all; any transportation company which gets its right to exist [94] and to operate from the Legislature or Congress can be controlled by the Legislature or Congress with reference to compensation for its injured employes. That industry can positively be handled in that way.

Congress has introduced and passed a resolution for the appointment of a Commission, which will consider that very subject. Those measures are to be made uniform; the State could readily agree upon a plan along that line, and it seems to me that with the subject handled with that idea in view you can pass, under our constitution, a compulsory compensation law for all railway employes. And those engaged in interstate commerce could be handled by Congress and thus make a uniform system.

As to what occupations should be considered, none of us has considered in Wisconsin, so far as our committee is concerned, that we necessarily ought to include farm laborers or domestic servants. Of course our plan here is different and the discussion seems to relate to what classification we shall have under an absolute system, which is quite a different question from that in Wisconsin. I can readily see how the farmers and employers of domestic servants would be inclined to oppose a measure as strong and radical as to include all such employes. I agree with the other speakers that in presenting that matter to the Legislature you ought to present it as you think it will be sustained by the Legislature rather than to ask for things that you know yourselves you probably would not be able to get. In fact, I think it might be well to keep in mind, in discussing the occupations, what you can do positively and what there is a great deal of doubt about being able to do, on the theory of an absolute compulsory system.

MR. RANNEY: When the International Harvester Company organized their industrial insurance plan they omitted all employes except those working in their mines, in their plant, and on their railroads. We have some 2500 men in our sales department and experts working out on farms who are not included in that plan, because we felt that going beyond the industries was rather a dangerous proposition. Hence, we included about 35,000 employes and excluded about 2500.

MR. BLAINE (Wisconsin): I think that if there is any justification for this sort of legislation it is found in the fact that the industry or trade should bear the burden and not the workmen.

I have contended also from the beginning that farm laborers and domestic servants should not be [95] included. Farmers as they conduct their occupation in this country to-day do not have any control whatever over the price or distribution of their products, and hence they have no opportunity whatever to transfer the cost of industrial accidents to the consumer. They are not organized. If they were organized into a vast Society of Equity in every State of the Union I doubt not but what they could control and dictate who should pay the cost of this new burden, if it is going to be an additional burden.

The other industries are organized. They cover vast areas of territory, and they know how to transfer the cost of production. The hazard, too, is greater in our industries than in our farming

communities. I think, however, that under the Wisconsin plan we have taken care of the farmer, and I apprehend no danger whatever from that source, because he need not come under the plan unless he wants to. He will be independent of it.

REUBEN MCKITRICK (Wisconsin): In an article written by Professor Farnam, statistics are given as to the comparative number of accidents in farming and agricultural pursuits and in the industries, and while I cannot state the figures in absolute terms at this moment, the percentage given is higher for laborers upon the farms than upon the railroads, for instance.

That statement is borne out also in the accident rates for farm laborers as compared with the rates for men in general manufacturing industries throughout the State. The accident rates are higher for the farm laborers, and so if you are going to work on a basis of establishing a classification on account of the hazardous employment, it seems to me the farmer would have to be included.

(In closing the discussion on Question 1, the following resolution was offered by Doctor Allport, but not voted upon, the unanimous consent to its adoption, required under the By-Laws, not being granted:

"*Resolved*, That it is the sense of this Conference, that State Compensation Laws should be framed to cover all hazardous manufacturing industries, and that any manufacturing industry in which accidents occur shall be declared classified as hazardous. That this classification shall not include farm or domestic labor."

Upon John Mitchell's motion, Commissioner Charles P. Neill, Mr. H. V. Mercer, Dr. John B. Andrews, Mr. M. M. Dawson, Dr. Lee K. Frankel and Dr. William H. Tolman were authorized to [96] represent the Conference at the International Congress of Social Insurance to be held in September, at The Hague, and to extend on behalf of the association an invitation to the International Congress to meet in the United States in 1912.)

CHAIRMAN MERCER: The second question is: Do you want the liability in whatever industries you cover to be an absolute liability; or do you want to make a law that will permit a contract to be made by the employer and employe?

If nobody wants to be heard on that we will pass to the next question, because that is largely a constitutional question of what you *can* do, and you all want to accomplish the same results, as far as you can.

The third question is: Whether, in your judgment, we should have a double or a single liability, if we could get what we want. Do you want to repeal the common law and statutory remedies or do you want to add the compensation act and leave the others as they stand?

JOHN FLORA (Illinois): As a member of the Chicago Federation of Labor, and knowing the views of that organization, I want to say that it is the unanimous desire of that portion of the workmen of the State of Illinois that we first have in the State of Illinois a law repealing the common law defenses of the assumption of risks, contributory negligence and the fellow-servant act. We hold, as a body of workmen, that no compensation law, I do not care how good you make it, will be worth the paper it is written on unless those defenses of the employer are taken away from him. Then we do not care whether it is elective or compulsory. If you take away the defenses of the employer along those lines, you can make an elective law, and he is compelled to accept it in order to escape the results of the statutory law.

CHAIRMAN MERCER: Are you willing to repeal all the common law, not only the defenses, but the right to recover if the compensation plan covers the whole field?

MR. FLORA: I am not at liberty to state that at the present time. I am careful in making my remarks, because I would first want to consult my constituents on any questions of that kind. I do know this, however, that the working people of Chicago do not want to give up the right of going under the law as it stands to-day and as they have it in England. We want the right, if we do not [97] like the compensation, to go to court. As a matter of fact, I think it is rather a foolish idea that is entertained. If we can get a compensation law in this State as good, for instance, as the one that Wisconsin recommends, personally, I am going to write in my dying request that my wife shall not be fool enough to go to common law, but to take the compensation, because, I think, she will come out better in the end.

I am gathering statistics in Cook County as to the accidents that have resulted in death, and I find in every case where they have gone to court they have received a great deal less than if they had settled with their employers. The largest amounts that have been recovered, after taking out the costs of a court procedure, have been less than what they would have received if they had settled with their employers in 150 cases that I have so far investigated. Therefore, I think, the idea that the working people have—that they want access to the courts under the law—is more of a bugaboo than anything else, and that after a good compensation law is passed we will have a great deal of trouble in our organization in trying to teach the people to take the compensation and stay out of the courts.

CHAIRMAN MERCER: Is it not true that the laboring men think now that they ought to have both systems left open to them, because they are afraid they are being handed a "gold brick" by the compensation plan, if their right to recovery under the common law is taken away from them?

MR. FLORA: Yes; if you have had many dealings with working people you will know that they are always afraid of a "gold brick."

DR. MCCARTHY (Wisconsin): Do you not believe that after a discussion with the working people

they will realize the situation and understand it better? I know in talking with the labor representatives up in Wisconsin for the last two or three years before the Legislature, that they are gradually beginning to understand what a compensation act is. I think the sentiment is changing among our labor people in Wisconsin, and I believe this winter they are going to accept the compensation act without asking for their common law rights.

JOHN MITCHELL: I do not believe there should be any hesitancy in answering that question. The fact of the matter is that the working people want the right to sue in order to make the employers [98] careful. We all know, of course, that under any compensation that is proposed here they are simply averaging up the compensation. That is to say, a man who is probably entitled to anything at all under any law we now have, gets something; and the man who is entitled to a great deal does not get so much.

DR. MCCARTHY: Do you think it will make the employer more careful?

MR. MITCHELL: Of course I do. I believe that if it cost an employer $20,000 to kill a man he would be careful. If it is expensive for an employer to kill men, he will protect them, but the great difficulty in this country is that it is not expensive to kill men. It is the judgment, I think, of nearly every one who has investigated this matter, that human life is entirely too cheap; it is not expensive enough for the employers who injure their workmen.

DR. MCCARTHY: The employers only pay one rate, any way. It falls on the insurance companies. Why should the employers be more careful?

MR. MITCHELL: Because their insurance rates are fixed by the number of accidents or the number of recoveries. I dare say in England the number of accidents is not as high as it is here. In fact, a representative of an English insurance company told me the other day that the British Government pays 30 cents per capita for mine inspection, and their total expenditure amounts to $6,000,000 annually. I dare say that while our population is double the population of Great Britain, that we do not pay in the whole United States $2,000,000 dollars a year in either factory or mining inspection, where as a little nation of 40,000,000 people is spending $6,000,000 annually. That is one reason, I think, why the accident rate is so much lower in England than it is in the United States.

MR. PARKS (Massachusetts): I have heard a great deal about this double liability plan where the workman, failing to win his suit at common law, would be entitled to compensation under the compensation act. I believe in Mr. Mitchell's idea in regard to that, and I believe that is the idea of the majority of the workmen. The cry in Massachusetts is that they want something different from the present employers' liability act. I am not so enthusiastic a laboring man as to think that we are going to get the employers' liability act so amended that we will take all of that grievance [99] away from the act. In fact, if we got all of the defenses taken away from the employer there would be no need of a compensation act.

We have had that bill before the Massachusetts Legislature for a number of years, and we have not heard any great talk about workmen demanding this or that right under the employers' liability act. They have been asking for something to take the place of the employers' liability act. They want a workman's compensation act. I do not want to see this thing come up from the workmen themselves, because I think it is going to stop this workmen's compensation movement. If they continually rise and say that the workmen demand this and demand that it will mean that the workmen will get nothing. I have had considerable experience in the Massachusetts Legislature in agitating labor legislation, and, if I do say it, I think Massachusetts in recent years has put more remedial labor legislation on the statute books than probably any other State in the Union, with the possible exception of New York. I give way to New York, because we like to follow New York, but I cannot say that of the other States of the nation. Personally, I would like to see the workmen get all they possibly can get, but we cannot impose too many restrictions on the employers, and if we recommend in the different States the taking away of practically all the defenses of the employer under the employers' liability act, and at the same time recommend the workmen's compensation act, the whole thing will fall through and we will get nothing. I believe we ought to go easy and get something that we can put through.

