

1914

c 146 Workmen's Compensation for Injuries Act

Ontario

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CHAPTER 146.

An Act to secure Compensation to Workmen in Certain Cases.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

PRELIMINARY.

1. This Act may be cited as *The Workmen's Compensation for Injuries Act*. R.S.O. 1897, c. 160, s. 1. short title.

2. In this Act,

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| <p>(a) "Action," "proceeding" or "suit" shall include arbitration;</p> <p>(b) "County" shall include district;</p> <p>(c) "County Court" shall include district court;</p> <p>(d) "Court" or "Judge" shall include arbitrator;</p> <p>(e) "Defendant" shall include respondent; 62 Vict. (2), c. 18, s. 2, <i>part</i>.</p> <p>(f) "Employer" shall include a body of persons corporate or unincorporate, and also the legal personal representatives of a deceased employer, and the person liable to pay compensation under section 4;</p> <p>(g) "Packing" shall mean a packing of wood or metal, or some other equally substantial and solid material, of not less than two inches in thickness, and which, where filled in, shall extend to within one and a half inches of the crown of the rails in use on any railway, shall be neatly fitted so as to come against the web of such rails and shall be well and solidly fastened to the ties on which such rails are laid; R.S.O. 1897, c. 160, s. 2, <i>part</i>.</p> <p>(h) "Plaintiff" shall include claimant; 62 Vict. (2), c. 18, s. 2, <i>part</i>.</p> <p>(i) "Railway servant" shall mean and include a railway servant, tramway servant and street railway servant;</p> | <p style="text-align: right;">Interpretation.</p> <p>"Action."</p> <p>"County."</p> <p>"County court."</p> <p>"Court," "Judge."</p> <p>"Defendant."</p> <p>"Employer."</p> <p>"Packing."</p> <p>"Plaintiff."</p> <p>"Railway servant."</p> |
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"Superintendence."

- (j) "Superintendence" shall mean such general superintendence over workmen as is exercised by a foreman, or person in a like position to a foreman, whether the person exercising superintendence is or is not ordinarily engaged in manual labour;

"Workman."

- (k) "Workman" shall not include a domestic or menial servant or servant in husbandry, gardening or fruit growing, where the personal injury caused to any such servant has been occasioned by or has arisen from or in the usual course of his work or employment as a domestic or menial servant, or as a servant in husbandry, gardening or fruit-growing, but shall mean any railway servant and any person before mentioned who, being a labourer, servant, journeyman, artificer, handicraftsman, miner or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract is made before or after the passing of this Act, is expressed or implied, oral or in writing, and is a contract of service or a contract personally to execute any work or labour. R.S.O. 1897, c. 160, s. 2, *part*.

PART I.—RIGHT OF ACTION FOR COMPENSATION.

When workmen to have claim against employer.

3. Where personal injury is caused to a workman by reason of—

- (a) any defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises connected with, intended for or used in the business of the employer; or
- (b) 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
- (c) 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
- (d) 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 the employer or by any person delegated with the authority of the employer in that behalf; or

- (e) the negligence of any person in the service of the employer who has the charge or control of any points, signal, locomotive, engine, machine, or train upon a railway, tramway or street railway,

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. R.S.O. 1897, c. 160, s. 3.

4.—(1) Where the execution of any work is being carried into effect under any contract, and

Employer,
who to be
deemed.

- (a) the person for whom the work, or any part thereof, is done, owns or supplies any ways, works, machinery, plant, buildings, or premises used for the purpose of executing the work, and
- (b) by reason of any defect in the condition or arrangement of such ways, works, machinery, plant, buildings or premises, personal injury is caused to any workman employed by the contractor or by any sub-contractor, and
- (c) the defect or the failure to discover or remedy the defect arose from the negligence of the person for whom the work or any part thereof is done, or of some person being in his service and entrusted by him with the duty of seeing that such condition or arrangement is proper,

the person for whom the work, or that part of the work is done shall be liable to pay compensation for the injury as if the workman had been employed by him, and for that purpose shall be deemed to be the employer of the workman within the meaning of this Act; but any such contractor or sub-contractor shall be liable to pay compensation for the injury as if this section had not been enacted, so however that double compensation shall not be recoverable for the same injury.

(2) Nothing in this section shall affect any rights or liabilities of the person for whom the work is done and the contractor and sub-contractor, if any, as between themselves. R.S.O. 1897, c. 160, s. 4.

Rights of
other parties.

5. Where personal injury is caused to a workman employed on or about any railway.

Injuries by
railways.

- (a) by reason of the lower beams or members of the superstructure of any highway, or other overhead bridge, or any other erection or structure

over such railway, not being of a sufficient height from the surface of the rails to admit of an open and clear headway of at least seven feet between the top of the highest freight cars then running on such railway, and the bottom of such lower beams or members, or

- (b) by reason of the space between the rails in any railway frog, extending from the point of such frog backward to where the heads of such rails are not less than five inches apart, not being filled in with packing, or
- (c) by reason of the space between any wing-rail and any railway frog, and between any guard-rail and any other rail fixed and used alongside thereof as aforesaid, and between all wing-rails where no other rail intervenes (save only where the space between the heads of any such wing-rail and railway frog as aforesaid, or between the heads of any such guard-rail and any other rail fixed and used alongside thereof as aforesaid, or between the heads of any such wing-rails where no other rail intervenes as aforesaid, is either less than one and three-quarters of an inch or more than five inches in width) not being at all times during every month of April, May, June, July, August, September, October, and November filled in with packing,

such injury shall be deemed to have been caused by reason of a defect within the meaning of clause (a) of section 3, but nothing in this section shall be taken or construed, as in any respect, or for any purpose restricting the meaning of the said clause. R.S.O. 1897, c. 160, s. 5.

