Notes on the Workmen's Compensation Act of Maine

by

ARTHUR L. ROBINSON
of the Maine Bar

Formerly Associate Legal Member of the Industrial Accident Commission of Maine

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The first workmen's compensation act of the State of Maine was passed by the Legislature of 1915 (P. L. 1915, Chap. 295),and became effective January 1, 1916. The Legislature of 1917 made certain incidental amendments. At the Legislature of 1919, the act was revised, its scope broadened, and it was passed anew (P. L. 1919, Chap. 238). The Legislature of 1921 made certain further amendments, effective July 9, 1921. The present act in force in the State of Maine is Chapter 238 of the Public Laws of 1919, as amended by Chapter 222 of the Public Laws of 1921.

Workmen's compensation is in effect by virtue of statutory enactment only. But, like all other statutory matters, it is subject to interpretation and exposition by the courts of the state. The principle of workmen's compensation is now almost universally accepted throughout the United States. Each jurisdiction has an act of its own, but fundamental principles underlying compensation run through all the acts. Compensation in this country is a very modern development, but in the short period of time since the establishment of the compensation acts a large body of case law has appeared. Not only do we have workmen's compensation laws, but also a "law of workmen's compensation"; that is, a body of law interpreting and explaining the workmen's compensation principles in the states. This article concerns itself with the Maine act and Maine law. As a matter of convenience in arrangement, I am following the published act in taking up the various subjects. The act itself is not reprinted. Anyone who cares to use the article should use it in connection with a copy of the act.

Under the provisions of the Maine law, an appeal from a compensation decision goes directly to the law court. Therefore, the tribunal having jurisdiction over compensation matters is the Supreme Court, sitting as a court of law. In Maine, the decisions of the commission, or members of it, are not publicly available. In this article I make occasional reference to commission rulings or decisions which I consider might be of interest on the particular point involved, especially if it is a subject that has not, as yet, been passed upon by the court. The commission rulings have force until the particular point has been passed upon by the Supreme Court.

EMPLOYER AND EMPLOYEE

In Section 1, sub-headings I and II, "Employer" and "Employee" are defined, and certain employees by the Maine law are expressly exempted from the act: (a) farm laborers, (b) domestic servants, (c) masters of and seaman engaged in interstate or foreign commerce. As to (c), it is held in Westman's case, 118 Me. 133, whether a workmen is engaged in interstate or foreign commerce depends upon the nature of the work which the boat was engaged upon at the time of the accident.

(d) Casual employees. These are defined in Smith vs. Boiler Co., 119 Me. 552, at page 565, citing Scully vs. Industrial Commission of Illinois, 284 Ill. 567. The word "casual" has reference to the contract of service, and not to the particular item of work being done at the time of his injury.

Section 1, VIII, defines dependents. By the amendments of 1921 certain incongruities in the phraseology of this section were corrected. Dependents must be members of the employee's family or next of kin, who are wholly or partly dependent upon the earnings of the employee for support. Certain persons are conclusively presumed to be wholly dependent.

A wife upon a husband with whom she lives, or from whom she was living apart for a justifiable cause, or because he had deserted her.

When the wife, although deserted, has committed adultery herself, she is not conclusively presumed to be dependent. In such case the justifiable cause has ceased. Scott's case, 117 Me. 437.

A child or children, including adopted or step children, under the age of eighteen years, are conclusively presumed to be dependent upon the parent with whom he is or they are living, or upon whom he is or they are dependent at the time of the death of said parent, there being no surviving dependent parent.

Illegitimate children are not conclusively presumed to be dependent. Scott's case, supra. But illegitimate children living with the parent may be considered members of his family, and are entitled to compensation when dependent in fact. Scott's case. The woman living in adultery with an employee is not a dependent.

On the question of dependency, the question of the effect of divorce, and the rights of minor children, raises a very interesting point. Such cases have been before the commission on at least two occasions, but have not been passed upon by the courts. Where the father and mother have been divorced, and the court having jurisdiction has granted the custody of the children to one or the other of the parents, and then the father is killed, the question of the dependency of the minor child upon the parent is raised. The Maine law is very clear that the obligation to support follows care and custody, and that where the parents are divorced, and the court has decreed the care and custody of minor children to the mother, as between the father and the mother, the father is not under legal obligation to support the children. Gilley vs. Gilley 79 Me. 292. On two occasions, when this question was before the commission, the commission recognized the right of a minor child of a divorced father to claim as a dependent of the father, even though care and custody has been granted to the mother. This was on the basis that the divorce of the parents should not prejudice the rights of minor children. Such point has not been passed upon by the Supreme Court.