I am a believer in fixing up everything before you put the bill into the Legislature, and have some kind of an understanding between the contending parties, so that when your hearing comes up both sides are pretty nearly agreed on the same plan. Take away all opposition before you have your hearing, because the minute you start opposition you begin the death of the bill. It is a slow illness, but it means death. If we can bring about something that will not be too radical, that will not be too harsh on the employers, we will get something for the workmen.

I believe, as Mr. Mitchell said, that the workman ought to have his right under the common law, but failing in that he should not be allowed to go to the compensation act. I do not believe in that; [100] it is a nice thing, and I would like to see the workmen have it, but it is not fair to the other side.

MR. BLAINE (Wisconsin): On this question of double liability I would suggest that the farmer under the Wisconsin plan will study this law and will learn the benefits of it, and either through mutual insurance companies, as they have mutual fire insurance companies to-day, or something of that sort, he will, no doubt, come under the law and be glad to do so, because it will be a positive benefit to him. The double liability is somewhat debatable. Under our plan we take away certain defenses. If we take away those defenses from the employer, and leave the employe the right to sue at common law, and also the right to compensation under the act in the event of failure to win his suit, I think we are doing something unfair toward the employer and something that the employe does not want. I do not believe that in Wisconsin the Federation of Labor would demand

that sort of a measure. In fact, I am led to believe that they are now prepared to meet the committee upon a very reasonable ground as to the double compensation, and I do believe that while our bill provides that the right of election shall take place at the time of employment, that we will be able to meet the committee on the fair proposition that the right of election shall take place at the time of the accident, but that that right shall apply to accidents happening by reason of the negligence of the employer or through his failure to supply the proper safety appliances for his machines.

MR. FLORA (Illinois): Of what value would a compensation law be to the workman in the State of Illinois particularly, where we have no employers' liability law, if the gate were left open for the insurance company or the mutual benefit company, or if the employer could bring in the old common law doctrine of contributory negligence, assumption of risk, and so forth? What would prevent the employer or the insurance company, if we did not repeal those laws, from bringing those in and keeping the workingman out of his compensation under a compensation law? I would like to know what protection the working people would have in that case.

I find also that too many labor representatives are too much imbued with the idea of protecting the other side. I believe in letting the other fellow take care of his own side. He is big enough to do it.

MR. PARKS (Massachusetts): If they had a workman's compensation act in Illinois the workmen would draw whatever the compensation act said they should draw. [101]

MR. FLORA: Cannot they bring in the law of contributory negligence?

MR. PARKS: No; not under the workmen's compensation act; you are entitled to so much, if an injury occurs, without regard to the liability.

As to Mr. Flora's statement that there are too many labor representatives who want to look out for the other side, I find that you get more for the workmen by showing a little consideration for the other side than by being radical.

MR. RANNEY (Illinois): In answer to Mr. Flora's question, I attended the National Manufacturers' Association meeting in New York and talked with about fifty or seventy-five large employers of labor, and there was not one of them that was in favor of a fair employers' liability law. But what they want to know is definitely what this is going to cost them. If they have got to be liable for every accident, they have got to know not only the expense under the compensation act, but the additional expense under an action at common law, which is an unknown quantity. I know that large employers in general are in favor of a fair compensation act, but I do not think they are in favor of double liability, because they will never know where they are. The laboring man quite properly wants to have a fair compensation act and wants a fair amount, but if he elects to go to common law, he should take that chance. Otherwise he will get a fair compensation without any legal action whatever.

MR. INGALLS: Would a liberal rate be more preferable to the employers than a double liability?

MR. RANNEY: I think it would.

MR. INGALLS: Of course, if you can fix the rates all right it might go a long way toward covering the proposition.

MR. RANNEY: I am not speaking for any employer, but I think that if a bill is adopted that is fair to both parties, that the employer should have some protection on that side. I am simply voicing what Mr. Mitchell said yesterday, that he was not in favor of the English act, which gives double liability.

MR. MITCHELL: I am not in favor of double liability, but I am in favor of the alternative.

MR. RANNEY: I do not think the employers would have any objection to an alternative, but they would not be in favor of a double liability where they might have to fight the case in court and then in the event of their winning the suit the workman could come in under the compensation act and get compensation. That does not seem to me to be fair. [102]

DR. MCCARTHY: Do you want the election before or after the accident?

MR. MITCHELL: After.

DR. MCCARTHY: If the employers' liability acts that have been passed were any good, or could be amended in any way to stop litigation, we would not be here. England tried for nearly a hundred years to modify the employers' liability act. The only thing we are here for is to knock out the everlasting cost of litigation, and the most perfect act that we can get will be the one that will knock out this expensive litigation. If a man is entitled to elect after he gets hurt there is going to be an awful confused state of affairs and the tendency, I believe, will be to increase litigation, because the temptation will be constantly before that man through the attorneys coming to him to go into litigation.

MR. MITCHELL: In England there are less suits under the English employers' liability law than there were three or four years ago, and every year shows a less number. On the other hand, there are a great number under the compensation act. That demonstrates that in England, even with the double liability, the men are not suing under the employers' liability law.

DR. ALLPORT (Illinois): I can give you the figures on the employers' liability law and workmen's compensation act for 1908, and that may perhaps enlighten the Conference in regard to the exact status of the act at this time. Out of 2065 deaths in trade accidents in 1908, only 524 out of those cases were made the basis of proceedings, or not much more than one-fourth of them, in the

county courts, and only 12 suits were brought for damages under the employers' liability law. In other words, only 12 of those 524 suits took advantage of the old Gladstone act to bring a suit for damages under the double liability.

PROF. F. S. DEIBLER: I think a great many of the suits that come up in England are suits to determine whether the accidents occurred in due course of employment.

CHAIRMAN MERCER: I have a letter from Mr. Gillette that does not exactly come under this heading, but I think you may be glad to hear it at this time. It reads as follows: [103]

MINNEAPOLIS, MINN., June 9, 1910.

*Mr. H. V. Mercer, City.*

DEAR SIR: Our study abroad developed a few things that stand out so clearly that I should like to have you know them before you go to Chicago. They are matters that ought to be carefully safeguarded in legislation of this kind.

First, the cost. Even after the act is most carefully drawn and the compensations are restricted to the utmost, the cost is bound, in my opinion, to be two or three times as great as under the present system. This means, of course, that the compensations must not exceed one-half wages in any event, and the death benefits must be limited as well as compensations for total disability. The payments to children must be graded according to the number, with an outside limit and there must be a waiting period without compensation at any rate not less than two weeks, and I think thirty days before benefits begin, and these benefits must not be retroactive in case the disability extends beyond the two weeks or the thirty days. In other words, every economy must be inserted and even then I believe the cost will be increased from two to two and one-half times.

Then the doctor question wants to be carefully considered. France is having a serious time over the doctor question. It is the curse of their system, and they are also experiencing great difficulty with the matter in Germany and England. If the English law had been left the way Mr. Chamberlain intended it, so that an independent doctor could have been called in at the request of *either* instead of both parties, it would have saved them all kinds of trouble.

Then there is another matter that ought to be carefully considered, and that is the matter of discrimination against agent or employe physically imperfect. The situation in England to-day is beginning to force a physical examination of employes. Mr. Holmes of the Hosiery Workers' Federation stated to me that in his opinion there were 150,000 English workmen who could not obtain employment by reason of excessive age or physical imperfections.

They are having a lot of difficulty in Germany over various questions arising out of their law. Over 17 per cent. of the claims get into litigation. This looks rather discouraging to us. Of course this arises largely from the fact that this litigation costs the workmen nothing.

I should like to write a few hundred pages on this subject, but I haven't time.

You might be interested to know that while in England the risks are practically all insured in private companies, the cost to the employer is less in England than it is in Germany, France or Austria. In France about 25 per cent. of the risks are not insured, and of the remainder about 60 per cent. are carried in private insurance, and 40 per cent. in mutual companies. The conditions and character of the workmen are so different over there from those existing in America that it is pretty hard to estimate the comparative costs if one of the foreign acts was transmitted to this country. Beside that the rates of wages are very much lower, although of course the benefits, being based on the wage rate, are nearly in proportion. [104]

The above estimate of cost of two and one-half times our existing cost is based on a contribution of 20 per cent. by the workmen. It looks as if the thing would have to resolve itself into a matter of some form of mutual insurance, both employer and employe contributing to the cost, or with a waiting period or else a longer waiting period, and a fund provided by the employers to take care of the accidents, the employes providing a fund to take care of sickness and temporary disabilities during the waiting period.

I am now having my notes written up, and will soon have a table of the comparative costs in England, Germany, Belgium, Austria and France, and possibly Denmark and Sweden.

Yours very truly,

GEORGE M. GILLETTE.

CHAIRMAN MERCER: I have not heard yet from Mr. McEwen. He is the labor commissioner, and I was in hopes that we would have a letter from him as well as this letter from Mr. Gillette.

The next question is the proposition of compensation; that is, whether you will have a limited sum or a pension plan, or what you will have.

