History of California Labor Legislation, 1910 - 1930.

Chapter VI.

Workmen's Compensation Legislation.

Status of Employers' Liability in 1910.

The conditions in California prior to the enactment of the Roseberry law of 1911 had been such as to permit of remarkably few recoveries for damages arising out of injuries sustained by employees.* The state had expanded so rapidly in an industrial

*Eaves, Lucile, A History of California Labor Legislation, pp. 261-286.

way that its laws regulating the relationship of employer and employee had lagged behind and were far from adequate. Not more than a very few of the injured workmen received any damages from employers or insurance carriers and, to make matters worse, most of the damages collected were paid out for lawyer's fees and court costs, to say nothing of the countless delays entailed in the process of making settlements. Down to 1907 in California all of the common law defenses of the employer had remained practically unimpaired. These defenses were three in numer. (1) If the injured employee had contributed by his own negligence to the cause of the injury, no liability on the part of the employer existed. (2) If the negligence of a fellow servant had contributed to the cause of the accident, no damages could be collected. (3) If the injury had arisen out of the ordinary hazards of the occupation and if the worker had known of these hazards, it was held that he

assumed the risks of employment, and therefore, the employer was not liable for damages. The limitations made in 1907 on the common law defenses were as follows: first, the employer was made responsible for the negligence of a co-employee who had the right to direct the person injured, and second, the fellow servant ruling was not longer to apply to employees working in different departments, or on some other machine, or appliance than that where the injured employee was working.*

*Cal. Stats. 1907, pp. 119-120.

During the 1909 session of the California Legislature four attempts were made by organized labor to further curb, or entirely remove, the common law defenses under employers' liability. Each of the bills introduced pertaining to the subject, however, was allowed to die in the committees to which they had been referred.*

*Final Calendar of the Legislature, 1909, pp. 93, 103, 112, and 389

Up to 1910 there had been no attempt in California to have introduced into the state a workmen's compensation law. Workmen's compensation represents a change of viewpoint from employers' liability. According to Thomas I. Parkinson, "The distinguishing feature of a workmen's compensation act is that it establishes a legal obligation on the part of the employers to pay or to provide for the payment of a fixed or readily determinable sum in relief of the loss of income sustained by employees or their dependents by reason of industrial accidents arising out of their employment".*

**"Problems and Progress of Workmen's Compensation Legislation" American Labor Legislation Review, Vol 1, p. 55, (Jan. 1911)

"The Agitation for Workmen's Compensation Legislation."

A movement to secure the enactment of compensation laws in the United States began in 1909, when commissions were appointed in New York, Wisconsin and Minnesota to investigate industrial accidents and employers' liability, and to suggest remedial legislation.* New York was the first state to secure results. It passed

*Ibid., p. 56.

two compensation acts in 1910. One, a compulsory act applying to specified occupations was declared unconstitutional in the first case tried under it, in March 1911.* The other, an elective

*Ives vs S. Buffalo R. R. Co. 124 N. Y. Supp. 920 (1910)

act, stood as a dead letter, only one employer having elected to come under it prior to 1911.

Although the adverse decision of the New York court came as a severe blow to contemplated legislation in other states, the movement for workmen's compensation had gained such a momentum that it could not be stopped.

At the annual convention of the American Federation of Labor in 1910 a model Employer's Liability and Workmen's Compensation bill was drafted and it was recommended that all state federations attempt to secure the legislation in their respective states.*

*The California State Federation of Labor endorsed this recommendation and pledged itself to work for the enactment of the model bill. ("Report of Committee on Law and Legislation", Proceedings of the 11th Annual Convention of the California State Federation of Labor, Oct. 3-7, 1910, p. 28.

In the National Republican Platform of 1910 there was placed a declaration of the party's attitude toward the subject of workmen's compensation. One of the plants stated that the party was in favor of "an Employers' Liability act which shall put on industry the charges of its risks to human life and limb along the lines recommended by Theodore Roosevelt". To carry out this provision of the platform, Chairman Lissner of the Republican State Central Committee of California appointed a committee to draw up such a measure. But it developed that Senator L. H. Roseberry of Santa Barbara was especially interested in the subject of employers' liability and so the drawing up of a tentative measure to be presented to the legislature was largely left to him.*

*Hichborn, Franklin, Story of the Session of the California Legislature of 1911, p. 236.
The measure finally presented by Senator Roseberry was a copy of the draft of what was later to be Wisconsin Compensation Act.