Section 12 of the act deals with the amount of compensation benefits to be paid to dependents where death results. Persons wholly dependent receive a weekly payment equal to two-thirds of the average weekly wages, but not more than sixteen dollars, nor less than six dollars a week for a period of three hundred weeks from the date of the injury, not to exceed four thousand dollars. If the employee leaves dependents only partly dependent, such dependents receive for a period of three hundred weeks from the date of the injury a weekly compensation equal to the same proportion of the weekly payment herein provided for the benefit of persons wholly dependent as the amount contributed annually by the employee to such partial dependents bears to the annual earnings of the deceased at the time of the injury. In the case of dependents only partly dependent, first, the dependency must be established, and then the amount of compensation to be paid. McDonald vs. Liability Corporation, 120 Me. 52.

If the dependency is established, then the amount must be figured in accordance with the fraction specified in Section 12. But in computing the amount of partial dependency, the only sums that are to be considered is the amount used by the claimant for actual and lawful support. McDonald vs. Liability Corporation, supra. That is, if the deceased employee has made contributions to a claimant, which contributions were used for other purposes than

for the claimant's lawful support, the amount of such contribution may not be figured in arriving at the compensation payment to be made. For example, in McDonald vs. Liability Corporation, just cited, the court held that money paid by a son to his father, and used by the father for repairs on his house, cannot be taken to an unreasonable degree as money used for support.

In the case of claims for partial dependency by parents on children, the issue has not been directly passed upon by the court as to deduction for board, clothing or other expenses of the child. If the child is a minor, the commission has made no such deduction. Such is the rule in Massachusetts.

AVERAGE WEEKLY WAGES.

Section 1, IX, outlines the method for figuring the average weekly wages of an employee. This is arrived at by taking three hundred times the average daily wages, and dividing by fifty-two. The important figure, however, is the average daily wage to be used in such formula. In Hight vs. York Manufacturing Co., 116 Me. 81, where the employee worked fifty-eight hours a week, the week's work being divided into ten and one-half hours for five days, and five and one-half hours on Saturday, the total amount earned by the week is divided by six to arrive at the average daily wages. The court says, "A week's pay for a week's work." Under this decision, the total amount earned in a week is divided by six, and not by five and one-half, although there is a half-holiday on Saturday. Paragraph 9 (f) of this section provides for the employee who works seven days a week.

This section of the law provides that the injured employee's wages are taken provided the employee has worked substantially the whole of the year immediately preceding his injury. This must be a year, and not six months. Thibeault's case, 119 Me. 336. Where the employee himself has not so worked, then the wage schedule of an employee of the same class working substantially the whole of such immediately preceding year is taken. In Thibeault's case, supra, an employee who had worked two hundred and forty working days was held to have worked substantially a year. Where there has been a reduction in time and output by causes incident and common to the employment, and not by causes of the individual, such may well be regarded as substantially the whole of the year. The first method given is used where possible. If not possible, the second method is used. Section C provides an alternative where neither of the above methods may be applied. Such a situation arises, particularly in seasonal employments, such as canning factories, where it is necessary to get the best average possible. No such cases have been presented to the law court, and it may be said that under such circumstances a reasonable fair daily wage is taken.

ASSENTING EMPLOYER

Section 6 of the act provides that employers desiring to come under the act file written assents. The Maine act is a voluntary act, and the employer comes under the act only by his voluntary assent to it. This is most important and the court has stated that the basis of the right for compensation is contractual; Mailman's case, 118 Me. 172; Gauthier's case, 120 Me. 73; Berry vs. Donovan, 120 Me. 457. Both the employer and the employee voluntarily come under the act. The result is that the awards of compensation are recognized as awards by a selected arbitrator. Judge Deasy says in Mailman's case, 118 Me. 173, "A decree of the commissioner is indeed analogous to finding of a judge who by consent determines facts or (as indeed it is) an award by a referee agreed upon by the parties."

We see the importance of the court's recognition that rights to compensation are fundamentally ex contractu, in Berry vs. Donovan, 120 Me. 457, where the Maine Supreme Court declares an award for compensation valid to a stevedore injured on a boat, since the right of compensation is in per-

sonam and may be given by a state statute, and it does not conflict with the federal jurisdiction over maritime matters, since the exclusiveness of the admiralty jurisdiction is as to proceedings in rem against the vessel. An assenting employer in Maine, although engaged in maritime affairs, comes within the jurisdiction of the compensation law in Maine.