WILLIAM H. MOULTON (Michigan): In the iron and copper mining region of Michigan for a great

many years we have had a plan of payments to which the men and the employers have contributed equally. These payments have been made monthly to the men during disability, and in any event they should not be made at any longer intervals than once a month. These sums have continued for a year, and in case of death, a death benefit has been paid from this fund.

The mining companies are very much interested in this compensation law. This is evidenced by the voluntary action of the harvester company and the United States Steel and some of our other independent companies. The Cleveland-Cliffs Iron Company, which I represent, have been contributing in this way for a great many years at all of our mines. We employ now perhaps 3000 or 4000 men, and another thing which is of advantage to them is this: We found it was a common custom when a man was killed in a mine for the men to stop work until the day of the funeral, no [105] matter whether our boats were lying idle waiting for cargoes or not. I think you will all agree with me that we generally get what we pay for, and if we expect a man to do something for us we expect to pay for it. Our proposition to the men was this: They stopped work out of sympathy for this man who had been killed. We suggested to them that it would be more an act of sympathy to follow out this plan, that they should continue at work until the day of the funeral and we would pay them for all the time they worked, and then if they took a half-day off for the funeral we would pay them for that half-day just as though they worked, but that this amount of money should be a contribution from them to the family of the man who had been killed. The last amount that I remember that was paid in that way was $298 which that family received in addition to the benefit fund. Our company also is paying to the widow and orphans the sum of $12 a month to the widow and $1 a month for each additional child under the age of 16 years, for a period of five years or until the widow remarries. This is done with the idea that by the time the children have reached the age of 21 they can support the family.

We also endeavor to reduce accidents by frequent inspections of our mines and monthly reports, and periodical inspections also, and in case of any serious accident we have a committee who visits the scene of that accident, carefully inquires into the cause of it and makes a recommendation for the benefit of that mine and of all our other mines.

I am sure I am voicing the opinion of all the Lake Superior region of the iron and copper mines when I say that we are heartily in favor of some plan of compensation for the workmen of our country which shall be a liberal one.

MR. DAWSON (New York): Nearly every bill which has so far been framed has proceeded on the basis that it is necessary to limit the length of time for which the benefit is to be paid. That is to say, even though a workman has become totally and permanently disabled, the benefit is to be paid for three or four years, and then is to stop. This overcaution grows out of two things; one of them is that we are almost entirely thinking of this as a compensation scheme which the individual employer is going to pay for. It may be that our laws will be passed in that form; but, even if they are passed in that form, experience in every country in the world has demonstrated that almost all employers will be insured, and the loss will be paid by companies which can just [106] as well continue payment so long as it is necessary for it to be continued, and charge premiums and set up reserves accordingly.

It is my personal opinion that we ought not to frame our laws on the basis that employers as a class are actually going to pay these compensations directly. We should frame them with a view to their being insured, and that, therefore, this will not be an intolerable burden upon any individual employer unless he makes a fool of himself by neglecting to insure.

The second reason is ignorance as to the cost. The additional cost when benefits are paid to the disabled as long as disability continues is extremely small. Relatively few persons who have been totally and permanently disabled are living after five years, but the need is greater than ever for those who are. In point of fact, it will add very little to the total cost to give the benefit throughout their disability. You may argue, on the other side, that because there are a few of them, we can as well cut them off; but a scheme that starts out to cure this evil—this economic flaw in our business system, and that, notwithstanding, turns loose a permanently disabled man after five years because he happens to be so unfortunate as still to live—is fundamentally shortsighted and should not be tolerated. I, therefore, earnestly urge those Commissions which have not yet prepared their bills, to make the benefit payable during the entire period of disability.

MR. MCCARTHY (Wisconsin): On certain minor injuries, would you say that was true?

MR. DAWSON: Not so true. My impression about minor injuries is that a careful study of the Austrian practice will be of great value. These benefits are not paid as an annuity at all unless the person is injured at least to the extent of 20 per cent. of his earning power. Smaller impairments are compensated by lump sums.

Again, in the matter of widows and orphans there is a whole lot of feeling that you must cut them off at the end of three or four or five years. There is no occasion for that, and every reason why it should not be done. The additional cost of paying during widowhood and minority is not heavy; and you should again, in my judgment, take into account that you are expecting this business to be insured and should encourage its being insured, and encourage the employer to run the risk himself. Of course, in a very large plant, it is quite possible for an employer to insure himself, [107] because he can have an average experience to judge from, but I am not referring to the exceptional case.

JAMES A. LOWELL (Massachusetts): The practical difficulty which strikes me is this: In Massachusetts, and everywhere else, for that matter, we have a financial situation to face. I

would say, and every man here would say, that it would be much better to have a pension for a person who needs to be pensioned; but we are brought up at once in the very beginning, and this thing comes right up and hits us in the face: How much is it going to cost? It is very well to say, as Mr. Dawson has said, that it won't cost much. Perhaps it won't, but the question is how much. It may be just the turning point in Massachusetts as to whether we can do it as a practical financial measure—to have a lump sum or a pension. I, personally, should be very much in favor of a pension. But there must be some way of ascertaining how much this pension is going to be. It appeals to me that as a practical measure in the beginning of this thing, that although we should like to be able to say to the man who is injured for life: "We will give you so much a month for the rest of your life"; that we cannot do it right off, because we do not know whether he will live five years or whether he will live twenty-five years. The difference between the amount which you will pay if he lives twenty-five and the amount you will pay if he lives five years may be just the difference between a possible scheme and an impossible scheme.

The employer's trouble about this thing is the uncertainty. The amount of it is not so great an objection. It is not that the employer would say, "Well, if I have to pay $5000 for such-and-such a case I cannot do it. I can pay $2000, but I cannot pay $5000." The trouble is he does not know whether he is to pay $2000 or $15,000. That is the difficulty. It strikes me in starting your system here you have got to find something that is certain. If there is to be a pension you have got to put a limit of time on it so that it may be definite.

If we were to pass a law for Massachusetts to-morrow, and contained in that law were those various pensions, we should not know anywhere near how we were coming out; and, I understand, and I will stand corrected on this if I am wrong, that they have not figured those accurately in either Germany or Austria or in England. The amount of the pensions which had to be paid was much greater than was calculated. If they had known at the start they were to pay [108] this greater amount it would not have made so much difference because they could have arranged it, but they did not know it and, therefore, they are getting a higher amount put upon them than they thought they would, which is very unfortunate for a great many reasons.

Mr. Dawson: There are reliable tables by means of which adequate premiums and reserves for annuities to the disabled and to widows and orphans can be computed.

Dr. Allport: I have a copy here of the workmen's compensation act of 1906, the English act, and I think it might not be a bad idea to read you the provision in the English act covering this matter. Of course, the English act started out just as our act must start out if we start out on the basis of compensation. It must be based on a certain proportion of the wage of the individual. When we come to consider the matter of disability, the point that comes up is whether we shall pay a man for a total or permanent disability in a lump sum or whether we shall limit the time in which the payments shall be made. It seems to me as though that is purely an actuarial matter, and that it is something which will adjust itself if any law goes into effect. No employer in England carries his own insurance; it is all carried by some form of insurance, and so the insurance companies will have to work this matter out for themselves, and they are going to be able to do it. The better class of insurance companies have prospered under that class of insurance. The provision in the English law is, briefly, this: It provides for the payment of compensation for disability as long as the disability lasts, and in case of death it provides for payment to the children until they reach a workable age, and for the widow until she marries again. Then there is this provision:

"Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the post-office savings bank, purchase an annuity for the workman equal to 75 per cent. of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this act, and such lump sum may be ordered by the committee or arbitrator or judge of the county [109] court to be invested or otherwise applied for the benefit of the person entitled thereto."

These cases are put into the hands of the court and paid by the court and not by the attorneys, and it is left optional as to whether he will take a lump sum or an annuity.

Dr. McCarthy: Some of the county judges over there with whom I talked told me that they were doing everything possible to keep the lump sums from being paid, because they believe that is a bad practice. There is no agitation over there that I could find in either Germany or England for limiting the time that a man should receive compensation. They understand over there that it has got to fall upon somebody in the end, and you must remember that in Germany and in England, to a large extent, this is done to keep away from the necessity of caring for the poor, and all that sort of thing. You go to any insurance company over there and say, "I have so many people working in my factory under such conditions; what are your rates?" and they will give you the rates and take care of an injured man for the rest of his life.

Chairman Mercer: It has seemed to me sometimes that it might be a good plan to provide for a lump sum settlement, subject to the approval of a court, in case a firm wanted to go out of business, or something of that kind. A corporation might want to dissolve, or the time of its charter might expire, and in that case what is it going to do?

Mr. Dawson: It would go to an insurance company and purchase an annuity to cover it.

Chairman Mercer: Suppose it is a big company that had been carrying its own risks?

Dr. McCarthy: That is an actuarial matter. If it is a mutual company in Germany, there has to be a reserve kept by those companies to provide for the possibility of their going out of business.

CHAIRMAN MERCER: It seems to me we might now go to the question of whether we will administer our compensation law through the courts or through boards of arbitration. In New York I notice that they recommend staying under the courts in their present bill.

PROF. SEAGER: The characteristics of the two bills that have passed in New York were explained yesterday, and I will try to avoid repeating what was said at that time. When it comes to the [110] details of the plan that the New York Commission recommended, and which the Legislature has adopted, the reasons why we did this rather than that are almost trivial, because they were always practical reasons of expediency. We have a Commission of fourteen members, and eight of them were members of the Legislature; one of them was a farmer; several of them were lawyers, and two of them were employers, so they represented in a very broad way the different interests of the State. It would have been quite impossible to get that Commission to agree on a plan that would include the farmers. It was difficult to get the employers to agree on our plan.

