

MAINE STATE LEGISLATURE

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CHAPTER 26.

INDUSTRIAL ACCIDENTS.

Sections 1-47 The Workmen's Compensation Act.

Sections 48-56 The Employers' Liability Law.

The Workmen's Compensation Act

139 Me. 84.

Sec. 1. Title of law. R. S. c. 55, § 1. The first 47 sections of this chapter shall be known, and may be cited and referred to in proceedings and agreements thereunder, as "The Workmen's Compensation Act;" the phrase "this act," as used in said sections, refers thereto.

120 Me. *76, 80.

Sec. 2. Words and phrases defined. R. S. c. 55, § 2. 1931, c. 160, § 1. 1939, c. 276, §§ 1, 2, 3, 4, 5. The following words and phrases as used in this act shall, unless a different meaning is plainly required by the context, have the following meaning:

I. Employer. "Employer" shall include corporations, partnerships, natural persons, the state, counties, water districts, and all other quasi-municipal corporations of a similar nature, cities, and also such towns as vote to accept the provisions of this act; and if the employer is insured, it also includes the insurer unless the contrary intent is apparent from the context or it is inconsistent with the purposes of this act.

128 Me. 155.

II. Employee. (1939, c. 276, § 1) "Employee" shall include every person in the service of another under any contract of hire, express or implied, oral or written, except:

A. Persons engaged in maritime employment, or in interstate or foreign commerce, who are within the exclusive jurisdiction of admiralty law or the laws of the United States;

B. Any person whose employment is not in the usual course of the business, profession, trade, or occupation of his employer. Policemen and firemen shall be deemed employees within the meaning of this act. Employers who hire workmen within this state to work outside the state, may agree with such workmen that the remedies under the provisions of this act shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment; and all contracts of hiring in this state, unless otherwise specified, shall be presumed to include such agreement. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents, and other persons to whom compensation may be payable.

See c. 12, § 61, re special provisions as to military service; 129 Me. 6: 130 Me. 64, 65, 181; 133 Me. 338.

III. Assenting employer. "Assenting employer" shall include all private employers who have complied with the provisions of section 6 hereof and to whom a certificate authorized by said section has been issued, but only so long as such certificate remains in force. It shall also include all towns voting to accept the provisions of the act. This act shall be compulsory as to the state, counties, cities, water districts, and all other quasi-municipal corporations of a

similar nature; but the provisions of said section 6 shall not apply thereto or to assenting towns.

133 Me. 338.

IV. Commission; commissioner. (1939, c. 276, § 2) "Commission" shall mean the industrial accident commission created by the provisions of section 29 hereof; except that as to hearings on petitions authorized by sections 9, 13, 28, and 40, and also as to proceedings under the provisions of section 23, it shall mean any two or more members thereof designated from time to time by the chairman, one of whom shall at all times be a legal member; and except further, that in any such case by agreement of the parties the authority of the commission may be exercised by a single commissioner. "Commissioner" shall mean any member of the commission appointed under the provisions of section 29.

V. Industrial accident insurance policy. "Industrial Accident Insurance Policy" shall mean a policy in such form as the insurance commissioner approves, issued by any stock or mutual casualty insurance company or association that may now or hereafter be authorized to do business in this state, which in substance and effect guarantees the payment of the compensation, medical benefits, and expenses of burial herein provided for, in such instalments, at such time or times, and to such person or persons and upon such conditions as in this act provided. Whenever a copy of a policy is filed as herein provided, such copy certified by the insurance commissioner shall be admissible as evidence in any legal proceeding wherein the original would be admissible.

See c. 19, § 64, sub-§ I, ¶ G, re financial responsibility law.

VI. Insurance company. "Insurance Company" shall mean any casualty insurance company or association authorized to do business in this state which may issue policies conforming to the provisions of the preceding subsection. Whenever in this act relating to procedure the words "insurance company" are used they shall apply only to cases in which the employer has elected to file such policy, instead of furnishing satisfactory proof of his ability to pay compensation and benefits hereinafter provided direct to his employees.

VII. Representatives. (1939, c. 276, § 3) "Representatives" shall include executors and administrators.

VIII. Dependents. (1939, c. 276, § 4) "Dependents" shall mean members of an employee's family or next of kin who are wholly or partly dependent upon the earnings of the employee for support at the time of the accident. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

A. A wife upon a husband with whom she lives, or from whom she is living apart for a justifiable cause or because he has deserted her, or upon whom she is actually dependent in any way at the time of the accident.

128 Me. 126.

B. A husband upon a wife with whom he lives, or upon whom he is actually dependent in any way at the time of the accident.

C. A child or children, including adopted and stepchildren, under the age of 18 years, or over said age but physically or mentally incapacitated from earning, upon the parent with whom he is or they are living, or upon whom he is or they are actually dependent in any way at the time of the accident to said parent, there being no surviving dependent parent. "Child" shall also include any posthumous child whose mother is not living and

dependent. In case there is more than one child dependent, the compensation shall be divided equally among them.

138 Me. 145.

In all other cases questions of total or partial dependency shall be determined in accordance with the fact, as the fact may have been at the time of the accident. If there is more than one person wholly dependent, the compensation shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof during the period in which compensation is paid to persons wholly dependent. If there is no one wholly dependent and more than one person partly dependent, the compensation shall be divided among them according to the relative extent of their dependency. If a dependent is an alien residing outside of the United States or of the Dominion of Canada, the compensation paid to any such dependent shall be $\frac{1}{2}$ that hereinafter provided in case of the death of an employee.

135 Me. 344, 418; 138 Me. 26.

IX. Average weekly wages.

A. (1939, c. 276, § 5) "Average weekly wages, earnings, or salary" of an injured employee shall be taken as the amount which he was receiving at the time of the accident for the hours and days constituting a regular full working week in the employment or occupation in which he was engaged when injured, provided such employment or occupation had continued on the part of the employer for at least 200 full working days during the year immediately preceding said accident; except that in the case of piece workers and other employees whose wages during said year have generally varied from week to week, such wages shall be averaged in accordance with the method provided under paragraph B following.

B. (1931, c. 160, § 1) (1939, c. 276, § 5) In case such employment or occupation had not so continued for said 200 full working days, the "average weekly wages, earnings, or salary" shall be determined by dividing the entire amount of wages or salary earned therein by the injured employee during said immediately preceding year, by the total number of weeks, any part of which the employee worked, during the same period; provided, however, that the week in which employment began, if it began during the year immediately preceding the accident, and the week in which the accident occurred, together with the amounts earned in said weeks, shall not be considered in computations under this paragraph if their inclusion would reduce said "average weekly wages, earnings, or salary."

C. In cases where the foregoing methods of arriving at the "average weekly wages, earnings, or salary" of the injured employee cannot reasonably and fairly be applied, said "average weekly wages" shall be taken at such sum as, having regard to the previous wages, earnings, or salary of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or a neighboring locality, shall reasonably represent the weekly earning capacity of the injured employee at the time of the accident in the employment in which he was working at such time.

D. (1939, c. 276, § 5) Where the employee is employed regularly during the ordinary working hours in any week concurrently by two or more employers, for one of whom he works at one time and for another he works at another time, his "average weekly wages" shall be computed as if the

wages, earnings, or salary received by him from all such employers, were wages, earnings, or salary earned in the employment of the employer for whom he was working at the time of the accident.