On this subject of assenting employer, it is well to note that by the Maine law for an employer to become an assenting employer, he files a written assent with the commission, and also files a copy of an Industrial Accident Commission insurance policy in any authorized company, or furnishes satisfactory proofs of solvency, and offers a bond. Both the assent and the policy are necessary. It has happened not infrequently that employers have simply filed a policy without filing the formal assent. In such cases they are not within the law.

Section 3 provides when an assenting employer is engaged in more than one kind of business, he may assent as to one business and not as to another. In Fournier's case, 120 Me. 191, an assent to a saw-mill at Milford and Oldtown in Penobscot county was not held to include a logging operation near Katahdin Iron Works in Piscataquis county. The acceptance expressly limited the employer's business to the manufacturing industry at Milford and Oldtown. Although this case deals with lumber and logging, it should be noted that the decision is based on Section 3 of the act as to the distinct business.

SECTION 10—MEDICAL

Section 10, as amended, provides that during the first thirty days after an accident the employer must promptly furnish reasonable medical, surgical and hospital services, nursing and medicine and mechanical surgical aids. The amount of such services shall not exceed one hundred dollars unless a longer period or a greater sum is allowed by the commission which, in their discretion, they may allow when the nature of the injury or the progress of the recovery requires it. It will be seen that by the act the commission has the broadest possible discretion in providing for medical services. In view of the phrasing of this section, it is quite improper to speak of the medical features of the act as being limited to thirty days and one hundred dollars. No limit is fixed as to the amount that may be allowed in a given case.

In the case of disputes over medical bills, such are passed on by the commission, but in this connection it should be noted that a doctor has no right to file a petition in his own name. Only the employee or the employer can petition for the determination of such issues.

May the injured employee select his own physician? This question is frequently asked. The section by its wording places the obligation to furnish medical attention upon the employer. In the case of emergency or other justifiable cause, the employee has the right to select a physician. Discussion as to the right to select involves questions of medical ethics which are not in point here. Experience seems to show that practically this question is not so important as it, theoretically, might appear to be.

By decision of commission, dental services are included in this section. Malloy's case, decided February, 1920.

PERSONAL INJURY BY ACCIDENT

Section 11. If any employee receives a personal injury by accident arising out of and in the course of his employment, he shall be paid compensation, as hereinafter provided, by the employer, who shall have elected to become subject to the provisions of this act.

This section defines the accidents that are within compensation, and it gives the jurisdiction limits of compensation—"receives a personal injury by accident arising out of and in the course of his employment." Three requisites must be present: (1)Personal injury by accident: (2) arising out of his employment; (3) in the course of his employment.

Judge Hanson defines accident in Patrick vs. Ham, 119 Me. 517. "As defined by lexicographers, an accident is a happening; an event that takes place without one's forethought or expectations; an undesigned, sudden or unexpected event. Its synonyms include mishap, mischance, misfortune, disaster, calamity, catastrophe.

1. In general anything that happens or begins to be without design, or as an unforeseen event; that which falls out by chance; a fortuitous event or circumstance.

2. Specifically, an undesirable or unfortunate happening; an undesigned harm or injury; a casualty or mishap.

3. The operation of chance; an undesigned contingency a happening without intentional causation; chance, fortune.—*Century Dictionary.*

1. Anything that happens; an occurrence; event; especially (1) Anything occurring unexpectedly, or without known or assignable cause; a contingency.

2. Any unpleasant or unfortunate occurrence that causes injury, loss, suffering or death.

3. Med. An unfavorable or unanticipated symptom.—*New Standard Dictionary.*

Bouvier, Rawles Revision, defines it, "An event which under the circumstances, is unusual and unexpected by the person to whom it happens."

"The sources of information defining the word, are in complete harmony with the popular and generally accepted use of the word, and especially as construed by courts in states having workmen's compensation laws with provisions similar to the provisions of the Maine act." See also Westman's case, 118 Me. 133.

Acceleration or aggravation of a pre-existing disease by accident is an injury caused by accident. Patrick vs. Ham, supra. Mailman's case, supra.

Occupational diseases, as such, are not compensable within the Maine law.

ARISING OUT OF HIS EMPLOYMENT

The Maine Supreme Court has defined this requirement with care. "The great weight of authority sustains the view that these words 'arising out of' mean that there must be some causal connection between the conditions under which the employee worked, and the injury which he received." Judge Philbrook in Westman's case, 118 Me. at 142, "Nothing can come 'out of his employment', which has not in some reasonable sense, its origin, its source its causa causans in the employment." It might well with safety be said that, in order for the accident to arise out of the employment, the employment must have been the proximate cause of the accident.