Taking up the details, however, we were very much impressed by the aspect of the case that Mr. Lowell spoke of a few minutes ago; that is, the uncertainty as to what it would cost and the opposition that developed against the measure because of that uncertainty. For that reason we felt that we ought to make the probable cost as definite as we could, and that meant requiring lump sum payments rather than continuous payments, limiting the period during which the continuous payments should be made in case of disability, and in other points making the measure precise and definite, when, from the point of view of the social interests of the community, it ought to be more vague and indefinite, that it might be adapted to the requirements of each special case. It was on those grounds of expediency, remembering all the time that this was the first step, that if the Legislature of New York passed these bills it would be the first State in this country to go in for any kind of workmen's compensation, and that every country which has adopted this policy has found it necessary to amend and modify as the result of experience, that the schedule which we finally agreed upon took the form that it did; that is, limiting the compensation in case of disability to not more than $10 a week, and to continue in case of a permanent disability for not more than eight years. In death cases not more in the aggregate than four years' wages, and not to exceed in any case $3000. That schedule has the advantage of being definite and of being one which enables the insurance actuary without much difficulty to name a rate, and, needless to say, we got such rates from the insurance company's representatives before we finally decided on that schedule.

As to the administrative features of our bills, our difficulty was to devise a plan which would do away with litigation and at the same time be constitutional. We all of us recognized the merits of [111] some scheme of arbitration as preferable to court procedure, and yet the more we looked into it, and the more we studied the complexities of our system in New York, the more we were impressed with the necessity of creating an entirely new system of jurisprudence, if we were going to have in that State a scheme of arbitration comparable to the English scheme of arbitration. For that reason we left that to future amendment of the bill, and left the judicial procedure very much as it is under the employers' liability law, believing that under a law requiring definite compensation, both employer and employe, for their own interests, would keep away from litigation, and would enter into voluntary arrangements for arbitration that would not require a resort to the courts. Resort to the courts may be taken by either side under these bills as before, but it is our confident belief that it will not be taken, and that this plan will very greatly reduce the litigation, and at the same time greatly increase the number of reasons these bills took the form which they have taken.

MR. HARPER (Illinois): Do you provide that in case any question arises under the compensation plan, suit may be brought and the merits tried in an action at law?

PROF. SEAGER: Yes.

MR. HARPER: And you also provide, I believe, that no jury trial shall be permitted?

PROF. SEAGER: No; such a provision was in the original bill, but was stricken out of the act. I am sorry that I am not a lawyer, and, therefore, cannot explain the point definitely, but the other provision was simply to make it possible to bring suit and recover a lump sum in case there was any default in the periodic payments required in cases of disability. That is, in case of default in the payments under this provision the employe or the dependent entitled to payment can immediately bring suit and collect a lump sum in damages.

SENATOR SANBORN (Wisconsin): We have appreciated in Wisconsin all these troubles and oppositions you have been discussing here, and have been trying to find some way that we can put a law into operation in Wisconsin so that we can have some basis for improvement hereafter, realizing at the outset we were going to meet the opposition of the manufacturers if they did not know exactly what it would cost. If we were going to get their hearty support the rates would [112] have to be so low that they would know it was not going to cost them any more than at the present time. On the other hand, we realized that the laboring man does not want to give up anything he has got, but wants more. That he is entitled to more than he is receiving under the law everybody, I think, will concede. The question was, how were we going to accomplish that and get for the laboring man all that he would get under the law.

We realized that practically 60 per cent. of every dollar that was paid out by the employers for industrial accidents under the present system was wasted and did not go to the laboring man, and if we could bring about a system which would prevent anywhere near that great amount of waste, and turn that money over to the laboring man who was injured, we felt that we would be taking one great step in advance, and we are trying now to get a system by which that can be done. In fact, we want to do away entirely with court proceedings, if possible.

The first step we propose to take in this regard is to change the law generally in our State, so that the manufacturer will feel that he must have relief. In order to reach that result we are going to make them all liable for the negligence of the fellow-servants and strike out the assumption of risk. We have practically agreed on that, and that leaves the only defense remaining for the employer, that of contributory negligence. That will reach a great many cases, and leave it so that the manufacturer will feel that he must have some relief.

Our whole plan is optional. No employer and no employe is obliged to come under it, but if a manufacturer or an employer of labor wants to come under it, all he has to do is to file a declaration with the commissioner of labor, and he is under it. He is not under it definitely, because he can get out at the end of any year by serving notice sixty days in advance of his desire so to do.

Then, as far as the laborer is concerned, the plan is that as a part of his contract of employment he waives his right to anything else except the compensation, and this law will fix his compensation. Then we follow that up by arbitration to settle all the disputes that may arise. The only question that can arise for the court to pass on is whether the arbitrators have exceeded their jurisdiction under the law, but all questions of fact are to be settled by the Board of Arbitration. If we had some criterion to follow, something that we could point to definitely as to [113] just what would be the result to the employer and the laboring man, we would feel differently. But we feel that we can put this system into operation, and we feel further that the manufacturers and the laboring men in their present spirit will operate under it until we can arrive at something definite. We are endeavoring to make our schedule just as large as it can be made. Our schedule is indefinite and will undoubtedly be increased over what it is in the bill. In other words, we propose to do just as the railroads have always done, to put onto the traffic for the benefit of the laboring man every dollar it will bear, and get that money to the man who is injured with as little expense as is possible. That is what we are aiming to do, and we know of no other way to do it except by putting it under a voluntary system, so as to get away from the constitutional conditions that you meet everywhere. Under a compulsory system you cannot do that, but under an elective system you can.

As to the expediency, we feel that our people will try it, and if it does not work it will not take any act of the Legislature to annul it. We can accomplish some results, and the time will come when we can have some figures perhaps to give conferences like this in their effort to ascertain what is best as the policy to be followed. We started out first with an insurance scheme connected with it, but we abandoned that and made up our minds to make it just as simple as we could, and to let the employer of labor have the widest possible scope to protect himself. If he does it through mutual insurance companies, well and good; if he does it through the other insurance companies, well and good; the idea being to hamper him as little as possible in that respect. All we want is to make it absolutely sure that when a man is injured he will receive his pay. That has been one of the troublesome questions; we have tried to make a provision, which is still tentative, by which the employe's claim shall be an absolute lien upon all the property of the employer.

Prof. Seager: We have not previously provided for the expenses of this Conference or for the expenses of the next Conference we may hold. With that thought in view, I would like to move that the members of the Commissions and committees represented at this Conference be requested to use their best efforts to secure an appropriation from the funds of such Commissions and committees of $50 from each Commission and committee toward the expenses [114] of our Conference.

Chairman Mercer: Without any formal motion that will be taken as the sense of the meeting.

Mr. Dawson: I move that when we adjourn, we adjourn to meet in St. Louis, and that the time be fixed between Christmas and New Year. The reason I make this suggestion is that there are to be other meetings at that time in St. Louis—the American Economic Association and the American Association for Labor Legislation, and also because by that time all the bills of these various Commissions will be ready, and we can have a final interchange of views before they go to their various Legislatures. I will add to that motion also that the Executive Committee be given power to change the date and place of the meeting if they deem it advisable.

(The motion being seconded was adopted by a *vivâ voce* vote.)

Dr. Allport: It appears in the matter of making provisions of the kind we have been discussing that their constitutionality would depend on two aspects: First, that we take the view as suggested by Mr. Mercer, that it lies within the police power of the State to regulate this matter and so constitute all these employments as dangerous employments, or whether we shall put into the law something which looks like a joker. The particular point I have reference to is this: The specifications in Sections 1, 2, 3 and 4 of the Wisconsin tentative bill relative to waiver of the matters we have been discussing; that is, assumed risk and contributory negligence, fellow-servants, etc. The second bill recommended makes this provision: "The provisions of this act shall apply to any person, firm or corporation transacting business in this State who shall have elected to accept and operate under such provisions."

That implies an election to accept the provisions of the act. In Section 4, however, is this provision: "Every person, firm or corporation engaged in business in this State that has an employe in his or its service shall be presumed to have accepted the provisions of this act. Every employe, as a part of his contract of hiring, shall be deemed to have accepted the provisions of this act unless at the time of such hiring he contracts in writing to the contrary, in which case the employer shall not be liable under the provisions of this act. Every employe whose contract of hiring is in force at the time his employer elects to provide compensation under this act, shall be [115]

deemed to have accepted the provisions thereof unless he files a notice in writing to the contrary with his employer within thirty days thereafter."

I am not a lawyer myself, and I do not know what that means, but I would like to know from somebody who is posted in constitutional law as to whether that method of circumventing the usual provisions of the law is strictly in accordance with the rulings under our constitution. That is, whether a law can specify that we shall have the right of election under the law, making the provisions of the law specific, and then in the following section specify that unless they shall elect to the contrary they shall be supposed to be acting under the provisions of this law. That is the way in which Wisconsin has gone behind the constitutional part of the law.

SENATOR SANBORN: The Legislature can always say what the fact is presumed to be, and the presumption is that every manufacturer will elect to accept this law. Whether they have or not is a presumption of fact, and we do not have to prove that. In other words, as a matter of course, we presume that every man has elected, but we do not have to say that he has elected.