Exceptions
to preceding
provisions.

6. A workman, or his legal representatives, or any person entitled in case of his death, shall not be entitled under this Act to any right of compensation or remedy against the employer,

- (a) under clause (a) of section 3, 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 entrusted by him with the duty of seeing that the condition or arrangement of the ways, works, machinery, plant, building or premises are proper,
- (b) under clause (d) of section 3, unless the injury resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned, but where a rule or by-law has been approved, or has been accepted as a proper rule or by-law, either by the Lieutenant-Governor in Council, or

under and pursuant to any provision in that behalf of any Act of this Legislature, or of the Parliament of Canada, it shall not be deemed for the purposes of this Act to be an improper or defective rule or by-law,

- (c) where the workman knew of the defect or negligence which caused his injury, and failed without reasonable excuse to give or cause to be given within a reasonable time, information thereof to the employer or some person superior to himself in the service of his employer, unless he was aware that the employer or such superior already knew of the defect or negligence,

but such workman shall not, by reason only of his continuing in the employment of the employer with knowledge of the defect, negligence, act, or omission, which caused his injury, be deemed to have voluntarily incurred the risk of the injury. R.S.O. 1897, c. 160, s. 6.

7. The amount of compensation recoverable under this Act shall not exceed either 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 in Ontario, or the sum of \$1,500, whichever is larger; and such compensation shall not be subject to any deduction or abatement, by reason, or on account, or in respect of any matter or thing whatsoever, save such as is specially provided for in section 12. R.S.O. 1897, c. 160, s. 7.

8. Where in any action under this Act compensation is awarded in the case of the death of a workman for an injury sustained by him in the course of his employment, the amount recovered, after deducting the costs not recovered from the defendant may, if the Court or Judge before whom the action is tried so directs, be divided between the wife, or husband, parent and child of the deceased in such shares as the Court or Judge, with or without assessors, as the case may be, or if the action is tried by a jury, as the jury may determine. R.S.O. 1897, c. 160, s. 8.

9. Subject to the provisions of sections 13 and 14, an action for the recovery, under this Act, of compensation for an injury shall not be maintainable against the employer of the workman, unless notice that injury has been sustained is given within twelve 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; but in case of death the want of such notice shall be no bar to the maintenance of such action, if the Court or Judge is of opinion that there was

reasonable excuse for such want of notice. R.S.O. 1897, c. 160, s. 9.

Contract by
workman
when to con-
stitute a
defence to
action for
compensation.

10. No contract or agreement made or entered into by a workman shall be a bar or constitute any defence to an action for the recovery under this Act of compensation for any injury,

- (a) unless for such workman entering into or making such contract or agreement there was other consideration than that of his being taken into or continued in the employment of the defendant, nor
- (b) unless such other consideration was, in the opinion of the Court or Judge before whom such action is tried, ample and adequate, nor
- (c) unless, in the opinion of the Court or Judge, such contract or agreement, in view of such other consideration was not on the part of the workman improvident, but was just and reasonable,

and the burden of proof in respect of such other consideration, and of the same being ample and adequate, and that the contract was just and reasonable and was not improvident, shall, in all cases, rest upon the defendant; but notwithstanding anything in this section, no contract or agreement made or entered into by a workman shall be a bar or constitute any defence to an action for the recovery under this Act of compensation for any injury happening or caused by reason of any of the matters mentioned in section 5. R.S.O. 1897, c. 160, s. 10.

Proviso.

Liability of
employer's
representa-
tives.

11. Notwithstanding anything in this Act, an action under sections 3, 4 or 5 shall lie against the legal personal representatives of a deceased employer. R.S.O. 1897, c. 160, s. 11.

Deductions
from
compensation.

12. There shall be deducted from any compensation awarded to any workman or the 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 damages, or part of a penalty or damages which may in pursuance of any other Act, either of the Parliament of Canada, or of this Legislature, have been paid 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 damages, or part of a penalty or damages under any such Act, either of the Parliament of Canada or of this Legislature, in respect of the same cause

of action, such workman, representatives or persons shall not, so far as this Legislature has power so to enact, be entitled thereafter to receive in respect of the same cause of action, any such penalty or damages, or part of a penalty or damages, under any such last-mentioned Act. R.S.O. 1897, c. 160, s. 12.