E. Where the employer has been accustomed to pay to the employee a sum to cover any special expense incurred by said employee by the nature of his employment, the sum so paid shall not be reckoned as part of the employee's wages, earnings, or salary.

F. The fact that an employee has suffered a previous injury or received compensation therefor, shall not preclude compensation for a later injury or for death; but in determining the compensation for such later injury or death, his "average weekly wages" shall be such sum as will reasonably represent his weekly earning capacity at the time of such later injury in the employment in which he was working at such time, and shall be arrived at according to and subject to the limitations of the previous provisions of this section.

116 Me. 81; *117 Me. 436; 118 Me. *136, 330; 119 Me. 24, 336, *425, 513, *552, 565; 120 Me. 56, 330, 457; 121 Me. 447, 461; 122 Me. 201, *319, *477; *123 Me. 359; 124 Me. *14, *47, 104, *123, *305, 404; 125 Me. *96, 147, 313, *361; 126 Me. *144, *287, *349, *358; 128 Me. *126, 155, 299; 132 Me. 60.

Sec. 3. Employers lose common law defenses. R. S. c. 55, § 3. In an action to recover damages for personal injuries sustained by an employee by accident arising out of and in the course of his employment, or for death resulting from such injuries, it shall not be a defense to an employer, except as hereinafter specified,

- I. That the employee was negligent;
- II. That the injury was caused by the negligence of a fellow employee;
- III. That the employee has assumed the risk of the injury.

See §§ 4. 5; *118 Me. 325; *119 Me. 176, 425; *121 Me. 484; 124 Me. 194; *125 Me. 100; 127 Me. 370; 128 Me. 315; 129 Me. 371; 133 Me. 341; 135 Me. 286; 136 Me. 102.

Sec. 4. Section 3 not applicable to certain actions; 5 or less employees; farming; domestic service; logging. R. S. c. 55, § 4. 1931, c. 225, § 4. The provisions of section 3 shall not apply to employers who employ 5 or less workmen or operatives regularly in the same business. Said provisions shall not apply to actions to recover damages for the injuries aforesaid, or for death resulting from such injuries, sustained by employees engaged in domestic service or in agriculture; or in the operations of cutting, hauling, rafting, or driving logs, including work incidental thereto. Any such logging operations, however, incidental to any business conducted by an assenting employer shall be presumed to be covered by his assent to the act as to such business unless expressly excluded in such assent.

121 Me. 537; *122 Me. 11, 201; 124 Me. *237, 344; *125 Me. 16; 127 Me. 228; 128 Me. 374.

Sec. 5. Section 3 not applicable to assenting employers; such employers exempt from other suits. R. S. c. 55, § 5. The provisions of section 3 shall also not apply to actions to recover damages for the injuries aforesaid, or for death resulting from such injuries, sustained by employees of an employer who has assented to become subject to the provisions of this act. If an employer at the time of so assenting is engaged in two or more independent businesses, he shall be held to come under the provisions of the act only as to the business or businesses specified in his assent. Assenting employers, except as hereinafter

provided by section 7, shall be exempt from suits because of such injuries either at common law or under the provisions of section 9 of chapter 152, or under the provisions of sections 48 to 55, inclusive, of this chapter.

118 Me. 330; *120 Me. 191; 122 Me. 11, *203; 123 Me. 250; 126 Me. 102; *127 Me. 252.

Sec. 6. Employers may become self-insurers; approval of benefit system; notices to be kept posted. R. S. c. 55, § 6.

I. Employer may become assenting employer by filing written assent and insurance policy. Any private employer desiring to become an assenting employer as herein provided shall file with the commission at its office in Augusta his written assent in such form as the commission approves, and may also file a copy of an industrial accident insurance policy in form approved by the insurance commissioner, said policy if found correct in all respects to be stamped with his approval. Such written assent shall continue in force during the life of said original policy or during the life of any subsequent policy or policies in renewal thereof and dating from the expiration of any immediately preceding policy, provided a copy of such renewal policy is filed not more than 10 days following such expiration. In case there shall be an interim of more than 10 days aforesaid between copies of such policies on file with the commission, then a new assent must be filed with the policy terminating such interim.

See § 2, sub-§ V.

II. Insurance policies and rates to be approved by insurance commissioner. Every insurance company issuing industrial accident insurance policies covering the payment of compensation and benefits provided for in this act shall file with the insurance commissioner a copy of the form of such policies, and no such policy shall be issued until he has approved said form. It shall also file its classification of risks and premium rates relating thereto, and any subsequent proposed classification thereof, none of which shall take effect until the insurance commissioner has approved the same as adequate for the risks to which they respectively apply. He may require the filing of specific rates for workmen's compensation insurance including classifications of risks, experience, or any other rating information from insurance companies authorized to transact such insurance in Maine, and may make or cause to be made such investigations as may be deemed necessary to satisfy himself that such rates are correct and proper before giving his approval and permitting such rates to be promulgated for the use of said companies. The insurance commissioner may at any time withdraw his approval of any classification of risks or premium rates relating thereto and approve a revised classification thereof.

See § 2, sub-§ V.

III. Assenting employer may become self-insurer by filing securities. Any private employer desiring to become an assenting employer as self-insurer may, in lieu of filing an insurance policy as above provided, furnish satisfactory proof to the commission of his solvency and financial ability to pay the compensation and benefits herein provided, and also deposit cash, satisfactory securities or a surety bond, in such sum as the commission may determine; such bond to run to the treasurer of state and his successor in office, and to be conditional upon the faithful performance of all the provisions of this act relating to the payment of compensation and benefits to any injured employee. In case of cash being deposited it shall be placed at interest by the treasurer of state, and the accumulation of interest on said cash or securities so deposited shall be paid to the employer depositing the same. Provided, however, that

the commission may at any time in its discretion deny to an assenting employer the right to continue in the exercise of the option granted by this subsection.

IV. Certificate to assenting employer. Upon the filing of such assent and complying with the provisions of subsection I or III of this section, the commission shall issue to such employer a certificate stating that said employer has conformed to the provisions of this act, and setting forth the date on which the policy filed under subsection I expires. The certificate thus issued shall remain in full force until the date of expiration of such policy or renewal thereof; or until the employer shall notify the commission that he withdraws his assent or has canceled such policy; or until a certificate issued to a self-insuring employer under the provisions of subsection III is withdrawn by the commission, or such employer files an industrial accident insurance policy in place of the securities so deposited by him.

See § 2, sub-§ V.

V. Approval of benefit system in use January 1, 1915. Subject to the approval of the commission, any employer may continue with his employees in lieu of the compensation, benefits, and insurance provided by this act the system thereof which was used by such employer on the 1st day of January, 1915. No such substitute system however shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this act, nor if it requires contributions from the employees, unless it confers benefits in addition to those provided under the provisions of this act at least commensurate with such contributions. Such substitute system may be terminated by the commission on reasonable notice and hearing to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purposes of this act. An employer who is authorized to substitute a plan under the provisions of this section shall give his employees notice thereof in a form to be prescribed by the commission, and a statement of the plan approved shall be filed with the commission.

VI. Notices of assent to be kept posted. A notice in such form as the commission approves, stating that the employer has conformed to the provisions of this act, together with such further matters as the commission determines, shall be posted by the employer and kept posted by him at some place in each of his mills, factories, or places of business, conspicuous and accessible to his employees. For wilful failure to post such notices, the employer shall be liable to a forfeiture of \$10 for each day of such wilful neglect, to be enforced by the commission in an action of debt in the name of the state.