CHAIRMAN MERCER: It seems to me, gentlemen, in the course of these proceedings, that the first thing to be done is to prevent accidents. The second proposition is to compensate the injured for those accidents which you do not prevent. You cannot prevent by penal legislation; you cannot prevent by the assumption of damages of an uncertain quantity, because those things have already been tried and have failed. You can prevent accidents better, I think, by placing a certain, simple and rapid liability upon the industry which both sides shall partially bear, and which will compel both sides to understand that there is a financial risk upon them that will increase their cost absolutely if any accidents occur. I do not think any large proportion of that should be placed upon the laboring man, perhaps not over 15 or 20 per cent.

The laboring man, however, is in a better position to determine whether or not a man is faking; he has his own channels of reaching him. He is in a better position to see that the machinery is protected, and to see that the rules are enforced in the factory, and he is the man who is in a position to see that a fair settlement is made if he has a financial interest in it, and not to say in [116] an off-hand way, "Oh, well, the man has been hurt, give him $50." Besides that, when he has such a proposition as that and feels that it is not a subject of charity, but a business proposition, and a matter in which he has a right to help in the administration of it, he wants to administer it quickly and rapidly. It appears that the European countries which have adopted some such scheme as this have found it to be the most satisfactory. No man will believe that he will be injured in an accident. The moment a man starts in on the proposition of whether he himself is going to be injured, he becomes an unfit subject to ask for employment. He is not in a position to go to the employer and say, "You must guard that wheel," or "protect this machine." But if a situation is devised where one man can go to the other and say: "You are the employer and you must stand five-sixths of the cost of an accident, and we one-sixth, and you must protect these men; here is a man over here that will not live up to the rules, fire him. Here is a man that does not know his business. Do not let him work in this place. We have an interest in this matter. It is costing us money if he injures somebody, and we want these men protected." You can see what a different situation arises.

The employer must take the word of the laboring man for that, because the laboring man is where he can see and know, and the employer is not in a similar position. The result of that is to increase the confidence in the laboring man, to increase the precautions taken to prevent accidents, and to increase the mutual respect and good feeling between the two men, if you place them both where they have a mutual and certain liability.

As to what is a dangerous employment, as to whether or not you should cover some or all, I have no doubt that there is not a man in this country, a farmer, a mechanic, a laboring man, a doctor, a lawyer or any other professional man, but what is perfectly willing to have and desires to have a fair compensation law if he can know just what it is going to cost him, and just what his insurance will cost him, in order to avoid the present uncertainties and evils that flow from existing conditions. The case of domestic servants has been mentioned here. One of our judges in the federal court in our State had a servant break her leg on his back porch last year. He took her to the hospital and took care of her, but would not he rather have been paying three dollars a year for insurance for all the risks that might come to her in that industry? Would not you rather [117] do that yourself? And besides that, from the humane standpoint, would not you rather that the poor girl should be placed in a position where she certainly will receive compensation in case of an accident which perhaps she or any one else could not have avoided, than to have her go on and lose her wages or else you pay them to her?

Then you say you must not go to the farmer. I say to you that I believe that the farmers in this country would welcome such a proposition if they understood it. There is not a man, an employer or a laboring man, who, when you place the proposition before him in any such form as we are discussing it here, would sanction it off-hand. But there is not a man in this country that I have ever seen who has studied this question for any length of time, intelligently and carefully, but what believes that the more nearly you can get every industry into one certain, definite and simple liability the better off you are.

Look at it as a business proposition—and it is a business proposition—it is an insurance risk and it ought to be left in such a way that the liability is direct. The first thing the business man undertakes to consider on this proposition is what will it cost me; can I afford it? Every time you put on a double liability, every time you leave a thing uncertain, you increase the risks to him and the cost to him in his business, and he so understands it, and that is something which you should give consideration. I do not believe there is a labor representative here, I do not believe there is a

laborer in this country, who entirely understands the matter, who is mature in his judgment upon it and who has studied it and understands the whole situation, but who would be willing that you should repeal all of the statutory provisions now existing, repeal all of the common law, if you give him something which he knows is not a gold brick. If you simply say you must have this liability, it is not a question of contract, because that still leaves an uncertainty; but if you say, "You will be paid in accordance with a certain percentage of your wages if you have an accident in your business," everybody will then know just exactly where they stand on the proposition, because it is only a question of actuarial calculation to determine what the compensation is, and I think everybody would be willing to accept a law drafted in that form. It will cost the business men more, but the laborer is going to get more out of it, and it is good business for the business [118] men. You cannot tell me, gentlemen, that all of the large financial institutions and corporations of this country that have voluntarily adopted this scheme in the last three years would have done so, if they had not come deliberately to the conclusion that, taking into consideration the humanitarian features of the case, and the mutual relations that exist between the employer and employe, that this is a step which naturally and logically will be profitably adopted in this country, and one of the most hopeful signs in the present economic situation is that labor and capital are dealing together on matters of that sort, and doing away with the strife and friction that has heretofore prevailed between them.

With respect to the theory that should be followed in this legislation, we must understand that both employer and employe must be willing to stand some restrictions. Neither has more interest in its remote consequences than has the State. We cannot keep up the old system and add a new without leaving all the uncertainties and adding the burdens of certainty. We would leave the burdens of cost, the weight of a large part of the injustice, a considerable amount of the delay and most of the prejudicial feelings that now prevail with respect to the worst accidents and their final determination. There is no doubt but that it would be the worst cases where the remedy through the courts would be used in the present system.

Penalties as such, criminal or civil in nature, ought not to be considered in this legislation where it does not rest upon the basis of fault; penalties never tend to good mutual feelings as between the parties. It is no time to stir up strife when both parties are willing to negotiate fairly upon this question. It is no time to heap unusual obligations when the employer and the State are willing to make a fair compulsory system. Neither is it any time to deprive the laborer of fair compensation; but it is the time to place a liability on a fair basis, comparable to the risk and the situation in other countries, and allow a simple, safe, quick remedy that is absolutely certain.

To be certain, we must remove any idea of recovery as a penalty; we must prohibit the bar of recovery by any fault of the employe. Cases in which the employe would directly and voluntarily be at fault are so few that they would cost the employer and the public much less than the defense of the trials if we should undertake to introduce an element of fault as a defense. The [119] theory of workers' compensation is to get away from fault, and it ought to be barred upon that side as well as the other.

The bill under consideration in this program was meant to be a bill that would accomplish the purposes when more elaborately worked out that we all feel should be had. The title is made broader than an ordinary legislative act, so as to allow a system of law that would repeal all other laws on the question, and substitute this remedy for those which exist and add it where there is none. We, therefore use the term "code" in order to cover a system of law. See Johnson *vs.* Harrison, 47 Minn., 575; Central of Georgia Railway Company *vs.* State, 104 Ga., 31, Section 1.

We have defined dangerous employment in this act with a view of covering every occupation which has accidents. This will give every person the opportunity to guard against the obligations that arise from injuries occurring in and growing out of the conduct of a business.

It is for the Legislature first to determine whether or not this is a proper classification, and if there be reasonable basis for declaring the employment to be dangerous, the courts will follow the judgment of the Legislature, even though their own judgment might not accord with that of the Legislature. See Lochner *vs.* N. Y., 198 U. S., 45; Holden *vs.* Hardy, 169 U. S., 365.

This definition of dangerous employment is studiously meant to be a broad one. It is not dependent upon classification of industries on the basis of manufacture, mining, railroading or other segregated employment. Its purpose is to so define dangerous employment that every employment which is, in fact, dangerous will be so defined exactly in proportion to the dangers that actually occur. Being a dangerous employment for each accident which it has, and not dangerous unless it has those accidents, the definition is especially equitable in two aspects. It induces those operating the same sort of employment to keep their accidents down; it makes those who have accidents liable exactly in proportion to the accidents which they have in fact.

We have not used the term "accident" in the law because of the uncertain meaning of that term throughout the state and federal courts of this country. We find that this term in some instances has been construed in the popular sense; in some instances it has been construed to mean that [120] which has happened without the fault or intent of any one. We fear great litigation as to what it would mean if the term "accident" should be used. The terms arising out of, and in the course of, such employment have been sufficiently defined by the English courts under their act that they will need no further definition here than the words themselves would indicate.

Section 2:

It is the intention of this act to make the employer liable to pay compensation, and it would be the purpose probably to make the employe liable to stand a small amount of the carrying charges

as specified in this act when worked out. Some argument has been produced in this convention to the effect that it would be difficult to hold the employer in case he had no fault, but fault is not necessarily the basis of liability in such cases. See Chicago, R. I. and Pac. Ry. Co. *vs.* Zernieke, 183 U. S., 582.

The man who put into operation the dangerous machinery of dangerous employment would be liable by reason of public necessity to be controlled under the elements of the police power for the protection of the general welfare. It has been intimated here that this rule would not apply except in the case of *quasi* public corporations, but this is not the law. Relations otherwise private may become public under public necessity if the State decides that the public needs protection. See State *vs.* Wagener, 77 Minn., 483; Harbison *vs.* Knoxvill Iron Co., 183 U. S., 13.