See Mailman's case, 118 Me. 172; Dulac vs. Insurance Co., 120 Me. 31; White vs. Insurance Co., 120 Me. 32; Larrabee's case 120 Me. 242.

IN COURSE OF HIS EMPLOYMENT

The words "in the course of" refer to the time, place, and circumstances under which the accident takes place. Westman's case, 118 Me. at 141. An injury arises in the course of his employment when it occurs within the period of his employment at a place where he may reasonably be, and while he is fulfilling the duties of his employment, or engaged in doing something incidental to it.

Mailman's case, supra;
Larrabee's Case, 120 Me. 242;
White vs. Insurance Co.; Supra.
J. Fournier's case, 120 Me. 236.

These two phrases although usually combined are not synonymous.

An accident to an employee that occurs while an employee is using an elevator, that he is not authorized or permitted to use is not an accident that arises out of and in the course of his employment. Dulac vs. Insurance Co., 120 Me. 31.

A call fireman, who is also a mill employee, and who receives an injury while going to a fire, although the injury occurs in the employer's premises, does not receive an injury arising out of and in the course of his employment as a mill hand. White vs. Insurance Co., 120 Me. 62.

An injury received by an employee while performing work in a manner in violation of instructions is not an injury arising in course of employment. J. Fournier's case, 120 Me. 126. "If then the employee is in a place where he is prohibited from being by positive orders of his employer by reason of the danger, or has taken certain course in going from one place to another, which he is prohibited from taking by his employer for the same reason, notwithstanding it is within the period of his employment, and his purpose in going to the other place is to perform some of his duties he is engaged to perform, he cannot be said while in the forbidden place, or while going by the forbidden route, or means, to be acting in the course of his employment within the meaning of the compensation act, because he is not in a place where he reasonably may be in the performance of any of his duties."

On hearing before members of the commission, it has been held that injuries caused by sportive arts—that is, "fooling" or "horseplay"—do not arise out of the employment. See Ferguson vs. Marston & Brooks, decided Sept. 30, 1919; and Talbot vs. Brackett, decided May 28, 1920.

EMPLOYER'S LIABILITY FOR DEATH

Section 12. Employer's liability for death. If death results from the injury the employer shall pay to the defendants, etc.

The death must result from the injury. If the evidence fails to show causal relationship between the injury and the death, there is no recovery. Joseph Dulac vs. Insurance Co., 120 Me. 324. In this case the employee sustained an epigastric hernia from heavy lifting, and he had at the same time an inguinal hernia. An operation was performed for both hernias at the same time. The evidence did not show that the death resulted from the operation on epigastric hernia alone, and compensation was denied "Inasmuch as the evidence fails to show that the injury effected the inguinal hernia, at all, the plaintiff then leaves it to uncertainty or conjecture whether the decedent would have died from the shock of the ventral hernia and cannot then recover because he must prove that fact."

SPECIFIC INJURIES

Section 16 provides that in certain scheduled cases the disability shall be deemed to be total for the period specified. The section provides for the loss of members. Prior to the amendment of 1919 the loss of use could not be considered as a loss. Merchant's case, 118 Me. 96. The amendment of 1919 added the concluding paragraph to this section, which provides for compensation where the usefulness of a member is permanently impaired. To be a loss of a member there must be loss of the whole member, and not a substantial loss. McLean's case, 119 Me. 332; Maxwell's case, 119 Me. 504. In the section, as now written, the distinction is of little importance.

Clark's case, 120 Me. 133, outlines the scope and effect of this section as it now reads. "We think, therefore, that the language of the final paragraph of Section 16 before quoted is not confined to cases of amputation, but includes all cases of injury to the members specified in that section, not before provided for, where the usefulness of the members or any physical function thereof is permanently impaired. The word "class" includes and refers to injuries to the members enumerated in the section. An injury to the forearm may permanently impair the usefulness of the fingers, although neither the hand nor the fingers are lost, and may be of some use".

In the case of permanent impairment the extent of the permanent impairment is determined by the commission, that is by the full commission. As a matter of practice in such cases, the findings are signed by the commission. The extent of the impairment may be arrived at by agreement.