118 Me. 175; 120 Me. 37, 76, 80; 122 Me. 205; 123 Me. 250; 126 Me. 102.

Sec. 7. Employee of assenting employer waives right of common law action unless expressly claimed. R. S. c. 55, § 7. An employee of an employer who shall have assented to become subject to the provisions of this act as provided in the preceding section, shall be held to have waived his right of action at common law to recover damages for the injuries aforesaid sustained by him, also under the statutes specified in section 5, if he shall not have given his employer at the time of his contract of hire notice in writing that he claimed such right, and within 10 days thereafter have filed a copy thereof with the commission; or, if the contract of hire was made before the employer so elected, if the employee within 10 days after knowledge by him of such assent shall not have given

said notice and filed a copy thereof with the commission as above provided. Such waiver of common law and statutory rights shall continue in force for the term of 1 year, and thereafter without further act on his part for successive terms of 1 year each, unless the employee shall at least 60 days prior to the expiration of such first or any succeeding year, give his employer notice of claim of such rights and file a copy thereof with the commission as aforesaid.

A minor working at an age legally permitted under the laws of this state shall be deemed sui juris for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor employee except as expressly provided herein; but if said minor shall have a parent living or a guardian, such parent or guardian, as the case may be, may give the notice and file a copy thereof as provided in this section, and such notice shall bind the minor in the same manner that adult employees are bound under the provisions hereof. In case no such notice is given, such minor shall be held to have waived his right of action at common law or under the statutes above referred to, to recover damages for such injuries sustained by him.

Any employee, or the parent or guardian of any minor employee, who has given said notice to the employer that he claimed his right of action at common law or under the statutes aforesaid, may waive such claim by a subsequent notice in writing which shall take effect 5 days after the delivery thereof to the employer or his agent. Copy of such notice shall be sent forthwith by the employer to the commission.

117 Me. 175; 118 Me. 330; 120 Me. 37, 76, 80.

Sec. 8. Employee under act, injured by accident, entitled to compensation. R. S. c. 55, § 8. If an employee who has not given notice of his claim of common law or statutory rights of action, or who has given such notice and has waived the same, as provided in the preceding section, receives a personal injury by accident arising out of and in the course of his employment, he shall be paid compensation and furnished medical and other services, as hereinafter provided, by the employer who shall have assented to become subject to the provisions of this act.

118 Me. *133, *172; *119 Me. 510; 120 Me. *31, *62, *236; 121 Me. *410, 491; *122 Me. 325; 123 Me. 86, *193, *402, *424, 497; 124 Me. 14, 54, *129, *145, *162, *305; 125 Me. *1, 135, *168, *443; 126 Me. *32, 157, *159, *358, *381, 450, *563; 127 Me. *245, 247, 254, *491, 549; 128 Me. *47, 73, *86, 303, 353; 130 Me. 373, 523; 131 Me. 91; 132 Me. 31, 145, 193; 133 Me. 59; 134 Me. 170; 135 Me. 225, 254; 136 Me. 42, 46; 138 Me. 26.

Sec. 9. Employee entitled to limited medical services; selection of own physician; cost, how determined. R. S. c. 55, § 9. 1943, c. 83. During the first 30 days after an injury aforesaid the employee shall be entitled to reasonable and proper medical, surgical, and hospital services, nursing, medicines, and mechanical surgical aids when they are needed. The amount of such services and aids shall not exceed \$100 unless a longer period or a greater sum is allowed by the commission, which in its discretion it may allow when the nature of the injury or the process of recovery requires it.

Upon knowledge or notice of such injury the employer shall promptly furnish to the employee the services and aids aforesaid. In case however the employer fails to furnish any of said services or aids, or in case of emergency or other justifiable cause, the employee may procure said services or aids and the commission may order the employer to pay for the same provided that they were necessary and adequate, and the charges therefor are reasonable. In every

case where any of said services or aids are procured by the employee, it shall be his duty to see that the employer is given prompt notice thereof. The commission in its discretion may also require the employer to furnish to the injured employee, but not more than once each for an injury aforesaid, artificial limbs, eyes, and teeth made necessary by such injury. In case artificial limbs, eyes, and teeth, in use by an employee at the time of the accident as substitutes for natural parts of the body, are themselves injured or destroyed, they shall be repaired or replaced by the employer.

Whenever there is any disagreement as to the proper costs of the services or aids aforesaid, or as to the apportionment thereof among the parties, any interested person may file a petition with the commission for the determination thereof.

*117 Me. 179; 124 Me. *32, *83; *125 Me. 426; *126 Me. 105, 215.

Sec. 10. Compensation begins on 8th day of incapacity. R. S. c. 55, § 10. 1943, c. 328, § 1. Compensation for incapacity to work on account of an injury aforesaid shall begin on the 8th day of incapacity, the day of the accident to be counted as the first day thereof; provided, however, that when incapacity continues thereafter for a period of 6 consecutive weeks or more, compensation shall be allowed from the day the incapacity began.

123 Me. 428.

Sec. 11. Compensation for total incapacity. R. S. c. 55, § 11. 1943, c. 328, § 2. While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to $\frac{2}{3}$ his average weekly wages, earnings, or salary, but not more than \$21, nor less than \$7 a week; and in no case shall the period covered by such compensation be greater than 500 weeks from the date of the accident, nor the amount more than \$7,500. In the following cases it shall, for the purposes of this act, be conclusively presumed that the injury resulted in permanent total incapacity: the total and irrevocable loss of sight in both eyes, the loss of both hands at or above the wrist, the loss of both feet at or above the ankle, the loss of 1 hand and 1 foot, an injury to the spine resulting in permanent and complete paralysis of the arms or legs, and an injury to the skull resulting in incurable imbecility or insanity.

117 Me. 175; 118 Me. 96; 120 Me. 133; 122 Me. *289, 387, 441; 123 Me. 501; 125 Me. 285; *128 Me. 73; 129 Me. 181; 132 Me. 410.

Sec. 12. Compensation for partial incapacity. R. S. c. 55 § 12. 1943, c. 328, § 3. While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to $\frac{2}{3}$ the difference, due to said injury, between his average weekly wages, earnings, or salary before the accident and the weekly wages, earnings, or salary which he is able to earn thereafter, but not more than \$21 a week; and in no case shall the period covered by such compensation be greater than 300 weeks from the date of the accident.

118 Me. 96; 120 Me. 133; 122 Me. *108, *289, 338, 387, 441, 563; 123 Me. 430; 124 Me. 422; 126 Me. 173.

Sec. 13. Compensation for specified injuries; permanent impairment. R. S. c. 55, § 13. In cases of injuries included in the following schedule the incapacity in each such case shall be deemed to be total for the period specified; and after such specified period, if there be a total or partial incapacity for work resulting from the injury, the employee shall receive compensation while such total or partial incapacity continues under the provisions of sections 11 and 12 re-

spectively. The specific periods during which compensation for presumed total incapacity is to be paid because of the injuries hereinafter specified shall be as follows:

For the loss of a thumb, 50 weeks.

For the loss of the 1st finger, commonly called the index finger, 30 weeks.

For the loss of the 2nd finger, commonly called the middle finger, 25 weeks.

For the loss of the 3rd finger, commonly called the ring finger, 18 weeks.

For the loss of the 4th finger, commonly called the little finger, 15 weeks.