13.—(1) Notice in respect of an injury 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 are more employers than one, upon one of such employers. ^{Notice of injury.}

(2) The notice may be served by delivering it to or at the residence or place of business of the person on whom it is to be served. ^{Delivery.}

(3) The notice may also be served by sending it by registered post, 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. ^{Service by letter.}

(4) Where the employer is a body of persons corporate or unincorporate the notice shall be served by delivering it at or by sending it by registered post addressed to the office, or if there are more offices than one, to any one of such offices. ^{Service on partnership or corporation.}

(5) The want or insufficiency of the notice required by this section, or by section 9, shall not be a bar to the maintenance of an action for the recovery of compensation for the injury if the Court or Judge before whom such action is tried, or, in case of appeal, if the Court hearing the appeal is of opinion that there was reasonable excuse for such want or insufficiency, and that the defendant has not been thereby prejudiced in his defence. ^{Irregularities in notice not bar to action.}

(6) A notice under this section shall be sufficient if in the form or to the effect following:— ^{Form of notice.}

To A.B., of (here insert the employer's address)
or

To the Company, (or as the case may be.)

Take notice, that on the day of 19, C.D., of (insert address of injured person) a workman in your employment sustained personal injury, (add, of which he died, if such be the case), and that such injury was caused by (state shortly the cause of injury, e.g., the fall of a beam).

(Date.)

Yours, etc.,
X.Y.

Defence of
want of
notice or not
the plaintiff's
employer.

14. If the defendant in any action against an employer for compensation for an injury sustained by a workman in the course of his employment intends to rely for a defence on the want of notice or the insufficiency of notice, or on the ground that he was not the employer of the workman injured, he shall, not less than seven days before the hearing of the action, or such other time as may be fixed by the rules regulating the practice of the Court in which the action is brought, give notice to the plaintiff of his intention to rely on that defence, and the Court may, in its discretion, and upon such terms and conditions as may be just in that behalf, order and allow an adjournment of the case for the purpose of enabling such notice to be given; and, subject to any such terms and conditions, any notice given pursuant to and in compliance with the order in that behalf, shall, as to any such action and for all purposes thereof, be held to be a notice given pursuant to and in conformity with sections 9 and 13. R.S.O. 1897, c. 160, s. 14.

Particulars of
demand.

15. In an action brought under this Act the particulars of demand or statement of claim shall state in ordinary language the cause of the injury, and the date at which it was sustained, and the amount of compensation claimed; and where the action is brought by more than one plaintiff, the amount of compensation claimed by each plaintiff, and where the injury of which the plaintiff complains shall have arisen by reason of the negligence, act, or omission of any person in the service of the defendant, the particulars shall give the name and description of such person. R.S.O. 1897, c. 160, s. 15.

Application
for appoint-
ment of
assessors.

16.—(1) Upon the trial of an action for recovery of compensation under this Act before a Judge without a jury, one or more assessors may be appointed by the Court or Judge for the purpose of ascertaining the amount of compensation; and the remuneration, if any, to be paid to such assessors shall be fixed and determined by the Judge at the trial.

Who may act.

(2) Any person who shall, as hereinafter provided, be appointed to act as an assessor in such action shall be qualified so to act.

Application for
appointment.

(3) In such action, a party who desires assessors to be appointed shall, ten clear days at least before the day for holding the Court at which the action is to be tried, file an application stating the number of assessors he proposes to be appointed, and the names, addresses and occupations of the persons who may have expressed their willingness in writing to act as assessors; and if the applicant has obtained the consent of the other party to the persons named being appointed, he shall file such consent with his application.

(4) Where the application for the appointment of as-Service.
 sessors has been made by one party to an action only, he shall, eight clear days at least before the day for holding the Court at which the action is to be tried, serve a copy of the application, so filed, upon the other party, who may then either file an application for assessors, or file objections to one or more of the persons proposed.

(5) An application for the appointment of assessors may be in the form following, or to the like effect, namely:— Form of application.

In the *(describing the Court)*

The Workmen's Compensation for Injuries Act.

BETWEEN

and

Plaintiff,

Defendant.

The plaintiff (or defendant) applies to have an assessor (or assessors) appointed to assist the Court in ascertaining the amount of compensation to be awarded to the plaintiff, should the judgment be in his favour, and he submits the names of the following persons, who have expressed their willingness in writing to act as assessors should they be appointed.

(Here set out the names, addresses and occupations of the persons above referred to.)

(If the other party consents to the appointment add the following):—

The defendant (or plaintiff) consents to the appointment of any of the persons above named to act as assessors in this action, as appears by his consent thereto filed herewith.

Dated this day of

A.B.

The above named plaintiff, (or as the case may be).

(6) Where separate applications are filed by the parties, Appointment.
 no objection to the persons proposed shall be made by either party, but the Court or Judge may appoint from the persons named in each application one assessor or more, but the same number of assessors shall be appointed from the names given in each application. R.S.O. 1897, c. 160, s. 16.

17. Where any such action is brought in a Division Assessors in Division Court.
 Court the applications for the appointment of assessors, together with any objections made to the persons proposed, shall be transmitted by the clerk of the Court to the Judge. R.S.O. 1897, c. 160, s. 17.

18. Where application for the appointment of assessors Appointment by Court or Judge.
 is granted, the Court or Judge shall appoint such of the persons proposed for assessors as by the Court or Judge may be deemed fit, subject to the provisions contained in this Act. R.S.O. 1897, c. 160, s. 18.