Injuries to the eye are within this class. The determination of the extent of impairment of the eye of necessity requires the assistance of competent expert opinion. Recently the Report of the Committee on Estimating Compensation for Eye injuries on the section of Ophthalomology presented at the annual session of the American Medical Association, June, 1921, has been used by the commission as assistance in such cases. The attention of anyone interested in this question is referred to that report.

NOTICE AND KNOWLEDGE

Section 17 provides that notice of the accident shall be given to the employer within thirty days after the happening thereof, and that claims for compensation shall be made within one year. Such claim need not be in writing. Smith vs. Heine, 119 Me. 552. Notice of the claim required by this section may be waived by the employer.

Section 20 provides that want of notice shall not be a bar if the employer or his agent had knowledge of the injury or that failure to give such notice was due to "accident, mistake or unforeseen cause." The foreman is a proper agent under this section. It is not necessary that this be an agent upon whom process can be served. Simmons' case, 117 Me. 175.

Knowledge and notice are not the same. Simmons' case, supra. Citing Murphy's case 226 Mass. 60.

Wardwell's case, 121 Me. 216, deals with "accident, mistake or unforeseen cause." In this case an accident occurred on February 17. The injury was a blow on the knee and caused discoloration and slight abrasion, and was not regarded by the employee as serious. He worked the following day, Friday, and on Saturday morning and Monday, during which time he was treating the knee at home with liniment. On Monday he felt sick. Tuesday pneumonia developed. Later he became delirious and on March 2 was taken to hospital. His knee was found infected and it was lanced. He remained at the hospital until April 4. On April 7 employee's wife notified the employer of the accident.

The Court says:

> "In case of controverted facts which would tend to excuse a failure to notify within thirty days, it is the province of the chairman to determine those facts like any other issue of fact before him and his finding is final provided there is some competent evidence to support it. Westman's case, 118 Maine 133; Mailman's case, 118 Maine 172. But upon facts undisputed, or upon facts found by the chairman in compliance with this rule, the question whether the written notice has been given to the employer within the time allowed by the Legislature is one of law." "An unforeseen cause in this connection may be defined in general as one which could not have been reasonably foreseen as likely to arise or occur and yet is of such a nature as to have substantially interfered with the giving of the notice.
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> "That definition fits here. The claimant's injury at first seemed to him comparatively insignificant. He did not even speak to his fellow workmen about it. He continued his work for two or three days. Then unexpected complications arose. Pneumonia at first set in and later an ugly abscess developed, with the consequent suffering, weakness and natural inability or disclination to give thought to business matters, all of which certainly bring the situation within the purview of the term unforeseen cause. In this petition the claimant alleges that he gave notice as soon as he was able to do so, that is, as soon as he was reason-

ably able to do so. Other things were upon his mind. The thirty days expired on March 19, right in the midst of his stay in the hospital. Was the door then shut against him? If not, when was it afterward closed, as he did not leave the hospital until April 4, and within four days thereafter sent the written notice. The relief clause was enacted to meet just such a case as this. It is a remedial provision and it is the duty of the Court to apply it in a broad and reasonable way to the facts of each case that may call for its consideration. No more definite rule can be laid down. The decision must be left to the sound judgment and wise discretion of the court in each instance."

SUBROGATION

This section (Section 26) gives a very broad right of subrogation over against third parties.

The Amendment of 1921 added to the provisions in this section. See Donahue vs. Thorndike, 119 Me. 20.

LUMP SUM

Section 28. Lump sums are within the jurisdiction of the commission, and petitions for commutation are passed on by the full commission. These are discretionary matters, and have not been the subject of any appeals to the Supreme Court.

As to general principle, it may be said that the commission does not "enthuse" over lump sums. They are granted only in a very small proportion of cases. Where the period of disability is fixed (as in the case of a dependent), or where the employee has a specific period and it is clear that no partial compensation will be payable they may be granted. The sentiment of the commission is not to grant them where the compensation period is in any way indeterminate or problematical.

HEARINGS

Section 34. If from the petition and answer there appear to be facts in dispute, the chairman or associate legal member of the commission shall then hear such witnesses as may be presented, or by agreement the claims of both parties as to the facts in dispute may be presented by affidavits. From the evidence thus furnished the chairman or associate legal member shall, in a summary manner, decide the merits of the controversy. His decision, finding of facts, and rulings of law, and any other matters pertinent to the questions raised at the hearing, shall be filed in the office of the commission and a copy thereof certified by the clerk of the commission mailed forthwith to all parties interested. His decision in the absence of fraud, upon all questions of fact shall be final.