The loss of the 1st phalanx of the thumb or of any finger shall be considered to be equal to the loss of $\frac{1}{2}$ of said thumb or finger, and the compensation therefor shall be $\frac{1}{2}$ the amount above specified. The loss of more than 1 phalanx shall be considered as the loss of the entire thumb or finger. Provided, however, that in no case shall the amount received for the loss of a thumb and more than 1 finger of the same hand exceed the amount specified in this schedule for the loss of a hand.

For the loss of the great toe, 25 weeks.

For the loss of one of the toes other than the great toe, 10 weeks.

The loss of the 1st phalanx of any toe shall be considered to be equal to the loss of $\frac{1}{2}$ of said toe, and the compensation therefor shall be $\frac{1}{2}$ the amount above specified. The loss of more than 1 phalanx shall be considered as the loss of the entire toe.

For the loss of a hand, 125 weeks.

For the loss of an arm, or any part thereof above the wrist, 150 weeks.

For the loss of a foot, 125 weeks.

For the loss of a leg, or any part thereof above the ankle, 150 weeks.

For the loss of an eye, or the reduction of the sight of an eye, with glasses, to $\frac{1}{10}$ of the normal vision, 100 weeks.

In all other cases of injury to the above mentioned members or eyes where the usefulness of any physical function thereof is permanently impaired, the specific compensable periods for presumed total incapacity on account thereof shall bear such relation to the periods above specified as the percentage of permanent impairment due to the injury to such members or eyes shall bear to the total loss thereof; and the commission upon petition therefor by either party shall determine such percentage.

118 Me. 96; 119 Me. *322, 504; 120 Me. 133; 122 Me. 276, 338, 387; 123 Me. *27, *46, 74, 478, *501, 517, 527, 554, 571; 125 Me. 221, 285, *395; *126 Me. 173.

Sec. 14. Permanent total incapacity due partly to prior injury; second injury fund. 1943, c. 272. If an employee who has previously lost, or lost the use of, 1 hand, 1 arm, 1 foot, 1 leg, or 1 eye, becomes permanently and totally incapacitated through the loss or loss of use of another member or organ, the employer shall be liable only for the compensation payable for such second injury. Provided, however, that in addition to such compensation and after the completion of the payments therefor, the employee shall be paid the remainder of the compensation that would be due for permanent total incapacity, out of a special fund known as the "second injury fund", and created for such purpose in the following manner:

In every case of the death of an employee under the provisions of this act where there is no person entitled to compensation, the employer shall pay to the

industrial accident commission the sum of \$300, to be deposited with the treasurer of state for the benefit of said fund, and the commission shall direct the distribution thereof.

Sec. 15. Compensation for death of employee; how apportioned. R. S. c. 55, § 14. 1931, c. 160, § 2. 1939, c. 276, § 6. 1943, c. 328, § 4. If death results from the injury, the employer shall pay the dependents of the employee, wholly dependent upon his earnings for support at the time of his accident, a weekly payment equal to $\frac{2}{3}$ his average weekly wages, earnings, or salary, but not more than \$21 nor less than \$7 a week, from the date of death for a period ending 300 weeks from the date of the accident, and in no case to exceed \$5,000. Provided, however, that if the dependent of the employee to whom compensation shall be payable upon his death is the widow of such employee, upon her death or remarriage compensation to her shall cease; and the compensation to which she would have been entitled thereafter but for such death or remarriage shall be paid to the child or children, if any, of the deceased employee, including adopted and stepchildren, under the age of 18 years, or over said age but physically or mentally incapacitated from earning, who are dependent upon the widow at the time of her death or remarriage. If the dependent is the widower, upon his death the remainder of the compensation which would otherwise have been payable to him shall be payable to the children above specified, if any, who at the time thereof are dependent upon him. In case there is more than 1 child thus dependent, the compensation shall be divided equally among them. Provided further, that except in the case of dependents who are physically or mentally incapacitated from earning, compensation payable to any dependent child under the age of 18 years shall cease upon such child's reaching the age of 18 years or upon marriage.

If the employee leaves dependents only partly dependent upon his earnings for support at the time of his accident, the employer shall pay such dependents for the said period of 300 weeks, a weekly compensation equal to the same proportion of the weekly payments herein provided for the benefit of persons wholly dependent as the total amount contributed by the employee to such partial dependents for their support during the year prior to his accident bears to the earnings of the employee during said period.

116 Me. 81; *118 Me. 172; *119 Me. 510; 120 Me. *52, 81, 242, *324; 121 Me. 282, 353, *506; 123 Me. 261; 124 Me. 107, 295; 125 Me. 49, 135, *285, *313, 408; 126 Me. 105; *127 Me. 207; *128 Me. 299, 300; 129 Me. 1, 184, 392, 467; 138 Me. 145.

Sec. 16. Burial expenses payable. R. S. c. 55, § 15. 1939, c. 276, § 7. If the employee dies as a result of the injury, the employer shall pay, in addition to any compensation and medical benefits provided for in this act, the reasonable expenses of burial, not to exceed \$250.

126 Me. 217.

Sec. 17. Compensation unpaid at death, to whom payable. R. S. c. 55, § 16. If the employee shall die before having received the entire amount of compensation to which he is entitled under the provisions of this act, the compensation payable to him before his death shall be paid to his dependents, if any; otherwise to his executor or administrator. No compensation is payable for presumed total incapacity for any period following the death of an employee.

Sec. 18. Injury or death due to wilful intention or intoxication not compensated for. R. S. c. 55, § 17. No compensation or other benefits shall be allowed for the injury or death of an employee where it is proved that such was occasioned by his wilful intention to bring about the injury or death of himself

or of another, or that the same resulted from his intoxication while on duty. This provision as to intoxication shall not apply, however, if the employer knew that the employee was intoxicated or that he was in the habit of becoming intoxicated while on duty.

120 Me. 36; 138 Me. 26.

Sec. 19. Compensation unaffected by employee's savings or insurance. R. S. c. 55, § 18. No savings or insurance of the injured employee independent of this act shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any source other than the employer be considered in fixing the compensation due.

Sec. 20. Notice of accident within 30 days. R. S. c. 55, § 19. No proceedings for compensation under the provisions of this act, except as hereinafter provided, shall be maintained unless a notice of the accident shall have been given within 30 days after the date thereof. Such notice shall include the time, place, and cause of the accident, and the nature of the injury, together with the name and address of the person injured. It shall be given by the person injured, or by a person in his behalf; or, in the event of his death, by his legal representatives, or by a dependent, or by a person in behalf of either.

Such notice shall be given to the employer, or to one employer if there are more employers than one; or, if the employer is a corporation, to any official thereof; or to any employee designated by the employer as one to whom reports of accidents to employees should be made. It may also be given to the general superintendent or to the foreman in charge of the particular work being done by the employee at the time of the accident.

117 Me. 175; 119 Me. 552; 121 Me. 216; 123 Me. 428; 125 Me. 245, 374, 524; 126 Me. 365; 127 Me. 374; 128 Me. 177.

Sec. 21. Notice unnecessary if employer has knowledge; extension of period for notice. R. S. c. 55, § 20. A notice given under the provisions of the preceding section shall not be held invalid or insufficient by reason of any inaccuracy in stating any of the facts therein required for proper notice, unless it is shown that it was the intention to mislead and that the employer was in fact misled thereby. Want of such notice shall not be a bar to proceedings under the provisions of this act if it be shown that the employer or his agent had knowledge of the accident. Any time during which the employee is unable by reason of physical or mental incapacity to give said notice, or fails to do so on account of mistake of fact, shall not be included in the 30-day period above specified. In case of the death of the employee within said period, there shall be allowed for giving said notice 3 months after such death.