19. Where an application for the appointment of assessors Additional assessors.
 has been filed, the Court or Judge may, at any time prior

Appointment
by Court on
its own
motion.

to the trial of the action, nominate one or more additional persons to act as assessors; and where no application for assessors has been made, the Court or Judge may appoint one or more persons to act as assessor or assessors in the action before or on the trial of the action. R.S.O. 1897, c. 160, s. 19.

Where as-
sessors do not
attend at
trial.

20. If at the time and place appointed for the trial all or any of the assessors appointed do not attend, the Court or Judge may either proceed to try the action with the assistance of such of the assessors, if any, as do attend, or may adjourn the trial generally, or upon any terms which the Court or Judge may think fit, or may appoint any person who may be available and who is willing to act, and who is not objected to, or who, if objected to, is objected to on some insufficient ground, or the Court or Judge may try the action without assessors. R.S.O. 1897, c. 160, s. 20.

Deposit of
assessor's fees.

21. Every person requiring the Court or Judge to be assisted by assessors shall at the time of filing his application deposit therewith the sum of \$4 for every assessor proposed, and such payment shall be considered as costs in the action, unless otherwise ordered by the Court or Judge; but where a person proposed as an assessor has in writing agreed and consented that he will not require his remuneration to be so deposited, no deposit in respect of such person shall be required. R.S.O. 1897, c. 160, s. 21.

Proviso.

By whom cost
of additional
assessors
borne.

22. Where an action is tried by the Court or Judge with the assistance of assessors in addition to or independently of any assessors proposed by the parties, the remuneration of such assessors shall be borne by the parties, or either of them, as the Court or Judge shall direct. R.S.O. 1897, c. 160, s. 22.

Where trial
does not take
place.

23. If after an assessor has been appointed the action is not tried, the Court or Judge may make an allowance to him in respect of any expense or trouble which he may have incurred by reason of his appointment, and direct the payment to be made out of any sum deposited for his remuneration. R.S.O. 1897, c. 160, s. 23.

Duty of
assessors.

24. The assessors shall sit with and assist the Court or Judge when required with their opinion and special knowledge for the purpose of ascertaining the amount of compensation, if any, which the plaintiff shall be entitled to recover. R.S.O. 1897, c. 160, s. 24.

Consolidation
of actions.

25.—(1) Where several actions are brought under this Act against a defendant in the same Court in respect of the same negligence, act or omission, the defendant shall be at liberty to apply to the Judge that the actions be consolidated.

(2) Applications for the consolidation of actions shall be ^{Upon notice.} made upon notice to the plaintiffs affected by such consolidation. R.S.O. 1897, c. 160, s. 25.

26.—(1) Where several actions are brought under this ^{Staying several actions to abide result of one.} Act against a defendant in the same Court in respect of the same negligence, act or omission, the defendant, on filing an undertaking to be bound so far as his liability for such negligence, act or omission is concerned by the decision in such one of the said actions as may be selected by the Court or Judge, may apply to the Court or Judge for an order to stay the proceedings in the actions other than in the one so selected, until judgment is given in such selected action.

(2) An application for a stay of proceedings may be made ^{Application for stay.} upon notice to the plaintiffs affected by the stay of proceedings or *ex parte*. R.S.O. 1897, c. 160, s. 26.

27. Upon the hearing of an application for the consolidation of actions or for a stay of proceedings, the Court or Judge may impose such terms and conditions and make such order in the matter as may be deemed just. ^{Terms of consolidation or stay.} R.S.O. 1897, c. 160, s. 27.

28. If an order is made by a Court or Judge upon ^{Varying order.} an *ex parte* application to stay proceedings, it shall be competent to the plaintiffs affected by the order to apply to the Court or Judge, upon notice or *ex parte*, to vary or discharge the order, and upon such last mentioned application such order shall be made as the Court or Judge shall think fit, and the Court or Judge shall have power to dispose of the costs occasioned by such order as may be deemed just. R.S.O. 1897, c. 160, s. 28.

29. If judgment in the selected action is given against ^{Removal of stay.} the defendant, the plaintiffs in the actions stayed shall be at liberty to proceed for the purpose of ascertaining and recovering their damages and costs. R.S.O. 1897, c. 160, s. 29.

30.—(1) Where two or more persons are joined as plaintiffs under section 25, and the negligence, act or omission which is the cause of action is proved, the judgment shall be for all the plaintiffs, but the amount of compensation, if any, that each plaintiff is entitled to shall be separately found and set forth in the judgment, and the amount of costs awarded in the action shall be ordered to be paid to such person and in such manner as the Court or Judge thinks fit. ^{Damages to be separately assessed.}

(2) If the defendant fails so to pay the several amounts ^{Execution.} of compensation and the costs awarded in the action, execution may issue as in an ordinary action, and if the proceeds of the execution are insufficient, after deducting

all costs, to pay the whole of the amounts awarded, a dividend shall be paid to each plaintiff, calculated upon the proportion of the amount awarded to the respective plaintiffs to the total amount realized after the deduction of all the costs of the action. R.S.O. 1897, c. 160, s. 30.