It has been urged that no man can have the right taken away from him to sue in the courts for injuries under such circumstances. Generally speaking, it is the rule that a party has no vested interests to a right of action at common law for a future injury. A tort action grows out of a breach of the duty which the State provides that one of its individuals owes to another, either by reason of the peculiar situation as between the parties, or by reason of a public burden which has a peculiar favor in it for the one who is injured. This direct liability the State has imposed by the implied adoption of the common law or by statute, both of which it has the power to repeal. It has repealed or has modified the common law or statutes every time it has imposed a new obligation or taken away an old obligation with respect to tort actions. See Martin *vs.* Pittsburg and L. E. R. [121] Co., 103 U. S., 284; Holden *vs.* Hardy, 169 U. S., 366; Snead *vs.* Central of Georgia Ry. Co., 151 Fed., 608.

With respect to the remedy, we think that the remedy provided here is the appropriate and proper one. It would be so if it were fire insurance. See Wild Rice Lbr. Co. *vs.* Royal Ins. Co., 99 Minn., 190. Such a law, leaving the general question of liability to be determined and simply providing a reasonable method of estimating and ascertaining the amount of the loss, is unquestionably valid in both this country and Europe. See Hamilton *vs.* The Liverpool and London Ins. Co., 136 U. S., 242, and cases therein cited.

The fact that the liability is conditioned upon the application of a remedy as substantially provided in the act does not in any way affect the constitutionality if it is carried out as we suggest. The theory is that until the appraisal is made by the award provided there is no liability. See President, etc., V. and H. Canal Co. *vs.* Penn. Coal Co., 50 N. Y., 250; Wolff *vs.* Liverpool, L. and G. Ins. Co., 50 N. J. Law, 453; Hall *vs.* Norwalk Fire Ins. Co., 57 Conn., 105; Reed *vs.* Washington Ins. Co., 138 Mass., 572.

It has been intimated that the employer might be forced by such law, when the employe could not be so forced. We fail to see the force of this argument. The reason why the employers cannot be forced, if it is done equally, is that it deprives them of their liberty secured by the Fourteenth Amendment to the Federal Constitution to contract with respect to their labor as they see fit upon the theory that the liberty of contract is a property right; but neither the right of property of the employe nor the employer stands above the general public good. The general welfare was one of the principal purposes given in the Preamble of the Federal Constitution as the reason for the making of that constitution. It has been consistently and persistently upheld by the courts whenever needed for the protection of public good; as long as government exists it always will be so upheld. It is an absolute and final necessity. With this right the Federal Constitution was never intended to interfere except in the few instances limited by the Fourteenth Amendment; except as specifically limited the State has as much power as a foreign nation upon this question, and that amendment does not prohibit the exercise of such power to the extent that it is necessary in dangerous employments. See Mayor, Alderman, etc., of N. Y. *vs.* Miln, 11 Peters, 102; Lochner [122] *vs.* N. Y., 198 U. S., 45. Other cases cited *supra*.

In this respect, too, we must not overlook the fact that the employer and the employe do not stand upon an equality in their negotiations with respect to dangerous employments. Stripped of political perplexities and personal prejudices and ambitions, the fact is, and must be recognized, that the fundamental reason for the interference by the State with respect to these matters rests upon the bare fact of the inequality of abilities of the respective parties to take care of their interests by reason of the peculiar situations. In the case of Harbison *vs.* Knoxville Iron Co., 53 S. W., 955, the Court said:

"The Legislature, as it thought, found the employe at a disadvantage in this respect, and by this enactment undertook to place him and the employer more nearly upon an equality. This alone commends the act, and entitled it to a place on the statute book as a valid police regulation."

The Supreme Court of the United States approved this opinion in Knoxville *vs.* Harbison, 183 U. S., 13.

In respect to the length of hours, dangerous labor may be required, it was said by the Supreme Court in Holden *vs.* Hardy, 169 U. S., 366:

"The Legislature has also recognized the fact, which the experience of Legislatures in many States has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, but that their interests are, to a certain extent, conflicting."

Then in the case of Narramore *vs.* Cleveland, etc., Ry. Co., 96 Fed., 298, a case involving the rights of railway employes to have switches blocked, while Judge Taft was sitting on the Circuit Court of Appeals, he used this language:

"The only ground for passing such a statute is found in the inequality of terms upon which the

railway company and its servants deal in regard to the dangers of their employment. The manifest legislative purpose was to protect the servant by positive law, because he had not previously shown himself capable of protecting himself by contract; and it would entirely defeat this purpose thus to permit the servant 'to contract the master out' of the statute."

An employe cannot successfully say to a railway president, "Run your business carefully or I will quit." This is a new right and not necessarily triable by jury in State courts. Am. *vs.* Morrison, 22 [123] Minn., 178. See Minor *vs.* Happersett, 21 Wall., 162.

We might argue this legislation at length, but it seems useless at the present time. There is an agitation throughout this country, unequaled upon any other single subject, in favor of a fairer system of compensation to meet the necessities somewhat along the lines that foreign countries have done. No subject in this country has ever been studied more deliberately; no attempt has ever been made upon the part of all parties to approach a legislative subject in this country with less partisan feeling or more careful study. Employes have awakened to the conditions in a substantial way. Employers are willing that they should have something of a fairer and more substantial nature. The State needs it for its own protection as well as the protection of its members. Public sentiment is aroused, but it is being judiciously controlled. We might have pending in this country a civil war larger than the Civil War of the sixties was and not do as much injury at the present time as the industrial accidents. Fair people, therefore, are going to be willing to have laws that will tend first to prevent accidents, and, second, to fairly compensate for them, and to do it in such way as to be an inducement to both the employer and employe to prevent the accident. We want society protected also. No better time will ever come for a fairer legislative act upon this question than at the beginning. If the movement is uniform, and held in check long enough to be understood, there will be no difficulty about passing the laws. Every bad law injures the cause, every unfair law will prejudice it. The basis is the police power and the liberty of occupation, and contract can only be controlled where necessary; that is, in dangerous employments, but can be in all such employments.

(This concluded the business to come before the Conference, and on motion of Joseph A. Parks, of Massachusetts, the meeting stood adjourned *sine die*.)

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# APPENDIX [124]

BRIEF REPORT

SECOND NATIONAL CONFERENCE

WORKMEN'S COMPENSATION FOR INDUSTRIAL ACCIDENTS

WASHINGTON, JANUARY 20, 1910

The second meeting of the National Conference on Workmen's Compensation for Industrial Accidents was held in Washington, at the New Hotel Willard, on January 20, 1910.

FORENOON SESSION.

SECRETARY H. V. MERCER, Chairman of the Minnesota Commission, called the meeting to order at 10 A. M. He announced that in response to the following invitation which had been sent to governors, ninety-four delegates had been appointed from nineteen states:

> "Dear Sir:
>
> As you are no doubt aware, several of the States have created commissions and legislative committees to investigate the present Employers' Liability Laws and report plans for betterment along the line of Workmen's Compensation Acts.
>
> A conference of these commissions and committees was held at Atlantic City, on July 29th, to 31st last, a report of which is this day sent you under another cover. At that time it was resolved to hold a second conference, to be attended, if possible, by some person or persons designated by the Governor of each State. (See pages 277-9; 302-3, Atlantic City Report, supra.)
>
> It has been determined to hold this second conference at Washington on January 20th, immediately after the conference on Uniform Legislation, which has been called by the National Civic Federation, and to which we are informed the Governors of the various States have been requested to send representatives.
>
> You are respectfully urged to designate one or more persons specially qualified to take part in our second conference. In case you designate persons to represent the State at the Uniform Legislation conference we would suggest that you might designate one or more of the same persons to attend the conference on Workmen's Compensation.
>
> Enclosed is a brief account of the Atlantic City Meeting, which explains more at length [125] the general purpose and scope of these conferences.
>
> We shall appreciate it if you will advise the Secretary at your earliest convenience as to the persons designated to attend this conference so that he may put himself in communication with them and arrange the details."

On motion, Mr. Mercer, in the absence of Dr. Chas. P. Neill, was elected temporary chairman, and Professor Henry R. Seager was made secretary of the meeting.

MR. MERCER:

> "Our executive committee did not formulate any regular program. We thought that the speeches ought to be limited to ten minutes and unless there is objection we will act upon that principle. We have drafted a short bill which we present here, not with an idea that it is correct, or that it is absolutely the bill that should be passed, but with a view of bringing up the different points for discussion. This matter has been discussed from the standpoint of theory sufficiently long and some of us think that we should get down to practical things."

SENATOR J. MAYHEW WAINWRIGHT, Chairman of the New York Commission, described the preliminary work of that body (as outlined again by Miss Crystal Eastman, at the third meeting in Chicago [Page 13]). Senator Wainwright said, in part:

> "The great difficulty is to determine how one State can adopt any system of compensation before the other States, and to secure the information upon which may be based a precise conclusion as to what the increased cost to the employers would be. It seems to me that it is going to be very difficult to get at exactly what the effect upon the industries of the States any particular bill will have, until some measure is tried. We are warned not to be the pioneers in the field. That raises, it seems to me, a very great ethical question, for this is a serious matter, and involves basic justice. It seems to me that we should question whether so much importance should be given to the cost, unless we are sure the cost is going to be pretty nearly prohibitive. In other words, if the thing is right, and fundamentally just, hasn't somebody got to start it and make a beginning and take some little chance as to what its effect may be. Another difficult matter, of course, is to determine the effect upon the smaller employers of labor, and there, we can only judge from the foreign experience.... The only thing we can be absolutely certain of, is that the present system is unsatisfactory and that there should be a change. So far as our commission is concerned, we will not cease from our labor but will unremittingly direct all our efforts to this subject until we, in the State of New York, can arrive at a solution which our commission will feel is the right one."...