*117 Me. 175; 121 Me. 216, 508; 123 Me. 498; 125 Me. 225, 245, 374, 524; 126 Me. 365; 127 Me. 374, 375; *128 Me. 177.

Sec. 22. Employee may be examined by employer's physician or impartial examiner; to accept proper medical treatment. R. S. c. 55, § 21. Every employee shall after an injury, at all reasonable times during the continuance of his disability if so requested by his employer, submit himself to an examination by a physician or surgeon authorized to practice as such under the laws of this state, to be selected and paid by the employer. The employee shall have the right to have a physician or surgeon selected and paid by himself present at such examination, of which right the employer shall give him notice when requesting such examination.

The commission or any commissioner may at any time after the injury appoint a competent and impartial physician or surgeon to act as medical exam-

iner, the reasonable fees of whom shall be fixed and paid by the commission. Such medical examiner, after being furnished with such information in regard to the matter as may be deemed essential for the purpose, shall thereupon and as often as the commission or the said commissioner may direct, examine such injured employee in order to determine the nature, extent, and probable duration of the injury, or the percentage of permanent impairment. He shall file in the office of the commission a report of every such examination, and a copy thereof shall be sent to each of the interested parties, who upon request therefor shall be given the opportunity at a hearing, before decree is rendered, to question said impartial examiner as to any matter included in such report.

If any employee refuses or neglects to submit himself to any reasonable examination provided for in this act, or in any way obstructs any such examination, or if he declines proper medical or surgical treatment offered by the employer, upon petition of said employer such employee's rights to compensation shall be suspended, and his compensation during such period of suspension shall be forfeited.

Sec. 23. Rights of minors or incompetents may be exercised by guardian; appointment of trustee. R. S. c. 55, § 22. In case an injured employee is a minor or is mentally incompetent or, where death results from the injury, in case any of his dependents entitled to compensation are minors or mentally incompetent at the time when any right, privilege, or election accrues to him or them under the provisions of this act, his parent, guardian, or next friend, or some disinterested person designated by the commission may, in his behalf, claim and exercise such right, privilege, or election, or file any petition or answer, and no limitation of time in this act provided shall run so long as such minor or incompetent has no parent living or guardian.

In case the commission shall have reasonable grounds for believing that compensation paid under the provisions of this act, either in weekly instalments or in a lump sum, will be squandered or wasted by the injured employee or his dependents, the commission may designate in writing some disinterested person to act as trustee for the said injured employee or said dependents; and the said trustee shall file an account at least once a year with the commission showing the amounts of receipts and expenditures in behalf of said injured employee or said dependents.

Sec. 24. Waiver of rights to compensation not valid; claims not assignable. R. S. c. 55, § 23. No agreement by an employee, unless approved by the commission or by the commissioner of labor and industry, to waive his rights to compensation under the provisions of this act shall be valid. No claims for compensation under the provisions of this act shall be assignable, or subject to attachment, or liable in any way for debt.

Sec. 25. Employee injured by third party has election; employer paying compensation subrogated to employee's rights. R. S. c. 55, § 24. 1939, c. 276, § 8. 1941, c. 31. When any injury for which compensation or medical benefits is payable under the provisions of this act shall have been sustained under circumstances creating in some person other than the employer a legal liability to pay damages in respect thereto, the injured employee may, at his option, either claim such compensation and benefits or obtain damages from or proceed at law against such other person to recover damages. Any employer having paid such compensation or benefits or having become liable therefor under any decree or approved agreement shall be subrogated to the rights of the injured employee

to recover against that person; provided if the employer shall recover from such other person damages in excess of the compensation and benefits so paid or for which he has thus become liable, then any such excess shall be paid to the injured employee less the employer's expenses and costs of action or collection. Settlement of such subrogation claims and the distribution of the proceeds therefrom must have the approval of the court wherein the subrogation suit is pending or to which it is returnable; or, if not in suit, of a single commissioner. When the court in which such subrogation suit is pending or to which it is returnable is in vacation, the judge of the court, or, if the suit is pending in or returnable to the superior court, any justice of the superior court, shall have the power to approve the settlement of such suit and the distribution of the proceeds therefrom. The beneficiary shall be entitled to reasonable notice and the opportunity to be present in person or by counsel at the approval proceedings.

The failure of the employer or compensation insurer in interest to pursue his remedy against the third party within 30 days after written demand by a compensation beneficiary, shall entitle such beneficiary or his representatives to enforce liability in his own name, the accounting for the proceeds to be made on the basis above provided.

*119 Me. 20; 120 Me. 419; *124 Me. 399; *128 Me. 50, 303, 393; 131 Me. 159.

Sec. 26. Claims under act have preference over unsecured debts. R. S. c. 55, § 25. A claim for compensation under the provisions of this act, and any decree or approved agreement therefor, shall be entitled to a preference over the unsecured debts of the employer to the same amount as the wages of labor are preferred by the laws of this state; but nothing herein shall be construed as impairing any lien which the employee may have acquired.

Sec. 27. Compensation to non-residents may be paid monthly. R. S. c. 55, § 26. If an employee receiving weekly payments under the provisions of this act shall cease to reside in the state, or if his residence at the time of the accident is in another state, the commission upon application of either party may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize such payments to be made monthly or quarterly instead of weekly.

Sec. 28. Commutation of payments to lump sum. R. S. c. 55, § 27. In any case where compensation is being paid or is claimed on account of an injury or death, either the employer, or the employee or his dependents, may petition the commission for an order commuting all payments on account of such injury or death that may become due in the future, to a lump sum. Such petition may be granted where it is shown to the satisfaction of the commission that the payment of a lump sum in lieu of future weekly payments, or as an agreed compromise settlement of a disputed claim, will be for the best interests of the person or persons receiving or claiming such compensation, or that the continuance of weekly payments will, as compared with a lump sum payment, entail undue expense or hardship upon the employer liable therefor, or that the person entitled to compensation has removed or is about to remove from the United States. Where such commutation is ordered, the commission shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at 5% per year with annual rests.

Upon payment of any lump sum approved by the commission the employer shall be discharged from all further liability on account of said injury or death,

and be entitled to a duly executed release; upon filing which, or other due proof of payment, the liability of such employer under any agreement, award, or decree shall be discharged of record, and the employee accepting the lump sum settlement as aforesaid shall receive no further compensation or other benefits on account of said injury or death under the provisions of this act.

*125 Me. 426.

Sec. 29. Industrial accident commission; appointment; tenure; duties; salary; clerk; seal. R. S. c. 55, § 28; c. 125, § 33. 1937, c. 221. 1943, c. 356, § 1. The industrial accident commission, as heretofore established, shall consist of 5 members, three of whom shall be men learned in the law and members in good standing of the bar of this state. They shall be appointed by the governor, with the advice and consent of the council. One of the commissioners, to be designated as chairman, shall be appointed for the term of 5 years, and the other commissioners for the term of 4 years each; the title of the members which was heretofore "associate legal member" shall be "commissioner." The commissioner of labor and industry and the commissioner of insurance shall be members ex officio.