Admissions
by notice.

31. A defendant may by notice to the opposite party to be given or served at least six days before the day appointed for the trial of the action, admit the truth of any statement of his liability for any alleged negligence, act or omission as set forth or contained in the plaintiff's statement or particulars of claim in the action, and after such notice, the plaintiff shall not be allowed any expense thereafter incurred for the purpose of proving the matters so admitted. R.S.O. 1897, c. 160, s. 31.

Where time
expires on
a holiday.

32. Where the time for doing any act, taking any proceeding, or giving any notice under or required by this Act expires on a holiday such act, or proceeding, or notice shall, so far as regards the time of doing, taking or giving the same, be held to be duly and sufficiently done, taken or given, if done, taken or given, on the day next following which is not a holiday. R.S.O. 1897, c. 160, s. 32.

Forms and
rules.

33. In an action brought in any Court to recover compensation under this Act, the forms and methods and the rules and orders in force in the Court shall, subject to and save as otherwise provided by this Act, apply to and regulate all matters of pleading, practice and procedure in such action, and notwithstanding anything in this Act contained, the forms and methods and the pleadings, practice and procedure in any such action shall conform to and be regulated by any rules or orders in that behalf hereafter lawfully and duly made or prescribed with respect to actions brought in such Court. R.S.O. 1897, c. 160, s. 33.

Burden of
proof.

34. Where

- (a) the machinery or other plant or works of or in a factory, or any part of such machinery, plant or works through or by reason of which the injury complained of was inflicted or occasioned or alleged to have been inflicted or occasioned is or are, by *The Factory, Shop and Office Building Act* or any other Act of this Legislature, or of the Parliament of Canada, required to be covered, guarded, protected or suitably enclosed in whole or in part or to be of a special or particular kind or quality or to be kept in a particular or specified state or condition; or
- (b) dangerous structures or places or openings in or in connection with a factory are required by law to be kept securely guarded or protected or suitably enclosed as far as practicable, or to be

Rev. Stat.
c. 226.

kept in some particular state or condition, or that facilities for so keeping them or any of them shall be provided; or

- (c) any part of a railway or railway track or railway bridge or other structure is required to be of a certain kind or character or to be constructed or kept by the company in any particular or specified way or manner as provided or contemplated by this Act or by *The Ontario Railway Act*, or by any other Act of this Legislature, or of the Parliament of Canada, Rev. Stat c. 185.

then upon any trial or arbitration under this Act for the recovery of damages for injury to a workman arising out of the neglect or alleged neglect on the part of the person or company required to keep such machinery, buildings, structures, dangerous places, and railway track or structures in such a state, condition or manner or of the kind, character or quality before mentioned and as it is provided or contemplated by those Acts, and it is or becomes material to the issue on the trial or arbitration, the onus of proving that the same were so kept or in such condition or that facilities were provided for so keeping the same as the case may be or as the Act or Acts require, shall be upon the party to the action whose duty it was under any of the Acts to so keep such machinery, works, plant, dangerous places or any part thereof, or railway tracks or works and structures or any part thereof as by those Acts or any of them is required or provided. 62 Vict. (2), c. 18, s. 3.

PART II. ARBITRATION.

35. Notwithstanding anything in Part I., except where the claim is in respect of an injury resulting in death, all claims for damages under this Act may be disposed of by arbitration as herein provided. Settlement of claims under part I by arbitration. 62 Vict. (2), c. 18, s. 4.

36. Proceedings under this Part by way of arbitration shall be begun and carried on in the county or district in which the accident happened or the injury was occasioned. Venue for proceedings under Act. 62 Vict. (2), c. 18, s. 5.

37. If the action is begun in a County Court, all applications may be made to the Judge of the Court instead of to a Judge of the Supreme Court in Chambers, and the Judge of the County Court shall have the same power and authority as a Judge of the Supreme Court in Chambers in respect of such applications, but the respondent shall not be entitled, where notice of arbitration is given and the amount claimed is within the jurisdiction of the County Court, to apply for an order directing that the proceedings shall be by action. Applications to judge of county court. 62 Vict. (2), c. 18, s. 6.

Notice of
arbitration.

38.—(1) If a workman claiming compensation for injuries under this Act desires to proceed by arbitration under this Part, he shall within four months from the date upon which such injuries were sustained serve a notice, Form 1, upon the person whom he claims to be liable, stating that his claim will be submitted to arbitration unless notice of objection is given as hereinafter provided.

Notice of
objection.

(2) If an employer objects to an arbitration he shall within ten days after the service upon him of such notice serve notice, Form 2, that at a time therein named, which shall not be more than eight days from the date thereof, he will apply to a Judge of the Supreme Court in Chambers for an order that any proceedings in respect of such injuries shall be by action and not by arbitration, and the Judge on hearing such application may in his discretion direct that proceedings are to be carried on by action on any of the following grounds:—

- (a) If he finds that difficult questions of law not already judicially determined are likely to arise during the proceedings, or
- (b) If it is made to appear that complicated questions of fact, difficult of determination, are likely to arise on the arbitration, and which should in his opinion be determined in an action and not by arbitration, or
- (c) If the Judge of the County Court is for any reason or cause disqualified, and there is no Junior Judge.