The Passage of the Roseberry Act.

Governor Hiram W. Johnson was firmly committed to the principle of workmen's compensation as is shown by his inaugural address given in January of 1911.* The legislators were also in fav-

*Governor Johnson stated, "In this state all parties stand committed to a just and adequate law whereby the risk of the employment shall be placed not upon the employee alone, but upon the employment itself. Some new legal questions will be required

to be solved in this connection, and the fellow servant rule now in vogue in this state will probably be abrogated and the docterine of contributary negligence abridged."

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or of seeing to it that the injured workers of the state were given better protect ion under the law. It is therefore, easy to see shy no great difficulty was experienced in getting enacted the compensation measure which was introduced in the 1911 Legislature. Even the employers in the state did not actively oppose the passage of the bill.* The only difficulty encountered was a disagree-

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*According to a pamphlet entitled "Employers' Liability and Workmen's Compensation in California", published by the Western Branch of the Aetna Life Insurance Company, in 1911, pp. 7-8, "There was no central trade or industrial association of employers, capable of dealing with legislative questions of this magnitude. On the other hand the labor unions had investigated the subject, determined their desires, and were ina position to present their full strength to the legislature in favor of their demands. The bill (The Roseberry measre) passed with less opposition than most similiar bills have met in other states."

Professor Ira B. Cross, writing in 1914, stated, "The legislature of 1911 was fairly progressive in its point of view, and a mere handful of people interested in the subject easily succeeded in obtaining the passage of the bill" (Workmen's Compensation in California", The American Economic Review, Vol. 4, p. 454.) June1914

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ment between the labor forces and the conservative members of the legislature regarding one of the clauses of the bill.

Mr.Hichborn* describes the passage of the Roseberry Employers'

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*Hichborn, Franklin, Story of the Session of the California Legislature of 1911, pp. 237-245.

Liability and Workmen's Compensation bill in the following concise manner: "...Various labor organizations had instructed their representatives at Sacramento that they recommended 'the passage of the Employers' Liability bill submitted by the American Federation of labor and none other'."

"On the other hand, some of the members of the Legislature hesitated about abrogating the doctrine of 'assumed risk" and 'fellow servant rule", while others, yielding these points, insisted that the doctrine of 'contributory negligence' be left unchanged."

"With such difference, a situation rapidly developed which, for the moment, threatened the enactment of any employers' liability legislation at all."

"Nevertheless, two important employers' liability measures were introduced, the Roseberry bill (S.B. 14)and the Kehoe bill (A.B. 1469).*"

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*Both measures were finally passed by the Legislature but they conflicted with each other in some respects. As the Kehoe bill merely provided for compensation on railroads, Governor Johnson believed that the Roseberry bill was the better measure of the two, and consequently, signed only the latter bill.

...."As originally drafted the Roseberry bill provided for the abrogation of the doctrines of 'assumed risk' and of "fellow servant rule", but the doctrine of contributory negligence" was left intact. The labor representatives objected to this latter provisions and the whole contest over the bill shifted to this point.* ...A Compromise was finally reached by which the 'doctrine

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*The Labor Clarion, February 17, 1911, p. 8. also gives an account of this contest.

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of comparative negligence' (*) was substituted for contributory negligence."

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*According to this rule the jury was to compare the evidence of both litigants as to the cause of the accident. If the employer

was found to be more to blame than the injured worker, then he was to bear the shock of the accident; if the worker was more to blame, then the employer was to be freed from part of the damages, the amount depending upon the negligence attributable to the employee.

With the adoption of this amendment, the labor forces got behind the bill and it passed in both the Senate and the Assembly without a dissenting vote.

Organized labor felt that the Roseberry law was perhaps the most important labor legislation enacted in 1911.*

*See "Summary and Comment on Labor Legislation", Proceedings of the 12th Annual Convention of the California State Federation of Labor. October 2-6, 1911, p. 80.