The commissioners so appointed shall hold office for the terms aforesaid, unless removed as herein provided, and until their successors are appointed and qualified. They shall all have the same authority and powers; but their respective duties shall be determined by the chairman. They shall be sworn, and for inefficiency, wilful neglect of duty, or for malfeasance in office may after notice and hearing be removed by the governor and council. In case of a vacancy occurring through death, resignation, or removal, the governor shall appoint a successor for the whole term of the member whose place he takes, subject to removal as aforesaid. In case the office of chairman becomes vacant, the senior commissioner shall act as chairman until the governor makes an appointment to fill such vacancy.

The chairman shall receive a salary of \$4,500 per year, and the other commissioners a salary of \$4,000 each per year. The commissioner of labor and industry, in addition to his salary as such, shall receive for his services as a member of the commission \$1,000 per year. The members of the commission shall also receive their actual, necessary, cash expenses while away from their office on official business of the commission.

The commission shall appoint a clerk and a reporter, and such clerical assistance as may be necessary, subject to the provisions of the personnel law.

The commission shall have a seal bearing the words "Industrial Accident Commission of Maine." It shall have its office and keep its records in the state house in Augusta, but may hold sessions at any place within the state.

Sec. 30. Authority of commission; forms and procedure. R. S. c. 55, § 29. The commission shall have general supervision over the administration of this act, and shall have powers to make rules and regulations not inconsistent with this act or other laws of the state for the purpose of carrying out the provisions hereof. It may prescribe forms and make suitable orders as to procedure adapted to secure a speedy, efficient, and inexpensive disposition of all proceedings hereunder. In interpreting this act it shall construe it liberally and with a view to carrying out its general purpose. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act. It may also provide blank forms of reports, agreements, petitions, and other forms required.

117 Me. 177, 180, *443; 119 Me. 20, 507; 120 Me. 55, 69; 121 Me. 216; 123 Me. 432.
498.

Sec. 31. Investigators; subpoenas; depositions. R. S. c. 55, § 30.

I. Investigators. Any commissioner may, when the interests of any of the parties or when the administration of the provisions of this act demand, appoint a person to make a full investigation of the circumstances surrounding any industrial accident or any matter connected therewith, and report the same without delay to the office of the commission.

II. Subpoenas. Any commissioner may administer oaths, and issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books, papers, and photographs relating to any questions in dispute before the commission or to any matters involved in a hearing. Witness fees in all proceedings under the provisions of this act shall be the same as for witnesses before the superior court.

III. Depositions. Depositions taken for the causes and in the manner hereinafter mentioned, may be used in all hearings under the provisions of this act.

Any commissioner may issue commissions to take depositions to any United States consul or vice consul, any judge of any court of record in the United States or any foreign country, or to any notary public or justice of the peace in this state, for either of the following causes:

- A. When the deponent resides out of, or is absent from, the state.
- B. When the deponent is bound to sea, or is about to go out of the state.
- C. When the deponent is so aged, infirm, or sick as to be unable to attend at the place of hearing.

Such deposition shall be taken by written interrogatories to be filed with the said commissioner, and the adverse party shall have 10 days after written notice of such filing to him or his attorney, in which to file cross-interrogatories thereto; and if cross-interrogatories are not so filed within 10 days after such notice, the right of cross-examination shall be considered waived.

The deponent shall be duly sworn; and after his answers have been written out, the deposition shall be signed and sworn to by the deponent before the commissioner authorized to take it, and shall by him be sealed up and sent to the industrial accident commission at Augusta.

Sec. 32. Approval of agreement as to compensation; petition for award.

R. S. c. 55, § 31. If following an injury the employer and the employee reach an agreement in regard to compensation under the provisions of this act, a memorandum of such agreement signed by the parties shall be filed in the office of the commission. If the commissioner of labor and industry finds that such agreement is in conformity with the provisions of the act, he shall approve the same. In case he shall find that such agreement is not in conformity therewith and shall refuse to approve the same, or if the employer and the employee fail to reach an agreement in regard to compensation, either employee or employer, and when death has resulted from the injury and the dependents of the deceased employee entitled to compensation are, or the apportionment thereof among them is, in dispute, any person in interest may file in the office of the commission a petition for award of compensation, setting forth the names and residences of the parties, the facts relating to the employment at the time of the accident, the time, place, and cause of the accident, the knowledge of the employer or notice of the occurrence thereof, the character and extent of the injury, and the claims of the petitioner with reference thereto; together with such other facts as may be

necessary and proper for the determination of the rights of the petitioner relative to said claims.

*119 Me. 507; 120 Me. 76; 122 Me. 276, 343; 123 Me. *27, *46, 74, 527; *124 Me. 54; 126 Me. *105, *175.

Sec. 33. Time limitations for filing petitions. R. S. c. 55, § 32. 1931, c. 160, § 3. 1939, c. 276, § 9. An employee's claim for compensation under the provisions of this act shall be barred unless an agreement or a petition as provided in the preceding section shall be filed within 1 year after the date of the accident; provided, however, that any time during which the employee is unable by reason of physical or mental incapacity to file said petition shall not be included in the period aforesaid. In case of the death of the employee, there shall be allowed for filing said petition 1 year after such death. No petition of any kind, however, may be filed more than 10 years following an accident.

*119 Me. 559; *120 Me. 73; 121 Me. 76; 122 Me. *136, *338, *437; 123 Me. *46, 478, 527; 124 Me. 404; *126 Me. 173; 134 Me. 256; 135 Me. 312, 336.

Sec. 34. Notice on petitions. R. S. c. 55, § 33. Within 4 days after the filing of the petition for award aforesaid, a copy thereof attested by the clerk of the commission shall be mailed to the other parties named in the petition, or notice be given in such other manner as the commission may determine.

Sec. 35. Filing of answers. R. S. c. 55, § 34. Within 10 days after notice of the filing of such petition all the other parties interested in opposition shall file an answer thereto and furnish a copy thereof for the petitioner; which answer shall state specifically the contentions of the opponents with reference to the claim as disclosed by the petition. The commission or any commissioner may grant further time for filing answer, and allow amendments to said petition or answer at any stage of the proceedings. If any party opposing such petition does not file an answer within the time limited, the hearing shall proceed upon the petition.

122 Me. *136, 276, 341, 566; 124 Me. 108, 163; 125 Me. 49, 408; 126 Me. 176; 128 Me. 302.

Sec. 36. Time and place of hearing. R. S. c. 55, § 35. The whole matter shall then be referred to a single commissioner, who shall fix a time for hearing upon at least a 5 days' notice given to all the parties. All hearings shall be held in the town where the accident occurred unless it is deemed advisable that any hearing be held in some other place, in which case the commission may in its discretion reimburse the claimant for his actual traveling expenses incurred in attending the hearing; any sum of money paid for such expenses to be charged to the appropriation of the commission.

*120 Me. 398; 123 Me. 498.

Sec. 37. Proceedings at hearing; decision. R. S. c. 55, § 36. If from the petition and answer there appear to be facts in dispute, the commissioner shall then hear such witnesses as may be presented, or by agreement the claims of both parties as to such facts may be presented by affidavits. If the facts are not in dispute, the parties may file with the commission an agreed statement of facts for a ruling upon the law applicable thereto. From the evidence or statements thus furnished the commissioner shall in a summary manner decide the merits of the controversy. His decision, findings of fact and rulings of law, and any other matters pertinent to the questions so raised shall be filed in the office of the commission, and a copy thereof attested 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.