Extension
of time.

(3) The Judge may by such order extend the time for commencing an action as he may deem proper.

Consent to
arbitration.

(4) Unless such notice of objection is given within ten days after the service on him of a notice of arbitration under subsection 1 the employer shall be deemed to consent to an arbitration, but where it is shown to the satisfaction of the Judge that the failure to give notice of objection was due to mistake, inadvertence, or oversight, or that there are other sufficient grounds, he may upon such terms as he may deem just, enlarge the time for giving such notice and such enlargement may be ordered although the application for the same is not made until after the expiration of the prescribed time. 62 Viet. (2), c. 18, s. 7.

Application
by defendant
in action to
have matter
disposed of by
arbitration.

39.—(1) Where proceedings are begun by action instead of by notice of arbitration, the defendant may apply to a Judge in Chambers for an order directing that the proceedings shall be taken and carried on by arbitration and not by action.

Order of Judge.

(2) The Judge to whom the application is made, if he is of opinion that the cause of action can be more conveniently

disposed of by arbitration than by action, and that the same should be disposed of by arbitration rather than by action, shall so order, and in that case no further proceedings shall be had in the suit or action, but proceedings shall be initiated and carried on by way of arbitration.

(3) The Judge may dispose of the costs of the action up to the date of the order, or may direct that such costs shall be in the discretion of the arbitrator. 62 Vict. (2), c. 18, s. 8. Disposition as to costs.

40. Either the issue of a writ or a notice of arbitration under this Part shall be a sufficient commencement of the action and a sufficient compliance with section 9, whether the proceedings are afterwards carried on by arbitration or by action. 62 Vict. (2), c. 18, s. 9. Commencement of action. Rev. Stat. c. 000.

41. Nothing in this Act contained shall dispense with the notice of injury required to be given by sections 9, 13 and 14. 62 Vict. (2), c. 18, s. 10. Notice of injury to be given.

42.—(1) In case the proceedings are to be by way of arbitration the claimant shall obtain an appointment from the Judge of the County Court of the county or district in which the injury was received, and shall serve a copy of such appointment upon the respondent, together with a notice, Form 3, of the time so appointed; and the Judge by the appointment shall name a day, hour and place, for proceeding with the hearing and such day shall be fixed with a view to as early a disposal of the case as appears practicable. Arbitration proceedings.

(2) If the claimant does not proceed with the arbitration with reasonable speed the respondent may obtain an appointment from the Judge of the County Court for the hearing and disposal of the case at a time to be named in such appointment and shall serve a copy of the appointment on the claimant; and on proof of such service the Judge may at the time appointed proceed with the hearing and make such disposal of the matter as may appear just. 62 Vict. (2), c. 18, s. 11. Right of respondent to expedite proceedings.

43.—(1) Where an order is made directing that the liability of the respondent to pay compensation to the claimant shall be determined by action, all proceedings upon the arbitration shall be stayed upon the filing of the order with the Clerk of the County Court and service thereof upon the claimant. Proceedings to be stayed.

(2) The claimant if he desires in such case to proceed shall do so by action. 62 Vict. (2), c. 18, s. 12. Right of action.

44. Within eight days after the notice to the respondent of the day upon which the arbitration will be proceeded with the respondent shall file with the Clerk of the County Court his statement of defence, Form 4, in which he may set up any Statement of defence.

defence which would be open to him upon the trial of an action in the Supreme Court, and shall serve a copy thereof upon the claimant. 62 Viet. (2), c. 18, s. 13.

Judge of another county may act on request.

45.—(1) If the Judge of the County Court is for any reason disqualified from acting or if he desires not to act, he may request some other Judge of a County Court to act for him, and the Judge acting on such request shall have all the jurisdiction conferred by this Act; and no act of such Judge shall be open to question on the alleged ground that he was not the proper Judge to perform the duty or that the same had not been regularly or otherwise assigned to him or had not been performed at such request or by such direction as the law requires.

Idem.

(2) When an application is made to a Judge of the Supreme Court in Chambers under section 37, he may direct that the Judge of the County Court of another county shall hear the arbitration; and in such case the travelling expenses of the Judge may be paid out of any moneys appropriated by this Legislature for that purpose. 62 Viet. (2), c. 18, s. 14.

Pleadings limited.

46. No pleadings or documents in the nature of pleadings shall be necessary where the matter is proceeded with by arbitration other than the notice of arbitration and the statement of defence hereinbefore mentioned. 62 Viet. (2), c. 18, s. 15.

Witnesses and evidence.

47.—(1) In any proceedings under this Act a Judge of the County Court may compel the attendance of witnesses and the production of documents in the same manner and to the same extent as in an action in the County Court and shall possess the same powers in respect of all such proceedings as he would possess in an action in such Court and the claimant or respondent shall have the same right to examine the opposite party for discovery or otherwise, and the Judge shall have the same power to direct the examination of witnesses by commission as in such an action.

Subpœnas.

(2) Subpœnas for witnesses may be issued out of a County Court on præcipe. 62 Viet. (2), c. 18, s. 16.

Employment of shorthand reporter.