Section 34 provides for hearings on petitions under the act, and for the decision on questions in dispute by the chairman or associate legal member. The decision on questions of fact is final; on questions of law appeal lies to the Supreme Court at law as provided by the second paragraph of this section.

The decree is analogous to a finding of a judge who by consent determines facts or (indeed as it is) an award by a referee agreed upon by the parties. Mailman's case, 118 Me. 172. A finding must be based on evidence. Gauthier's case, 120 Me. 73. As to findings, since no appeal lies in questions of fact, "the only question of law is whether or not there was any evidence before the commission upon which the decision can rest." Simmons' case, 117 Me. 177. "If there is direct testimony which, if clear, standing alone and uncontradicted, would justify the decree there is some evidence notwithstanding its contradiction by other testimony of greater weight." Mailman's case, 118 Me. at 176. The evidence may be slender, but if present, that is sufficient.

The act and the law places upon the trier of fact great authority and great responsibility. But as great as this authority is, it is authority that must be exercised under recognized rules of law. No section of the act has been the subject of more judicial interpretation by the court than has this section.

A finding must be based on proper evidence. "A finding of fact without proper evidence is an error of law." Mailman's case, 118 Me. 175; Thibeault's case, 119 Me. 336; Dulac vs. Insurance Co., 120 Me. 324; Gauthier's case, 120 Me. 73,

In the following cases the Court on appeal sustains the findings:

Simmons' case, 117 Me. 177;
Mailman's case, 118 Me. 175;
Westman's case, 119 Me. 133;
Patrick vs. Ham, 119 Me. 516;
Larrabee's case, 120 Me. 242;
Gray vs. Insurance Co., 120 Me. 81;
Basil W. MacDonald's case, 120 Me. 543.

In the following cases findings are set aside:

Thibeault's case, 119 Me. 336;
Gauthier's case, 120 Me. 173;
Dulac vs. Insurance Co., 120 Me. 324.

CIRCUMSTANTIAL EVIDENCE

In studying the cases in which the issue of findings made by the chairman is raised, it is important to note particularly the subject of circumstantial evidence. When the evidence is direct, any direct evidence, no matter how slight, is sufficient to sustain a finding. But where the evidence is circumstantial, then the finding must be made inferentially from the circumstances admitted or proved. The chairman may find the circumstances, but the inferences from the circumstances to arrive at the findings must be by reason. Such inferences must be rational and natural. And the Court on appeal, may examine, weigh and test these inferences. In other words, in cases of circumstantial evidence, the reasoning used by the trier of the fact is subject to review on appeal.

This rule was laid down in Mailman's case, 118 Me. at 176, and has been reaffirmed in later cases. Larrabee's case, 120 Me. 242. Where the evidence is circumstantial, and not direct, the inference must be rational and reasonable, and not simply conjecture. The line between inference and conjecture is admittedly "somewhat obscure." (Mailman's case, supra),and the Court has not undertaken to define the rules generally to cover all cases. Each case must depend upon its particular facts, but the important consideration is that the Supreme Court has expressly claimed that it has jurisdiction to consider the question.

"If there is direct testimony, which, if clear, standing alone, and uncontradicted, would justify the decree, there is some evidence, notwithstanding its contradiction by other evidence of much greater weight.

"If the case must be proved wholly or in part circumstantially, and there is a dispute as to what the circumstances are, the determination of such dispute by the commission is final. It is for the trier of facts who sees and hears witness to weigh their testimony, and without appeal to determine their trustworthiness.

"But the inferences which the commissioner draws from proved or admitted circumstances must needs be weighed and tested by this Court. Otherwise it cannot determine whether the decree is based on evidence or conjecture.

"In other words, the Court will review the commissioner's reasoning."—Mailman's case, 118 Me. 176.

EVIDENCE

A finding must be based on proper evidence. A finding "in view of" certain facts that are not supported by the evidence is improper." Gauthier's case, 120 Me. 73. The evidence must be presented under such circumstances as to afford full opportunity for comment, explanation and refutation. Gauthier's Case, supra. Incompetent, hearsay testimony should not be admitted in hearings, but the admission of such incompetent testimony does not of itself require the Court to disturb the decree unless such decree was in whole or in part based on such testimony. Mailman's case, Larrabee's case, supra; Ballou case, in 121 Maine, just decided but not yet reported.

The Law Court has sustained a finding of the chairman in which he states that the finding "wholly disregards" hearsay testimony. But see Ballou case, just referred to.

A statement of a deceased—"I got hurt"—is admissible only to show the physical condition and not admissible as narrative of the event. Mailman's case, Larrabee's case.