*117 Me. 177; 118 Me. *133, *172; 119 Me. 510; 120 Me. *54, *77, 81, *242, 324; 121 Me. *37, 282, 353; 122 Me. *116, 276, *477, 492; 123 Me. *255, *261, *495, 517; 124 Me. 54, 104, *107, 295, 422; 125 Me. 16, 49, 135, 147, 245, *389, 408; 126 Me. 32, 358, *572, 579; 127 Me. *207, 208, *214, *249, 251; 128 Me. 126, *303, 407; 133 Me. 183; 134 Me. 171; 136 Me. 44; 138 Me. 335.

Sec. 38. Petition for review of incapacity; for further compensation. R. S. c. 55, § 37. While compensation is being paid under any agreement, award, or decree, the incapacity of the injured employee due to the injury may from time to time be reviewed by a single commissioner upon the petition of either party upon the grounds that such incapacity has subsequently increased, diminished, or ended. Upon such review the commissioner may increase, diminish, or discontinue such compensation in accordance with the facts, as the justice of the case may require. If after compensation has been discontinued, by decree or approved settlement receipt as provided by section 44, additional compensation is claimed by an employee for further period of incapacity, he may file with the commission a petition for further compensation setting forth his claim therefor; hearing upon which shall be held by a single commissioner. The provisions of the 4 preceding sections as to procedure shall apply to the petitions authorized by this section and by section 22; and said provisions shall also apply to the petitions authorized by sections 9, 13, 28, and 40, except that such petitions shall be heard by the commission as therein provided.

119 Me. 506; 120 Me. 75, 251; 121 Me. 37, 75; 122 Me. *108, *116, *289, 437; 123 Me. 517; 124 Me. 54, 83; 126 Me. 401; 130 Me. 1; 131 Me. 386, 452; 136 Me. 20.

Sec. 39. Petition or agreement superseded by subsequent approved agreement. R. S. c. 55, § 38. If after any petition, except for lump sum settlement under the provisions of section 28, has been filed the parties themselves reach an agreement as to payment of compensation, the memorandum of which is approved by the commissioner of labor and industry, or as to payment of medical benefits under the provisions of section 9, the pending petition shall thereupon be dismissed by the commission. The weekly rate of compensation payable for actual incapacity under any degree or approved agreement may be modified at any time by an approved agreement between the parties as to any subsequent period of incapacity.

Sec. 40. Agreement through mistake of fact or fraud may be annulled. R. S. c. 55, § 39. Upon the petition of either party at any time the commission may annul any agreement which has been approved by the commissioner of labor and industry provided it finds that such agreement was entered into through mistake of fact by said petitioner or through fraud; and provided further, that except in the case of fraud upon his part, an employee shall not be barred by any time limit from filing a proper petition to have the matters covered by such agreement determined in accordance with the provisions of this act as though the agreement aforesaid had not been approved.

Sec. 41. Decision or approved agreement as basis for court decree; procedure for appeal. R. S. c. 55, § 40. 1939, c. 276, § 10. Any party in interest may present copies, certified by the clerk of the commission, of any order or decision of the commission or of any commissioner, or of any memorandum of agreement approved by the commissioner of labor and industry, together with all papers in connection therewith, to the clerk of courts for the county in which the accident occurred; or if the accident occurred without the state, to the clerk of courts for the county of Kennebec; whereupon any justice of the superior court shall

render a pro forma decree in accordance therewith and cause all interested parties to be notified. Such decree shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though rendered in a suit in equity duly heard and determined by said court, except that there shall be no appeal therefrom upon questions of fact found by said commission or by any commissioner, or where the decree is based upon a memorandum of agreement approved by the commissioner of labor and industry.

Upon any appeal therefrom the proceedings shall be the same as in appeals in equity procedure, and the law court may, after consideration, reverse or modify any decree so made by a justice based upon an erroneous ruling or finding of law. There shall be no appeal however from a decree based upon any order or decision of the commission or of any commissioner unless said order or decision has been certified and presented to the court within 20 days after notice of the filing thereof by the commission or by any commissioner; and unless appeal has been taken from such pro forma decree within 10 days after such certified order or decision has been so presented. In cases where after appeal aforesaid by an employer the original order or decision rendered by the commission or by any commissioner is affirmed, there shall be added to any amounts payable under said order or decision, the payment of which is delayed by such appeal, interest to the date of payment. In all cases of appeal the law court may order a reasonable allowance to be paid to the employee by the employer for expenses incurred in the proceedings of the appeal including the record, not however to include expenses incurred in other proceedings in the case.

*120 Me. 54, 78, 81, 324, 398; 121 Me. 20, 37; 122 Me. 114; 123 Me. 250, 261, 517; 126 Me. 572; 127 Me. 214, 249; 132 Me. 31, 60; 134 Me. 260; 135 Me. 344, 391; 136 Me. 108.

See § 37, re cases relating to commission's findings of fact, see citations following.

Sec. 42. Enforcement of court decree; how modified. R. S. c. 55, § 41. Any pro forma decree rendered under the provisions of the preceding section shall be enforceable by the superior court by any suitable process including execution against the goods, chattels, and real estate; and including proceedings for contempt for wilful failure or neglect to obey the orders or decrees of the court, or in any other manner that decrees in equity may be enforced. Upon the presentation to it however of a certified copy of any subsequent order or decision of the commission or of any commissioner increasing, diminishing, terminating, or commuting to a lump sum any payments of compensation on account of said injury, or of any agreement for modification of such compensation approved by the commissioner of labor and industry, the court shall revoke or modify any such pro forma decree based upon such prior order or decision of the commission or of any commissioner, or upon any agreement so approved, to conform to such subsequent order or decision, or such approved agreement.

Sec. 43. Proceedings not to abate because of death. R. S. c. 55, § 42. No proceedings under the provisions of this act shall abate because of the death of the petitioner, but may be prosecuted by his legal representatives or by any person entitled to compensation by reason of said death under the provisions of this act.

Sec. 44. Employers to file reports of accidents and settlement receipts; penalty. R. S. c. 55, § 43. 1939, c. 276, § 11. Whenever any employee has reported to an employer under the act any injury by accident arising out of and in the course of his employment which has caused the employee to lose a day's work or has required the services of a physician, or whenever the employer has

knowledge of any such injury by accident, every such employer shall within 7 days after said notice or knowledge make report thereof to the commission, with the average weekly wages or earnings of such employee, together with such other particulars as the commission may require; and shall also report whenever the injured employee shall resume his employment, and the amount of his wages or earnings at such time. Any employer who wilfully neglects or refuses to make any report required by this section shall be subject to a penalty of not more than \$100 for each such neglect or refusal, to be enforced by the commission in an action of debt in the name of the state. In the event the employer has sent the report to the insurance carrier for transmission by such insurance carrier to the commission, the insurance carrier wilfully neglecting or refusing to transmit the report shall be liable for the said penalty.

Whenever any settlement is made with an injured employee, either by the employer or insurance company, for compensation covering any specified period under an approved agreement or a decree, or covering any period of incapacity, total or partial, that has ended, a duplicate copy of the settlement receipt or agreement signed by said employee showing the total amount of money paid to him for such period or periods shall be filed with the commission, but shall not be binding without its approval.

See c. 25, § 8, re reports of death, accidents, etc. to be made to commissioner of labor; *121 Me. 353; 124 Me. *54, *107; *126 Me. 175.