We shall not discuss the Roseberry law in detail for it was admittedly a tentative measure and although some of its provisions are still effective, the law has been largely superceded.* The statute was divided into two parts. The first related to employers'

*A. J. Pillsbury, first Chairman of the Industrial Accident Commission, said of the measure, "The Roseberry law was crude and tentative only, elective in its terms, and sufficed mainly to enable the people of California to become familiar with the compensation idea as applied to industry and to make it possible for the then Industrial Accident Board to make such investigations and preparations as were necessary for the formulation of a more adequate and compulsory compensation law. "An Adventure in State Insurance", The American Economic Review, Vol 9, p. 681 (Dec. 1919)

liability and the second embodied the compensation provisions of the law. The sections dealing with employers' liability modified the doctrine of contributory negligence by changing it to one of comparative negligence and they also abolished the common law doctrine of the assumption of risk and of the fellow servant rule. It was made illegal for any employer by an contract, rule, or reg-

ulation to obtain from his employee a waiver of liability which would impair the employee's rights under the act. The remaining sections had to do with liability for compensation for industrial injuries without regard to negligence. The liability was strictly limited, however, by the provisions of the act and did not, in any case, purport to be a full reparation for the injury sustained, but only a limited insurance designed to tide the injured person over his period of adversity. Every employer in the state was to be under one or the other of the two provisions of the act, and no one could be under both. The compensation provision was made elective and although the cost of carrying compensation insurance was high, there would be some inducement to come under this provision as the liability in case of accidents would be fixed and definite.

An important feature of the statute was the introduction of a new principle of administration in the form of an Industrial Accident Board, with power to decide all disputed questions under the act. A review of the board's awards could be had by taking the matter into the superior courts of the state, but this could be done only within thirty days following the date of the award. However, the award could be set aside only when (1) the board acted without or in excess of its powers, (2) when the award had been procured by fraud and (3) when the findings of fact by the board did not support the award.*

*Cal. Stats. 1911, Ch. 399.

More will be said regarding the provisions of the Roseberry law in the chapter on Administration of the Workmen's Compensation Law.

The Constitutional Amendment.

Besides enacting the Roseberry law in 1911, the legislators introduced and adopted a constitutional amendment pertaining to the subject of workmen's compensation. This was done in order to safeguard the validity of such legislation. It was believed, in the light of the New York Court of Appeals' adverse decision of March 1911, that compensation could not be made compulsory unless it was specifically provided for by the state constitution.

No difficulty was encountered in getting the amendment (S.C. A. No. 32) adopted by the legislature. The Senate approved by a unanimous vote and the Assembly by a count of fifty-four to three.*

*Final Calendar of the Legislature, 1911, p. 305.

It was put before the people to decide whether or not they wished to ratify the proposal.*

*The proposed amendment authorizing workmen's compensation was as follows:
"The Legislature may be appropriate Legislation createand enforce a liability on the part of all employers to compensate their employees for any injury incurred by the said employees in the course of their employment irrespective of the fault of either party. The Legislature may provide for the settlement of any disputes arising under the legislation contemplated by this section, by arbitration, by an industrial accident board, and by the courts, or either of these agencies, anything in this Constitution to the contrary notwithstanding." (Section 21, Article XX)

The workmen's compensation amendment was to come before the people for a vote on October 10, 1911. Very little attention was devoted to the measure as stress was laid at that time upon a proposal referring to woman suffrage.* Organized labor, however,

did agitate for its ratification.* The Commonwealth Club of Cal-

*See Labor Clarion, September 1, 1911, p. 10; Coast Seamen's Journal, May 17, p. 1, August 16, 1911, p. 6.

ifornia, also investigated the subject and published reports, both for and against the amendment, the reports having been presented at a special meeting held May 10, 1911, in San Francisco.*

*"Employers' Liability", Transactions of the Commonwealth Club of California, June 1911.

Inasmuch as the state was experiencing a wave of progressivism the workmen's compensation amendment was adopted by an overwhelming majority of 82,312 votes.* The way was now paved for the

*The final count showed 147,567 in favor and 65,255 against the measure. "Report on Election Returns", Proceedings of the 12 Annual Convention of the California State Federation of Labor, October 2-6, 1911, p. 109.

introduction of a thorough-going and extremely comprehensive compulsory compensation measure which had been carefully prepared by the Industrial Accident Board.*

*The Industrial Accident Board was assisted by certain committees of public organizations among which was the Commonwealth Club. Much valuable publicity was also given to the measure through two special meetings held by the club at which prominent men of the state debated the subject of workmen's compensation. "Industrial Accidents Bill", Transactions of the Commonwealth Club of California, April 1913

The Boynton Compensation Law of 1913.