For proof of marriage in hearings before the commission, see Smith vs. Heine Safety, etc., 119 Me. 552.

Medical testimony must be produced in evidence before it can be the foundation of a decree. Gauthier's case, supra.

APPEALS

In case of appeals, the appeal must be filed in the county where the injury occurred. Maguire's case, 120 Me. 398.

After a decree has been made, and the time for making an appeal has expired, the chairman has no power to grant a rehearing on the merits upon the ground of newly discovered evidence. Connor's case, 121 Me. 37.

PROCEDURE

Burden of Proof. In proceedings before members of the commission, the plaintiff has the burden of proof. Westman's case, 118 Me. 133; Mailman's case, 118 Me. 172; Patrick vs. Ham, 119 Me. 520; Dulac vs. Insurance Co., 120 Me. 31. "Surmise, conjecture, guess, or speculation are not sufficient to sustain the burden and justify a finding in behalf of the claimant." Westman's case, supra. Burden of proof on plaintiff is not sustained. Dulac case, 120 Me. 324.

The nature of the petitioner's claim on the matter in dispute should be set out in the petition. Maxwell's case, 119 Me. 504; Clark's case, 120 Me. 133.

JURISDICTION OF LAW COURT

The Law Court may recommit cases to the commission.

McKenna's case, 117 Me. 179;
Maxwell's case, 119 Me. 504;
Gauthier's case, 120 Me. 73.

The Law Court may modify a decree of the commission.

Thibeault's case, 119 Me. 336;
McDonald vs. Liability Corporation, 120 Me. 52;
Gray vs. Insurance Co., 120 Me. 61;
Fennessey's case, 120 Me. 252.

If further evidence is to be produced, the case must be recommited. Gauthier's case, supra.

Continuance. The chairman has discretion to continue hearings. McDonald vs. Liability Corporation, 120 Me. 52.

REHEARING

The commission has no authority to grant a rehearing on the account of newly discovered evidence. Connor's case, 121 Me. 37. The rights of the parties to compensation are fixed by statute. The commission has no general or limited common law jurisdiction, and this procedure borrows nothing by implications from the common law.

RECORD

The appeal will be dismissed if the record is not complete for the Law Court. Gagnon's case, 121 Me. 20. The appeal must be filed in the county where the accident occurred. Maguire's case, 120 Me. 398.

RULES OF COMMISSION

The commission is not authorized to make rules inconsistent with the act. McKenna's case, 117 Me. 179.

Compensation is not payable after the necessity for it has ceased. Compensation may be ordered stopped from date prior to the petition. Fennessey's case, 120 Me. 251. This case holds that if a petition for review is filed, and it is established that no further compensation is due, compensation will be ordered stopped, and the commission may order compensation to cease at a date earlier than the date of the petition. That is, the duration of the period of compensation is controlled by the merits of the case, and the mere fact that a petition is dated subsequent to the time when compensation should cease, does not arbitrarily entitle the employee to compensation until the date of such petition. In this connection the writer ventures the suggestion that where it is desired to stop compensation, compensation should be stopped only upon filing of a petition, that is, the employer or insurance carrier has no arbitrary right to stop compensation on his own account. But if the petition is filed, then compensation may be stopped from a period even earlier than the date of the petition.

COSTS

If the Law Court on appeal sustains the ruling of the commission, costs may be included. "Appeal dismissed with costs to the petitioner." Simmons' case, 117 Me. 177. I find no case where on appeal sustained, costs have been decreed against the petitioner.

PETITIONS

Section 26 and 39 specify as to petitions under the act. Taking up the latter provision first, Section 39 is as follows:

"Agreement or petition shall be made within two years. An employee's claim for compensation under this act shall be barred unless an agreement or a petition as provided in Section 30 shall be filed within two years after the occurrence of the injury, or, in case of the death of the employee, or in the event of his physical or mental incapacity, within two years after the death of the employee or the removal of such physical or mental incapacity."

The original petition for compensation must be filed within two years.

Gauthier's case, 120 Me. 73;

Lemmelin's case, 121 Me. 72.

This is the rule where there has been no agreement. If an agreement has been entered into the parties, but not approved, the original petition may be filed after two years. Gauthier's case, supra. Obviously, if an agreement has been entered into and approved, no original petition is in order.

Section 29 provides as to petition for award, and Section 30 as to petition for review. Certain other special forms of petitions are recognized in practice.

A petition for a lump sum settlement is addressed to the commission under Section 28.

