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OCTAVO

VICTORIÆ REGINÆ.

A.D. 1884.

No. 325.

An Act to amend the law relating to the Liability of
Employers to Compensate Workmen for Personal
Injuries suffered in their service.

[Assented to, November 14th, 1884.]

BE it Enacted by the Governor of the Province of South
Australia, and with the advice and consent of the Legislative
Council and House of Assembly of the said province, in this present
Parliament assembled, as follows:—

1. Where after the commencement of this Act personal injury Amendment of Law.
is caused to a workman—

- (i.) By reason of any defect in the condition of the ways, works,
machinery, or plant connected with, or used in the
business of the employer; or,
- (ii.) By reason of the negligence of any person in the service of
the employer who has any superintendence entrusted to
him whilst in the exercise of such superintendence; or,
- (iii.) By reason of the negligence of any person in the service of
the employer, to whose orders or directions the workman
at the time of the injury was bound to conform, and did
conform, where such injury resulted from his having so
conformed; or,
- (iv.) By reason of the act or omission of any person in the service
of the employer done or made in obedience to the rules or
by-laws of the employer, or in obedience to particular
instructions given by any person delegated with the
authority of the employer in that behalf; or,

(v.) By

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- (v.) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal points, locomotive engine, or train upon a rail or tramway,

The workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer nor engaged in his work.

Exceptions to amendment of law.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases, that is to say:

- (I.) Under sub-section one, of section one, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, and machinery or plant were in proper condition:
- (II.) Under sub-section four, of section one, unless the injury resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned:
- (III.) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give or cause to be given information thereof to the employer or some person entrusted with any duties of superintendence in or over that department in which the defect or negligence existed, whether such superintendent be ordinarily engaged in manual labor or not, unless the injured person should himself perform duties of superintendence, in which case such person must have given notice to the employer or to a person entrusted with any superintendence over himself, unless the employer or such superior already knew of the said defect or negligence:
- (IV.) In any case where the injury is caused to the workman whilst employed on any work which is being carried out by the employer pursuant to any contract made before the passing of this Act.

Limit of sum recoverable as compensation.

3. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings during the three years preceding the injury of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

Limit of time for recovery of compensation.

4. An action for the recovery, under this Act, of compensation for an injury shall not be maintainable, unless notice that injury has been

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been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or in case of death within twelve months from the time of death.

5. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action, and where an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action, such workman, representatives, or persons shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

Money payable under penalty to be deducted from compensation under Act.

6. All the provisions of this Act shall have effect and be enforced by every Court in every case, notwithstanding any contract or agreement, excluding all or any of the provisions of this Act, or otherwise interfering with the operations thereof: Provided—

Act to be enforced notwithstanding agreements to the contrary.

(I.) That in determining in any case the amount of compensation payable under this Act by an employer, the Court shall take into consideration the value of any payment or contribution made by such employer to or for the injured person in respect of his injury, and also the value of any payment or contribution made by such employer to any insurance or compensation fund to the extent to which any person who would otherwise be entitled to compensation under this Act has actually received compensation out of such payment or contribution at the expense of such employer:

7. Every action for the recovery of compensation under this Act, if for an amount not exceeding Four Hundred Pounds, shall be brought in a Local Court: Provided that—

Action to be brought in Local Courts.

(I.) Upon the trial of any such action in a Local Court without a jury, one or more assessors may be appointed for the purpose of ascertaining the amount of compensation:

(II.) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a Local Court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied, and repealed from time to time, in the same manner as rules

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rules and regulations for regulating the practice and procedure in other actions in Local Courts :

- (III.) The Court in which an action is commenced or is pending, may, at any stage of the proceedings, amend any defect in a notice of injury or death, or direct that the action shall proceed and be maintainable notwithstanding that such notice has not been given duly or at all, if the Court having regard to the circumstances of the case thinks just so to direct, and if it appears to the Court that, within the time limited by the Act for giving such notice, the employer, or his agent, or representative, had knowledge or notice of the occurrence of the accident, and of the fact that the workman was injured thereby, or that there was reasonable excuse for such defect or omission.

Mode of serving
notice of injury.

8. Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury, and the date at which it was sustained, and shall be served on the employer, or if there is more than one employer, upon one of such employers. The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served. The notice may also be served by post, by a registered letter, addressed to the person on whom it is to be served, at his last known place of residence, or place of business; and if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered. Where the employer is a body of persons, corporate or unincorporate, the notice shall be served by delivering the same at, or by sending it by post in a registered letter addressed to the office, or if there be more than one office, any one of the offices of such body. A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the Judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

Definitions.

9. For the purposes of this Act, unless the context otherwise requires, the expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labor. The expression "employer" includes a body of persons corporate or unincorporate. The expression "workman" does not include a domestic or menial servant, but, save as aforesaid, means a railway servant, and any other person, who being a laborer, servant in husbandry, journeyman artificer, handicraftsman, miner, or otherwise engaged in manual labor, whether under the age of twenty-one years

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or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service, or a contract personally to execute any work or labor.

10. This Act shall not come into operation until the first day of January, one thousand eight hundred and eighty-five, which date is in this Act referred to as the commencement of this Act. Commencement of Act.

11. This Act may be cited as the “Employers Liability Act, 1884.” Short title.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WILLIAM C. F. ROBINSON, Governor.