As previously stated, the Roseberry act was purely experimental. It was "crude and tentative, elective in its terms,"

and served mainly to enable the people of California to become familiar with the compensation idea as applied to industry. During the two and a third years of the life of the Roseberry law most of the time of the Industrial Accident Board was spent in preparing and making ready for presentation to the legislature a draft for an adequate and compulsory workmen's compensation act.*

*See Industrial Accident Board of California, Program for Workmen's Compensation Legislation, 1913, 16 p.

The members of the Industrial Accident board made a study of the literature of all the compensation insurance systems then in existence and held conferences with the heads of large liability insurance concerns of the East in order to acquaint themselves with the insurance side of the problem. It was decided that the state should enter the insurance business and furnish compensation protection for employers on a competitive basis with other insurance carriers. Inasmuch as the employers would be compelled to take out insurance it was hoped that this state competition would keep the rates down. The idea was borrowed from New Zealand.*

*Pillsbury, A. J., "An Adventure in State Insurance" American Economic Review, Vol 9, p. 682 (Dec 1919)

When the Legislature convened in 1913 the bill was ready for presentation. It was entitled "The Workmen's Compensation, Insurance and Safety Act" and was introduced by Senator Boynton. Governor Johnson had shown that he was heartily in favor of the proposed law,* and all of the labor organizations of the state

*Johnson, Hiram W., Biennial Messiage to the Legislature, January 6, 1913, pp.11-11

endorsed it.*

*"Report on Labor Legislation", Proceedings of the 14th Annual Convention of the California State Federation of Labor, October 6-11, 1913, p. 93; also "Petition of the San Francisco Labor Council", Assembly Journal, March 11, 1913, p. 553.

Almost immediately, however, opposition to the bill developed in all parts of the state. The principal source of the objection was from insurance companies doing an industrial accident business. Such companies started a state-wide campaign against the provisions of the measure.* Arguments against the bill were published

*Labor Clarion, February 21, 1913, p. 8.

and widely circulated.* According to Mr. Pillsbury, the chief arguments advanced were, (1) that the sinsurance field belonged to private enterprise, (2) that politics would inevitably get into the management of the fund and so hopelessly injure it, (3) that the state fund would get the bad risks and the insurance companies the good ones, (4) that private enterprise could do business cheaper than the state, and (5) that it was unjust for three commissioners, whose duty ti was to sit in judgement over controversies between injured persons and insurance compaines, also to sit as a board of directors in the operation of an insurance concern in competition with such other private carriers.*

*Pillsbury, A. J., "An Adventure in State Insurance" American Economic Review, Vol. 9, pp. 684-686, Dec. 1919

The farmers also took up the fight against the passage of

the Boynton Bill.* Petitions from them flooded the Legislature.

*According to Mr. Hichborn, "A cleverly conducted campaign on the part of the industrial insurance companies had stirred up opposition in the farming communities against the workmen's compensation act....The farmer were led to believe that the provisions of the bill meant ruin for them." (Story of the Session of the California Legislature of 1913, pp. 128, 347.)

They claimed that if the law were enacted, farmers would be forced to carry heavy insurance which could not be shifted to the consumers as the products were sold in the world's market without regard to cost of production. It was further argued that depreciating land values would be the result and thus general hardship would be experienced by all.* The sponsors of the compensation

*See petition of the State Fruit Growers' Association, Assembly Journal, January 14, 1913, pp. 114-115.

bill finally agreed to amend the measure so that agricultural, horticultural and related farming occupations would be exempt from its provisions.

The San Francisco Chronicle and the Los Angeles Times kept up a continual condemnation of the proposed bill. One of the favorite editorial arguments was that the measure was "freak" legislation and that it would cost the state many millions of dollars.*

*See either paper, almost any date between Apr. 3 and May 26, 1913.