48. If the parties so desire or the Judge so directs the evidence may be taken by a shorthand writer; and the cost of such shorthand writer shall be borne by the parties equally unless the Judge otherwise directs, and copies of evidence shall be paid for on the scale allowed to special examiners in proceedings in the County Court. 62 Viet. (2), c. 18, s. 17.

Referring questions of law.

49. A Judge of the County Court may submit any question of law for the decision of a Judge of the

Supreme Court in Chambers or the Court; and the decision of such Judge on any question of law, so submitted shall be final. 62 Vict. (2), c. 18, s. 18.

50.—(1) The costs of and incidental to the arbitration ^{Costs.} and proceedings connected therewith shall be on the scale allowed in actions in the County Court and shall be subject to taxation in the same manner; and in all cases shall be in the discretion of the Judge.

(2) The Judge may fix the costs of the arbitration or of any other proceedings before him as between the parties instead of directing taxation thereof, and he may also fix the costs as between the solicitor of either party and his client on the application of either. 62 Vict. (2), c. 18, s. 19. ^{Powers of Judge as to.}

51. The Judge of the County Court shall make his award in writing, Form 5, and upon the filing of the same with the Clerk of the Court it shall become and be a judgment of the Court and execution may be issued thereon in the same manner as on a judgment in an action. 62 Vict. (2), c. 18, s. 20. ^{Effect of award.}

52. Where the amount of compensation payable under Part I. has been ascertained by agreement between the parties a memorandum of such agreement shall be delivered or sent by registered post to the Clerk of the County Court, who shall, on being satisfied as to its genuineness record such memorandum in a special register upon payment of a fee of \$1 and thereupon such memorandum shall for all purposes become and be a judgment of the Court and shall be enforceable as a judgment, but a Judge of the Court may at any time rectify such register. 62 Vict. (2), c. 18, s. 21. ^{Agreement as to compensation.}

53.—(1) The duties by this Act imposed upon a Judge of a County Court and upon the Clerk and other officers of such court shall be part of their duties as officers of the Court, and no fees shall be payable to the Judge except a fee of \$10, or to any officer of the Court in connection with any arbitration other than the ordinary fees in an action in the County Court as for similar work. ^{Duties of Judges and officers of courts.}

(2) Any sum awarded or agreed upon as compensation shall be paid on receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him or to claim a lien on or to deduct any amount for costs from the said sum awarded except such sum as may be awarded by the Judge on an application, Form 6, made by either party to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation if the Judge so directs. 62 Vict. (2), c. 18, s. 22. ^{Payment of sum awarded.}

Appeal.

Rev. Stat.
c. 59.

54.—(1) Any party to an arbitration under this Part may appeal from the decision of the arbitrator to a Divisional Court, and sections 38 to 46 of *The County Courts Act* shall, so far as applicable, apply to such appeals.

Remitting
matter to
Judge of
County Court.

(2) The Court shall also have power on hearing any such appeal, to remit the matter for the re-consideration of the Judge. 62 Viet. (2), c. 18, s. 23.

Rules.

Rev. Stat.
c. 56.

55.—(1) The Judges of the Supreme Court shall have the same authority to make Rules of Court with respect to proceedings under this Part as under *The Judicature Act* they have with respect to procedure in the Supreme Court.

Practice in
cases unpro-
vided for.

(2) Until provision is made in that behalf in any matters which are unprovided for by this Part, the rules of practice applicable to proceedings in the County Court shall, as nearly as may be, be followed. 62 Viet. (2), c. 18, s. 24.

Amount
recoverable.

56. In any arbitration under this Part the claimant shall not be limited to the amount recoverable in an action in the County Court, but may recover the same amount as is provided in case of actions under Part I. 62 Viet. (2), c. 18, s. 25.

Arbitration
optional.

57. Nothing in this Part shall oblige a claimant to proceed by way of arbitration, but he may bring an action if he deems fit. 62 Viet. (2), c. 18, s. 26.

Rev. Stat.
c. 65 not to
apply.

58. *The Arbitration Act* shall not apply to an arbitration under this Part. 62 Viet. (2), c. 18, s. 27.

Use of forms.

59. The forms appended to this Act with such variations as may be necessary may be used by any party to an arbitration. 62 Viet. (2), c. 18, s. 28.

FORM 1.

(Section 38 (1).)

NOTICE OF ARBITRATION BY AN INJURED WORKMAN WITH RESPECT TO
THE COMPENSATION PAYABLE TO HIM.

In the County (or District) Court of the County (or District) of

In the matter of *The Workmen's Compensation for Injuries Act.*

Between

A.B.

Claimant,
and

C.D. & Co., Limited,

Respondents.

Take notice that A.B. proposes to submit to arbitration his claim for compensation under the said Act, in respect of personal injury caused to him by accident arising out of and in course of his employment.

If you object to an arbitration you are to notify A.B. of such objection within ten days from the service of this notice upon you otherwise you will be deemed to have assented to such arbitration and the same will be proceeded with at such time as may be appointed by the judge of the county court of the county of the arbitrator in this matter.

Particulars are hereto appended (or annexed).

PARTICULARS.