COMMISSIONER CHARLES P. NEILL, of the United States Bureau of Labor, arrived at this time and [126] assumed the chair. He said:

> "Gentlemen, I wish to apologize for my inability to get down here at the opening of the session. It has not been a want of interest in this subject that has delayed me, for there is probably no subject in which I have more interest than the one of employers' liability and workmen's compensation. For the last eight days we have been engaged in bringing about the adjustment of a controversy which required as a solution some form of workmen's compensation. We have been dealing with the representatives of switchmen in the railroad yards, and if there is any occupation in which more men are maimed and butchered, I do not know what it is. Discussion brought forth at almost every point the necessity of doing something in this country to put us on what we might call a half civilized basis for taking care of the derelicts of industry." (Applause).

SENATOR A. W. SANBORN, Chairman of the Wisconsin Commission, was then introduced and he outlined the preliminary work of that Commission (in a statement similar to the report made at Chicago by Senator Blaine [Page 10]). Senator Sanborn also said:

> "As we look at it in Wisconsin, we are surrounded on three sides by very lively competitors in the manufacturing line; there is only a certain amount that we can load on our manufacturers and let them compete until we reach a bill that is uniform in the group of States in the Northwest. As one of our large manufacturers expressed it at one of our hearings, we are willing to pay twenty per cent. or twenty-five per cent. more than we are to-day, however, if you put it on a definite basis so that we know how much....
>
> ... Now, I hope we can derive some benefit here by getting down to specific things. I think it is generally conceded by everybody that has paid any attention to the subject, that the time has arrived when something must be done; the present situation is absolutely intolerable, giving rise to great unrest, and people feel there is great injustice under the present system."

PROFESSOR HENRY W. FARNAM, of New Haven, stated upon call, that the Connecticut Commission accomplished practically nothing. He then made an appeal for united action between the states for the purpose of securing greater care and greater uniformity in investigation and legislation. He offered the services of the American Association for Labor Legislation (of which he is president), in any endeavor that would bring about a better understanding between the different groups now interested in this question.

MR. MAGNUS W. ALEXANDER, of Lynn, stated upon call, that there was at present no Commission in [127] Massachusetts.

MR. JOHN MITCHELL, of the New York Commission, in discussing a proposal to study costs of

industrial insurance in Germany, said:

> "I think it is important, that we should understand that neither in purpose nor in action is it contemplated that a movement of this kind shall delay the efforts of the commission to reach conclusions. I quite agree with you that an investigation as to the costs and operation of the laws in Europe would be of advantage to us, but I quite well recognize that that is a slow process, and I think we cannot afford to wait for several years before we do something definite in this country. Now, I should like to say that I recognize very well how important it is to our industries that they be kept on a fairly competitive basis. I am not at all satisfied, however, that the establishment of a system of compensation, even in one of our states, would be a serious handicap to the employers of that state. I think that we ought to take into consideration the experience abroad. Now I do not know whether it is because of the compensation laws in Germany, or in spite of them but I do know that co-incident with the establishment of their insurance system, which is the most comprehensive of any in Europe, prosperity took a rise. The German Empire has forged ahead at an unprecedented rate since the establishment of their comprehensive system of insurance and compensation....
>
> ... The relation of the various countries of Europe to each other is not unlike the relation of our own state governments. Competition between some of the continental countries is as keen as is competition between some of our states. I am not willing to agree either that increasing the cost of a product will necessarily put that product out of the running with the same product produced in another state. There are a good many other considerations entering into the matter: If better laws or better wages attract better workmen, then there is a compensation to an employer even though his wage-scale be higher or his cost greater than prevails in a competitive industry in another State. The best workmen are attracted to those industries and to those localities where conditions of employment are most satisfactory, and I dare say that every employer will agree that the best workman is to him the cheapest workman even though his wages be higher.... I feel, that our state would not suffer in the race for trade if we should establish a compensation system, and I believe that Minnesota would not suffer and I believe that Wisconsin would not suffer. We cannot afford in the United States to wait until all States, even though they be only competitive ones, are ready to adopt one system of compensation, any more than we ought to wait before we advance wages in one state until all the other states are ready to advance them, and we certainly do not [128]
> do that. As a matter of fact there is scarcely an industry conducted in the State of Wisconsin, Minnesota, or New York, whose wage schedules are made at the same time, notwithstanding the fact that they have competitive industries. There are very few industries in this country whose wage rates and conditions of employment are regulated nationally; there are very few industries where organized workmen are employed that attempt to make wage scales on a national basis; true, there are some, such as coal mines and the railways, but in the machinery trade, in building construction, and in all the miscellaneous industries, the wage schedules are made local and without any special relation to the wage schedules of other states....
>
> I, of course, am anxious that we shall have the very best information obtainable, and of course it is desirable that all the states should act together, but I think it is equally desirable that some of the states act quickly because it is an evil, and a growing evil, and it is more readily recognized now because we have been talking about it. The workingmen of the country are aware now of the conditions that prevail in other countries and we are very much dissatisfied with the conditions we now have. Employers themselves are going outside of the law to try and compensate workmen for injuries. Practically all of the large employers in the United States recognize and concede the inequity of the present law, by trying on their own account to draft some system to pay workmen more money wherever there exists a necessity for speedy relief. Now, I wanted to make those observations because I do not want to agree to a proposition here for an investigation of the conditions in Europe, if that investigation means, either in purpose or in effect, that we are going to wait the returns of that investigation before we get something that is substantial in America." (Applause).

Mr. C. B. Culbertson, of the Wisconsin Commission, said in brief:

> "The conditions in the United States are far different from what they are in Europe, and the testimony taken before our Commission shows that two industries standing side by side, being practically the same, having practically the same number of machines, with practically the same number of men employed, would have rates of which one would be half as great as the other, and would be fair in each case, because the accidents in the one concern were twice what they were in the other. Now this is going to be a very hard matter to get at if you wait to get these figures and then attempt to follow them. And a third point; I believe the employers in Wisconsin, as well as the laboring men, are ready for this proposition at this time, and I believe we are going to have it in Wisconsin at the next legislature. I do not think we are going to wait for any instructions from Europe or for any figures from there."

At this point two resolutions which had been adopted at the Atlantic City meeting, in July 1909, [129]
were re-adopted,—requesting the U. S. Bureau of Labor to publish the foreign compensation laws

in English, and to investigate the comparative cost to employers, of liability insurance under the American system, and workmen's compensation under the British and German systems.

Mr. Miles M. Dawson, of New York City, said:

> "I agree with the Wisconsin, Minnesota and New York Commissions that if we are to get anything done this year, we should go ahead and do it without waiting, for these tables of cost are by no means absolutely necessary.... But the things which can be brought out by that information are not quite the same things you are apparently thinking about.... A thoroughly competent expert, who will know what he is after, can put that information in the hands of the Bureau of Labor for publication by September or October next, and there is no reason why the Minnesota legislature or the Wisconsin legislature should hold up its report for an indefinite length of time. I have known New York pretty well, and if the Commission in New York renders a report during the present session and it meets with the approval of most of the Commission in New York, there is no doubt in my mind but what something will be done in New York before the present legislature is over."

Dr. Charles McCarthy, of Wisconsin, said:

> "I am thoroughly in favor of getting the statistics from Europe and I fully realize what a job that is. I believe, however, there is a way of going ahead as Mr. Mitchell and Mr. Culbertson have suggested without getting the statistics. Perhaps we are trying to get too much at once upon the statute books. I would suggest that these industries might be classified as to the dangers which they incur, not necessarily the industries that are particularly dangerous, but a group of industries could be taken and the law applied to them, and a bill could be introduced in the three legislatures applying to those particular industries. The rates could be fixed in that law so reasonable that the manufacturers could not oppose the law, with a provision in the law that after investigation, or within a certain time, those rates would be increased in the future. Now, as an experimental thing, as a thing which all States could agree upon, that would not be hard to get and would not be hard to put upon our statute books. It would be an opening wedge, it could be tried before the courts and the principle determined by the courts and then applied within a few years to other industries of a dangerous nature. I do not think the process of statute law making is a process of getting all the statistics and facts from foreign countries; I think that it is the other way in America. Our statutes work out differently in the psychology of the working man, and I believe the [130]
> way to do it in America is to get some particular group of industries that we know are dangerous and get three of the States to act together. I think the workmen will meet that half way, with the idea of increasing in the future. It is an entering wedge that all can agree upon." (Applause).

Mr. J. P. Cotton, counsel for the New York Commission:

> "If we ever come to workmen's compensation, there has to be back of it sometime an efficient insurance system and the data of the English experience on that is of the very highest importance.... I do not see any reason why, in non-competitive trades, any American state is not now ready to go ahead and establish a system of compensation at such a rate as will at least grant relief to the workmen. But that does not make any less important the collection of foreign figures in particular accident experience."

Dr. McCarthy:

> "How will it do to make a classification based upon actual statistics of deaths and accident rates and put it up to the courts? Suppose the courts do knock it down, then they will tell what we can do in the future. We don't want to be afraid of the veto of the courts, for in the end they will tell us what we can do. We have to go through that experience some time and we might as well begin with our best foot forward,—with the best case we can make."