Under Section 10 a petition may be filed by either the employer or the employee to fix the amount of medical charges, and this also is addressed to the commission.

Under Section 16, concluding paragraph, petitions to determine the extent of permanent impairment are filed. These are addressed to the full commission. It is suggested that this form of petition is a petition for award; that is, a petition for award for permanent impairment.

The Supreme Court has stated that the nature of the petitioner's claim and matter in dispute should be set out in the petition. Maxwell's case, 119 Me. 504; Clark's case, 120 Me. 133. The different forms are used in order that the petition may set out the matter in dispute. Forms for petition are obtainable from the office of the commission.

PETITION FOR REVIEW

Section 36. Agreement, award, findings or decree may be reviewed. At any time before the expiration of two years from the date of approval of an agreement by the commisioner, or the entry of a decree fixing compensation, but not afterwards, and before the expiration of the period for which compensation has been fixed by such agreement or decree, but not afterwards, any agreement, award, findings or decree may be from time to time reviewed by the chairman or associate legal member upon the application of either party after due notice to the other party, upon the grounds that the incapacity of the injured employee has subsequently ended, increased or diminished, upon such review the said chairman or associate legal member may increase, diminish or discontinue the compensation from the date of the application for review, in accordance with the facts, or make such other order as the justice of the case may require, but shall order no change of the status existing prior to the application for review.

Where compensation is being paid under an approved agreement or following a decree, and the question is raised whether the disability is ended, increased or diminished, this is the form of petition to be used, and it may only be used for these purposes. The petition for review lies only where the agreement has been approved. Gauthier's case, 120 Me. 73. The petition for review must be filed within two years, and within the period fixed by the agreement or decree. Lemmelin's case, 121 Me. 72.

Section 36 provides that the chairman or associate legal member shall order "no change of the status existing prior to the application for review." Status as used in the statute means the relation in which the injured person stands toward him who is employer at the time of the accident. It goes to his right to receive compensation. Fennessey's case, supra.

Under Section 36, Lemmelin's case is of importance as fixing the very distinct limitation within which a petition for review lies.

LIBERAL CONSTRUCTION OF THE ACT

Section 37 states that the act shall be construed liberally, and we find references of the liberal construction in many of the cases, "The act is to be construed liberally." Simmons' case, 117 Me. 176. "It is expressly enjoined upon those whose duty it is to administer this statute that it shall be construed liberally." Scott's case, 117 Me 436. And Judge Hanson rejects a contention advanced by counsel in Smith vs. Heine, 119 Me.554, as "too strict a construction."

But, on the other hand, the court says that "Liberal construction does not require the court to strain plain and unequivocal language." Maxwell's case, 119 Me. 504. Liberal construction cannot be extended to make an employer an insurer. White vs. Insurance Co., 120 Me. 62, and Judge Hanson says in Lemmelin's case, 120 Me. 72, "We may construe the act liberally, but we cannot amend or add to it." See also Fennessey's case, 120 Me. 251. It may be said that the requirement for liberal construction is a general re-

quirement only and in each circumstance the issue presented by the individual case must be controlling, and this is not a rule that gives a criterion for all cases.

GENERAL PURPOSES

In the cases that have come up under the workmen's compensation act, the Supreme Court has taken occasion in several instances to state what the court considered the general purpose of the law. Judge Wilson, in Scott's case, 117 Me. 437, stated that, "The general purpose of this act is to transfer the burdens resulting from industrial accidents, regardless of who may be at fault, from the individual to the industry, and finally to distribute it upon society as a whole."

Judge Morrill, in Thibeault's case, 119 Me. 336, says that the underlying object is to pay an injured workman for his loss of capacity to earn. See Fennessey's case, 120 Me. 251. This statement that the underlying object is to pay for the loss of capacity to earn is of great importance, especially where it is necessary to determine the loss of capacity to earn due to a specific injury. The object of compensation is to pay the workmen for loss of capacity due to an injury, and loss of earning power due to extraneous circumstances must be differentiated as not within the meaning and intent of the act.

As to the procedure, the court says, "The design of the act is the speedy, inexpensive and final settlement of claims." Connor's case, 121 Me. 37.

The act has been expressly declared constitutional by the Maine Supreme Court, Mailman's case, 118 Me. 175. Amendments which increase the amounts of benefit are not retroactive.

Gauthier's case, 120 Me. 73;
Major Shink's case, 120 Me. 80;
Gray vs. Insurance Co., 120 Me. 81.