Sec. 45. Insurance companies to furnish information; penalty for refusal. R. S. c. 55, § 44. Every insurance company insuring employers under the provisions of this act shall fill out any blanks and answer all questions submitted to it that may relate to policies, premiums, amount of compensation paid, and such other information as the commission or the insurance commissioner may deem important, either for the proper administration of this act or for statistical purposes. Any insurance company which shall refuse to fill out such blanks or answer such questions shall be liable to a forfeiture of \$10 for each day of such refusal, to be enforced by the commission in an action of debt in the name of the state. All moneys recovered under the provisions of this or the preceding section, or under the provisions of section 6, shall be paid into the state treasury and credited to the appropriation for the administration of this act.

Sec. 46. Biennial report of commission. R. S. c. 55, § 45. The commission shall make a report to the governor and council for the biennial period ending December 31st of each even year, giving such statistical information as may be contained in its department in relation to the administration of this act, particularly with reference to the number of employees under the act, the number injured, the amount of compensation and other benefits paid, and the cost of the same to the employers.

Sec. 47. Penalty for false statements. R. S. c. 55, § 46. If for the purpose of obtaining any benefit or payment under the provisions of this act, either for himself or for any other person, anyone wilfully makes a false statement or representation he shall be guilty of a misdemeanor and liable to a fine of not exceeding \$50, and shall forfeit all right which he may have to compensation under the provisions of this act.

The Employers' Liability Law

Sec. 48. Employers' liability defined. R. S. c. 55, § 48. If personal injury is caused to an employee, who, at the time of the injury, is in the exercise of due care, by reason of:

I. A defect in the condition of the ways, works, or machinery connected with or used in the business of the employer, which arose from, or had not been discovered or remedied in consequence of, the negligence of the employer or of a person in his service who had been entrusted by him with the duty of seeing that the ways, works, or machinery were in proper condition;

II. The negligence of a person in the service of the employer who was entrusted with and was exercising superintendence and whose sole or principal duty was that of superintendence, or in the absence of such superintendent, of a person acting as superintendent with the authority or consent of such employer;

III. The negligence of a person in the service of the employer who was in charge or control of a signal, switch, locomotive engine, or train upon a railroad.

The employee or his legal representatives, shall, subject to the provisions of the 8 following sections, have the same rights to compensation and of action against the employer as if he had not been an employee, nor in the service, nor engaged in the work, of the employer.

A car which is in use by, or which is in possession of, a railroad corporation shall be considered as a part of the ways, works, or machinery of the corporation which uses or has it in possession, within the meaning of subsection I of this section, whether it is owned by such corporation or by some other company or person. One or more cars which are in motion, whether attached to an engine or not, shall constitute a train within the meaning of subsection III of this section, and whoever, as a part of his duty for the time being, physically controls or directs the movements of a signal, switch, locomotive engine, or train shall be deemed to be a person in charge or control of a signal, switch, locomotive engine, or train within the meaning of said subsection.

108 Me. 361; 110 Me. 376.

Sec. 49. Actions for damages for death in addition to those for injury. R. S. c. 55, § 49. If the injury described in the preceding section results in the death of the employee, and such death is not instantaneous or is preceded by conscious suffering, and if there is any person who would have been entitled to bring an action under the provisions of the following section, the legal representatives of said employee may, in the action brought under the provisions of the preceding section, recover damages for the death in addition to those for the injury.

Sec. 50. Actions for damages by widow or next of kin. R. S. c. 55, § 50. If, as the result of the negligence of an employer himself, or of a person for whose negligence an employer is liable under the provisions of section 48, an employee is instantly killed, or dies without conscious suffering, his widow or, if he leaves no widow, his next of kin, who, at the time of his death, were dependent upon his wages for support, shall have a right of action for damages against the employer.

Sec. 51. Damages for death, how sustained. R. S. c. 55, § 51. If, under the provisions of either of the 2 preceding sections, damages are awarded for the death, they shall be assessed with reference to the degree of culpability of the employer or of the person for whose negligence the employer is liable.

The amount of damages which may be awarded in an action under the provisions of section 48 for a personal injury to an employee, in which no damages for his death are awarded under the provisions of section 49, shall not exceed \$4,000.

The amount of damages which may be awarded in such action, if damages

for his death are awarded under the provisions of section 49, shall not exceed \$5,000 for both the injury and the death, and shall be apportioned by the jury between the legal representatives of the employee and the persons who would have been entitled, under the provisions of section 50, to bring an action for his death if it had been instantaneous or without conscious suffering.

The amount of damages which may be awarded in an action brought under the provisions of section 50 shall not be less than \$500, nor more than \$5,000.

109 Me. 585.

Sec. 52. Notice of injury in writing within 60 days; action within 1 year.

R. S. c. 55, § 52. No action for the recovery of damages for injury or death under the provisions of sections 48 to 51, inclusive, shall be maintained unless notice of the time, place, and cause of the injury is given to the employer within 60 days and the action is commenced within 1 year after the accident which causes the injury or death. Such notice shall be in writing, signed by the person injured, or by a person in his behalf; but if from physical or mental incapacity it is impossible for the person injured to give the notice within the time provided in this section, he may give it within 10 days after such incapacity has been removed, and if he dies without having given the notice and without having been for 10 days at any time after his injury of sufficient capacity to give it, his executor or administrator may give such notice within 60 days after his appointment. A notice given under the provisions of this section shall not be held invalid or insufficient solely by reason of an inaccuracy in stating the time, place, or cause of the injury, if it is shown that there was no intention to mislead, and that the employer was not in fact misled thereby.

If a notice given under the provisions of this section is claimed by the employer to be insufficient for any reason he shall so notify in writing the person giving it within 10 days, stating the insufficiency claimed to exist, and thereupon the person whose duty it is to give the notice may, within 30 days, give a new notice with the same effect as if originally given.

Sec. 53. Liability of employer not barred by entering into contract with independent contractor. **R. S. c. 55, § 53.** If an employer enters into a contract, written or verbal, with an independent contractor to do part of such employer's work, or if such contractor enters into a contract with a subcontractor to do all or any part of the work comprised in such contractor's contract with the employer, such contract or subcontract shall not bar the liability of the employer for injuries to the employees of such contractor or subcontractor, caused by any defect in the condition of the ways, works, machinery, or plant, if they are the property of the employer or are furnished by him, and if such defect arose, or had not been discovered or remedied, through the negligence of the employer or of some person entrusted by him with the duty of seeing that they were in proper condition.

Sec. 54. Employee has no right of action for damages, if he knew of defect or negligence and failed to give notice. **R. S. c. 55, § 54.** An employee or his legal representatives shall not be entitled under the provisions of sections 48 to 51, inclusive, to any right of action for damages against his employer if such employee knew of the defect or negligence which caused the injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer who was entrusted with general superintendence.

Sec. 55. Application of §§ 48-54 limited. R. S. c. 55, § 55. The provisions of the 7 preceding sections shall not apply to injuries caused to domestic servants or farm laborers by fellow employees, or to those engaged in cutting, hauling, or driving logs. Nothing in said sections shall be construed to abridge any common law rights or remedies which the employee may have against his employer, but a judgment recovered under the provisions of said sections, or a settlement of any action commenced or claim made for death or injury, under the provisions thereof, shall be a bar to any claim made or action begun to recover for the same injury or the same death, under the provisions of the common law or under the provisions of any other statute.

110 Me. 376; *114 Me. 208.

Sec. 56. Special contracts prohibited. R. S. c. 55, § 56. No person shall, by a special contract with his employees, exempt himself or another person from liability which he may be under to them, for injuries suffered by them in his employment and resulting from the negligence of the employer or such other person, or of a person in his employ.