Mr. George M. Gillette, of the Minnesota Commission:

> "... It seems to me that the question of cost on the one side and compensation on the other are so closely interrelated that it is absolutely impossible to consider the one without the other. If the other members of this Conference do not desire this information, I have no desire to press it; it has already been expressed by resolution in the minutes of the preceding Conference. Personally, however, I am going to investigate the costs and the working of these compensation acts abroad.
>
> I offer the following resolution:
>
> 'Resolved: That a committee of three be appointed by the Chair to confer with the Honorable Secretary of State to secure the coöperation of the Government, and its aid through our Consular and Diplomatic Service in obtaining information as to the workings of the foreign compensation acts and the criticisms which are made at the home of the various acts.'"

The resolution was adopted, and John Mitchell, A. W. Sanborn and Geo. M. Gillette were

appointed.

MR. BERTRAM PIKE, of New Hampshire: [131]

"I would suggest in connection with getting the insurance rates from abroad, that we ascertain what has been the actual cost of the workmen's collective policies in the different industries and States in this country, because it will show almost absolutely what it costs to protect those men."

MR. OWEN MILLER, of Missouri:

"I think that suggestion is a good one."

MR. WALLACE INGALLS, of Wisconsin:

"The accident insurance companies know what injuries occur in the principal manufacturing industries. They have definite information."

SENATOR HOWARD R. BAYNE, of the New York Commission:

"Our Commission has adopted the plan of discussing tentative propositions in order to confine our attention to specific questions. I move that this Conference now direct its discussion to the consideration of whether the scheme of workmen's compensation in all cases of industrial accidents is industrially feasible at the present time."

[The motion was carried.]

MR. WILLIAM BROSMITH, counsel for the Travelers' Insurance Co., of Hartford:

"I do not know that I am in a position to give you any advice as to the industrial feasibility of workmen's compensation. Personally, I am a strong believer in workmen's compensation."

THE CHAIRMAN:

"Do you believe that the insurance companies would be willing to place at the disposal of this conference, or any one, the actual experience they have had under collective insurance; in other words, would they be willing to allow statements to be taken from their figures showing precisely the number of accidents in any given occupation or the total number of people insured, the number of injured, the kind of injury, the time the injuries lasted, of course leaving out the question of how much was paid by the company?"

MR. BROSMITH:

"I can speak positively for one company. I know that we will be very glad indeed to furnish to the State Commissions the experience of our company on industrial accidents. I have offered already to do that for the New York State Commission. I have [132] no right, of course, to speak for other companies, but I am confident, that all of them which write industrial accident insurance or which cover it in one form or another, will be glad indeed to furnish their experience. I do not believe that the value of statistics you gather abroad as to the practical working of workmen's compensation and insurance in foreign countries will be of much value, but I do believe that in our own country, where we have a vast mass of experience it will be of practical benefit.

The company which I represent has been transacting accident insurance in this country for fifty years. We have written, I presume, millions of policies of accident insurance upon persons engaged in industrial occupation. We have that experience all tabulated and arranged and classified so as to show the injuries sustained in the different occupations, the injuries sustained at occupation, the injuries sustained foreign to occupation, the premiums charged and received in all of these years, the loss ratio and the accident ratio. I believe, the insurance companies in the United States could in a very short time know the exact amount paid by any employer of labor as a premium rate, or cost of insurance which would be necessary to protect the employer against the compensation which he in turn would be obliged to furnish to his employees. I believe that experience will be very valuable to the State Commissions and I know, that so far as the accident companies are concerned, when a scheme of compensation is perfected in any State, it is to that experience we will go in order to ascertain what we will charge the employer for the insurance protection. We will not go to the experience of any liability insurance. That may have a value, I presume it has, but it is not at all comparable to the value of experience in personal accident and health insurance, and particularly the experience of the companies which write industrial insurance.

At the present time, the insurance company has the privilege of selecting its risk, and the benefit of that selection affects the premium charged. Today we may insure a thousand employees of the Pressed Steel Car Company, but we will select that one thousand; the ones who are of bad habits, careless, or of bad morals we decline to take. Under the workmen's compensation, however, we would have to insure all of the

employees of a given industry, good, bad and indifferent. The fact that we would have to insure all of the risks in a given industry without selection, would have the effect of increasing the premium somewhat. However, under workmen's compensation I would assume that the injuries to be covered by the insurance would be only the injuries sustained in occupations, so that a very considerable percentage of the injuries now covered by general accident insurance, would be taken out of the insurance under workmen's compensation."

PROF. SEAGER:

"If we asked your company to name the thirty most hazardous industries carried on in New York State, it would not be a matter of difficulty?" [133]

MR. BROSMITH:

"It certainly would not be difficult to give you the thirty most hazardous all over the country."

MR. WILLIAM F. WELCH, of West Virginia:

"Would the insurance companies, under a compensation act, require the rigid medical examination that is now required?"

MR. BROSMITH:

"No. There is no medical examination in accident insurance now."

MR. MERCER:

"I have prepared a bill that I thought would stimulate discussion, and I have had it printed in order that you might look it over."

Mr. Mercer then explained briefly the provisions of his tentative bill, which, with modifications, was presented again at the Chicago meeting, and is printed on page 40.

At one o'clock the meeting adjourned until 2.30 P. M.

## AFTERNOON SESSION.

The Committee on Permanent Organization through its chairman, Prof. Seager, submitted a report, which was adopted,—providing:

1. That the members of the permanent Conference shall be the members of all State Commissions on the subject, one permanent representative to be appointed by the Governor of each State, and ten members at large to be elected at any regular meeting of the Conference;

2. That a permanent executive committee of fifteen members be appointed by the Committee on Permanent Organization;

3. That the Secretary of the American Association for Labor Legislation be named as the Assistant Secretary of this Conference;

4. That the Conference meet in Chicago on June 10th, 1910.

The sentiment of the Committee favored public meetings, but with privilege of voting limited to the members of the Conference.

The Executive Committee was directed to draw up a suitable set of by-laws for submission at the Chicago meeting of the Conference. [134]

On motion, a committee consisting of Messrs. Seager, Mercer and Dawson was appointed to draw up a bill and submit it to the insurance companies for cost figures, and to furnish copies of the bill for distribution, at least twenty days in advance of the next meeting in Chicago.

MR. M. L. SHIPMAN, of North Carolina, made a plea for more specific announcements concerning arrangements and place for meetings, in order that there might be less confusion on that account in the future.

The Conference, after a temporary adjournment for the purpose of having a photograph taken, took up, section by section, the discussion of Mr. Mercer's tentative bill.

Upon the question of the proper classification of hazardous employments it was practically agreed that any attempt to include agricultural laborers and domestic servants in a compensation measure, would probably result in failure. "You cannot pass a bill of that sort," declared Dr. McCarthy. "Anybody who has been around a legislature knows that the farmers, on questions of this sort, are way behind the laboring man or the manufacturer; they are full of prejudice and will fight a bill of that kind every time."

The constitutional difficulties in New York were discussed by Senator Bayne who laid special stress upon: (1) the death limit clause; (2) the right of trial by jury; and the due process clause. "Some of us," said Senator Bayne, "have about concluded that the only way we can justify any compensation act for industrial accidents will be through the exercise of the police power of the State. And we think this principle lies at the bottom of the police power: that it is competent for

the legislature to declare that a proposed remedy is based upon the police power, but it must in fact be dangerous to the health or public safety or welfare of the community. The mere fact that the legislature so declares it, does not make it so. It is subject to investigation by the courts, and if they find that it is reasonable then they will leave it to the legislature to declare the extent of authority under that police power with those limitations."

In answer to these objections Mr. Mercer cited numerous court decisions (printed in pamphlet form by Mr. Mercer) which led him to feel more sanguine of what may be accomplished under our constitutions. In answer to Prof. Seager's question: "Is it probable that the court will take the [135] view that a general workmen's compensation act is a reasonable exercise of the police power?" Mr. Mercer replied:

> "My understanding of that is that under the general theory where twenty-three of the most important foreign countries have passed legislation on the theory that there was a reasonable foundation for it, where six or seven of the forty-six states have passed laws requiring commissions to investigate this proposition, where men would meet at Atlantic City and discuss this subject as we did for two days, where the National Civic Federation devoted a day to it in New York, and where we devote a day to it here, where there is literature all over the country and every magazine has some article on the subject at the present time, and probably all of the corporations coming around to the view that we need certain legislation, I do not believe any court would say that there is any opposition to a reasonable discussion of the question, and that the legislature has not the right to declare it was a dangerous employment if we limit it to the industries that have hazards."

Prof. Seager outlined the plan of "extra-hazardous" occupation classifications favored by the New York Commission and Dr. McCarthy pointed out the danger of too much definition. "My experience with bill-drafting is that in getting the most simple statement of a case, the less you say, the better."

Mr. John Lundrigan, of New York, gave it as his opinion that "any scheme of compensation that follows the job or the employment, instead of the individual, is wrong and will fail." He said he did not believe men engaged in hazardous occupations would be willing to waive their right to undertake to recover in the courts whenever it could be shown that the employer was negligent.

[The stenographer who reported the remainder of this brief session lost his notes, and there is no further record].

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# INDEX

### Speakers and Subjects

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Transcriber's Notes:

Obvious typographical errors were repaired.

P. 49: Words of Chairman Mercer—"although the judgment of the as laid down in Lockner"—apparent missing word is as in the original.

P. 78: Words of Edwin Wright—"injured person fails to report within a very limited time, his it presented a question"—"his" is as in the original.

P. 111: "the number of reasons these bills took the form which they have taken"—original read "sons" in place of "reasons."

Updated editions will replace the previous one—the old editions will be renamed.

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