1. Name and address of injured workman.
2. Name, place of business and nature of business of respondents.
3. Nature of employment of workman at time of accident, and whether employed under respondents or under contractors with them. (If employed under contractors, who are not respondents, name and place of business of contractors to be stated).
4. Date and place of accident, nature of work on which workman was then engaged, and nature of accident and cause of injury.
5. Nature of injury.
6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.
7. Average weekly earnings during the 12 months previous to the injury, if the workman had been so long employed under the same employer, or, if not, during any less period during which he had been so employed.
8. Estimated average amount which the workman is able to earn after the accident.
9. Payments not being wages received from employer in respect of the injury during the period of incapacity.
10. Amount claimed as compensation.
11. Date of service of statutory notice of accident on respondents. (*A copy of the notice to be annexed.*)
12. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:
Of the applicant,
Of his solicitor,

The names and addresses of the respondents to be served with this application:

Dated this day of

(Signed),

Claimant.

or

Claimant's Solicitor.

FORM 2.

(Section 38 (2).)

NOTICE OF OBJECTION TO ARBITRATION.

(Heading as in Notice of Arbitration.)

Take notice, that a motion will be made before the presiding Judge in Chambers at Osgoode Hall Toronto, (or as the case may be) on the day of next, at the hour of o'clock in the forenoon, or so soon thereafter as the application can be heard, for an order directing that any proceedings in this matter be by action and not by arbitration. The application is made on the following grounds:

(Here state grounds.)

FORM 3.

(Section 42 (1).)

NOTICE TO RESPONDENT OF DAY UPON WHICH ARBITRATION WILL BE PROCEEDED WITH.

(Heading as in Notice of Arbitration.)

TAKE NOTICE: That the Judge of this Court will proceed with the arbitration herein, at on the day of at the hour of o'clock in the noon; and that if you do not attend either in person or by your solicitor at the time and place above mentioned such order will be made and proceedings taken as the judge may think just and expedient.

And further take notice that if you wish to disclaim any interest in the subject-matter of the arbitration, or consider that the particulars are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the judge, or intend to rely on any fact, or to deny, wholly or partially, your liability to pay compensation under the Act, you must file an answer, stating your name and address and the name and address of your solicitor, if any, and stating that you disclaim any interest in the subject-matter of the arbitration, or stating in what respect the particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the judge, or on which you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

Such answer, together with a copy thereof for the judge, and a copy for the applicant and for each of the other respondents, must be filed with the Clerk of the Court 5 clear days at least before the day of

If no answer is filed and subject to such answer, if any, the particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of

To

of

(Signed),

Claimant.

or

Claimant's Solicitor.

FORM 4.

(Section 44.)

ANSWER BY RESPONDENTS.

(Heading as in Notice of Arbitration.)

Take notice that the respondents, C.D. & Co., Limited, intend, at the hearing of the arbitration, to give in evidence and rely on the following facts:—

That no notice of the alleged action was given to the respondents as required by section 13 of *The Workmen's Compensation for Injuries Act*;

That the claim for compensation with respect to the alleged accident was not made within twelve weeks from the occurrence of the accident;

or

That the respondents, C.D. & Co., Limited, deny their liability to pay compensation under the above mentioned Act in respect of the injury to A.B., mentioned in the Claimant's particulars, and that the grounds on which they deny their liability are:—

That the employment of the said A.B. was not an employment to which the said Act applies;

or

That the said injury to the said A.B. was not caused by accident arising out of and in the course of his employment;

or

Any other ground of defence.

FORM 5.

(Section 51.)

AWARD.

*In case of application by workman.**(Heading as in Notice of Arbitration.)*

Having duly considered the matters submitted to me, I do hereby make my award as follows:—

1. I order that the respondents, C.D. & Co., Limited, do pay to the claimant, A.B., the sum of _____ as compensation for personal injury caused to the said A.B., on the _____ day of _____, by accident arising out of and in the course of his employment as a workman employed by the said C.D. & Co., in (state nature of employment).

2. And I order that the said C.D. & Co. do pay to the claimant, (or as the case may be) his costs of and incident to this arbitration such costs in default of agreement between the parties as to the amount thereof, to be taxed by the clerk _____ on the scale of costs in use in the county courts, and to be paid by the said C.D. & Co. to the claimant (or as the case may be) within 14 days from the date of the certificate of the result of such taxation (or if the judge fixes the costs or the parties agree upon them, this form to be adapted).

Dated this _____ day of _____

Judge.

FORM 6.

(Section 53 (2).)

NOTICE OF APPLICATION FOR DETERMINATION OF AMOUNT OF COSTS.

In the County (or District) Court of holden at

(Title as in Award or Memorandum.)

TAKE NOTICE: That I intend to apply to the judge at
on the day of at the hour of
 o'clock in the noon, to determine the amount
of costs to be paid to me as solicitor (or agent) for you A.B. in
the above mentioned matter; and for an order declaring that I am
entitled to a lien for such amount on or to deduct such amount from
the sum awarded as compensation to you the said A.B. in
the above mentioned matter and for consequential directions.
Dated this day of

Applicant.

To the Clerk of the Court
and to
A.B.
of