In spite of all objections, however, the progressive legislature was determined to enact the measure. The lawmakers were

encouraged throughout the entire fight by Governor Johnson as well as the united labor forces of the state. The bill passed the Senate April 28, by a count of thirty to five and by the Assembly, just three days before adjournment, with a vote of fifty-five to thirteen. On May 26th the Compensation, Insurance and Safety act was signed by the governor.*

*Final Calendar of the Legislature, 1913, p. 300.

Mr. Pillsbury vividly described the victory in the following way: "It was what Governor Johnson regarded as a 'bully fight'. The corridors of the Capital building swarmed with insurance men, all their knives whetted to a keen edge and with bloody-minded intent upon killing the bill if they could consumate its death, but at all events to do it bodily harm. They did neither. They were beaten at every point and were able to make almost no change at all in the text of the measure as submitted to the legislature by the then Industrial Accident Board. The bill passed both houses with large majorities, was signed by the governor, and went into effect January 1, 1914."*

*"An Adventure in State Insurance", American Economic Review, Review, Vol. 9, p. 683. (Dec. 1919)

Mr. Paul Scharrenberg, then as now, Secretary-Treasurer of the California State Federation of Labor, said, "If everything had been denied to labor except the one big measure known as the workmen's compensation bill, the workers of California would still be able to congratulate themselves upon a long forward step... This is the greatest achievement of the fortieth session of the

legislature."*

*"California Legislature's Work", Coast Seamen's Journal, May 21, 1913, p. 8.

The Compensation act of 1913* was composed of ninety-two

*Cal. Stats. 1913, Ch. 176.

sections, with scores of sub-sections and sub-divisions. Because of its great length and complexity it is advisable merely to summarize the main features of the statute at this point. Other Provisions will be brought out in connection with the administration of the act in the chapter following.

Although the statute dealt with three subjects, compensation, insurance and safety, it may be divided into five parts for the purpose of discussion.

Sections 3 to 11, inclusive, authorized the formation of an Industrial Accident Commission, and outlined its plan of organization and general powers.

Sections 12 to 35, inclusive, pertained to the subject of compensation. The principle of compulsory compensation for industrial accidents was established amd made applicable to all employees, except those engaged in farm, dairy, agricultural, viticultural or horticultural labor, in stock or poultry raising or in household domestic service, or in casual labor. For all employees, except the excluded classes, the right to compensation was made the only remedy of an employee as the result of an industrial accident unless he was injured through the gross negligence of the employer. In the latter case the employee might

sue at law for damages. On the other hand, however, if the accident were caused by the wilful misconduct or intoxication of the employee, he should be denied compensation. The schedule of compensation was fixed as follows: All medical care during the first ninety days after the accident should be furnished. The injured employee should receive nothing other than medical attention during the first two weeks of his disability.* After that time, if temporarily disabled, he should receive sixty-five percent of his loss of earnings during disability. If permanently disabled, he should receive compensation computed on the basis of his earning power. If killed, those dependent upon him should, with certain limits, receive three times his average annual earnings. Section 17 established the method of computing earnings. Sections 22 to 28 dealth with the manner of procedure before the Industrial Accident Commission in connection with the settlement of disputes.

Sections 36 to 50, inclusive, pertained to the subject of insurance. Insurance against industrial accidents was not compulsory. The employer might insure in a mutal company, in a private stock company, or in the state compensation fund, or if he desired to do so, he might carry the risk himself. A self-supporting fund was created which was to be administered by the Industrial accident Commission for the purpose of insuring those employers who should choose to take out policies with the state.*

*It was this latter provision which caused the private insurance companies to oppose bitterly the enactment of the statute.

Sections 51 to 72, inclusive, gave the Commission power to make and enforce safety rules and regulations, to prescribe safety

devices, to fix safety standards and to order the reporting of accidents. There was also provision for the review of the safety orders of the Commission by the courts and for the establishment of museum of safety.

Sections 73 to 92, inclusve, concerned such matters as related to general procedure, rules of evidence, holding of rehearing, and review of decisions of the Commission by the courts.*

*Sections not included in the five groups pertained to definitions of terms used in the act.

As the Industrial Accident Commission has acquired experience in administering the compensation act of 1913, it has found it advisable from time to time, to have the statute amended. The reader will be better able to comprehend the significance of these amendments if they are discussed in connection with the problems which brought them about. They will, therefore, be taken up in the following chapter on administration of workmen's compensation legislation.