1920.

NEW ZEALAND.

GOLDFIELDS AND MINES COMMITTEE

(REPORT OF) ON MINING AMENDMENT AND COAL-MINES AMENDMENT BILLS, TOGETHER WITH ADDRESSES OF COUNSEL AND OPINIONS OF SOLICITOR-GENERAL AND CROWN SOLICITOR.

Reports brought up on the 15th October, 1920, and, together with Addresses of Counsel and Opinions of Solicitor-General and Crown Solicitor, ordered to be printed.

ORDERS OF REFERENCE.

Extracts from the Journals of the House of Representatives.

WEDNESDAY, THE 14TH DAY OF JULY, 1920.

Ordered, "That Standing Order No. 219 be suspended, and that a Goldfields and Mines Committee be appointed, consisting of twelve members, to whom shall be referred all matters relating to mining and all Bills relating to mines; with power to call for persons and papers; three to be a quorum: the Committee to consist of Mr. Bollard, Mr. J. McC Dickson, Mr. Edie, Mr. A. Hamilton, Mr. Holland, Mr. Horn, Mr. Hudson, Mr. Poland, Mr. Reed, Mr. T. W. Rhodes, Mr. Seddon, and the mover."—Right Hon. Mr. MASSEY.

Ordered, "That the Coal-mines Amendment Bill be referred to the Goldfields and Mines Committee for report."—Mr. HOLLAND.

WEDNESDAY, THE 21ST DAY OF JULY, 1920.

Ordered, "That the Mining Amendment Bill be referred to the Goldfields and Mines Committee."—Mr. PARRY.

THURSDAY, THE 2ND DAY OF SEPTEMBER, 1920.

Ordered, "That the names of Mr. Parry and Mr. Potter be added to the Goldfields and Mines Committee."—Right Hon. Mr. MASSEY.

REPORTS.

THE MINING AMENDMENT BILL.

THE Goldfields and Mines Committee, to whom was referred the Mining Amendment Bill, have the honour to report that, having carefully considered the same, they recommend that it be allowed to proceed with the amendment shown on the copy attached hereto, and that counsel's addresses and the opinions of the Solicitor-General and the Crown Solicitor attached be printed.

14th October, 1920. T. W. RHODES, Chairman.

THE COAL-MINES AMENDMENT BILL.

THE Goldfields and Mines Committee, to whom was referred the Coal-mines Amendment Bill, having carefully considered the same, have the honour to report that they recommend that the Bill be allowed to proceed with the amendment shown on the copy attached hereto, and that counsel's addresses and the opinions of the Solicitor-General and the Crown Solicitor attached to the report of this Committee on the Mining Amendment Bill be printed.

14th October, 1920. T. W. RHODES, Chairman.

ADDRESSES OF COUNSEL.

TUESDAY, 21ST SEPTEMBER, 1920.

Mr. P. J. O'REGAN examined.

The Chairman: Whom are you representing, Mr. O'Regan?—I am representing the New Zealand Miners' Federation.

Will you make a statement?—Well, sir, there is not very much to add to what I stated last session. I went into this matter very fully then before this Committee. However, I would point out that what is asked for in these Bills is quite a simple proposal. The Workers' Compensation Act, which has been in force since 1908, does not take away from an injured man any rights which he had prior to that Act becoming law. The Act gives him compensation for injuries arising from accident not attributable to the negligence of any one, but at the same time, if he desires it, he can still sue for damages at common law or otherwise, and he will probably do that if he has a chance of establishing negligence. But with regard to miners the position is this: A judicial decision has been given by the Full Court of New Zealand that if a miner is injured by an accident in or about a mine, and he accepts weekly payments under the Workers Compensation Act, he is thereby denied the right given by section 268 of the Mining Act, 1908, and section 60 of the Coal-mines Act, 1908, to bring an action for damages independently of the Workers' Compensation Act. If he accepts payments under the Workers' Compensation Act, in other words, he is deemed to have "taken proceedings" under that Act, and is consequently precluded from taking proceedings under the Coal-mines Act or the Mining Act. These Bills provide that when a miner accepts a weekly payment under the Workers' Compensation Act he shall not be deemed to have lost his rights under the Mining Act, 1908, or the Coal-mines Act, 1908, but that he will still be able to claim damages, but such payments will be deducted from whatever amount he may ultimately receive as damages. Personally I believe that it is only right that the law should be brought into line with the provisions of section 43 of the Workers' Compensation Act, 1908.

You went into the whole position last session?—Yes. I dealt with the matter fully before this Committee last session.

You have seen Mr. Pryor's statement?—Yes. I replied to that last session. Mr. Pryor suggested that section 60 of the Coal-mines Act, 1908, and sections 267 and 268 of the Mining Act, 1908, should be repealed altogether. Now, if you examine these sections you will find that the mine-owner is made answerable for the negligence of his servants or agents—a most important amendment of the common law. That has been incorporated in the mining legislation since 1874, but its importance is less since the abolition of the defence of common employment generally. The practical difference, however, lies in the fact that there is no limitation of damages under the Mining Acts, whereas, apart from them, the maximum damages recoverable on account of a fellow servant's negligence is £500. These points are obvious to members of the legal profession, and both Mr. Myers and myself are on common ground with respect to them. Section 62 of the Workers' Compensation Act, which abolishes the defence of common employment affords a remedy independently of the Mining Acts. But now we come to the important qualifications that the section, while abolishing the defence of common employment, expressly limits the amount of damages recoverable to £500, except in the case of death. Of course, in the case of a fatal accident due to the neglect of a fellow-servant there is no limitation. That point has been settled by a case taken recently to the Privy Council. But in the case of injuries not having fatal results, no matter how serious the incapacity may be, the amount of damages is limited to £500. If the sections in question were repealed, as has been suggested, the right which miners have enjoyed for forty-six years of being able to bring an action for unlimited damages in case of injury as a result of a fellow-servant's negligence will be taken away from them. No matter how serious or how grievous the injury may be the maximum amount which an injured miner could receive would be £500. I have in mind the case of a boy in the South for whom I acted. He had both his legs taken off at the thighs. That accident was brought about by the negligence of a fellow-worker. I took proceedings under the Coal-mines Act and the case was settled for £1,000. If section 60 were repealed the boy would have to be satisfied with £500. I think that no member of the Committee would look upon that amount as adequate for such serious injuries as that boy received. The Committee will thus see that the repeal of these sections would seriously curtail miners' legal rights. It will be a real grievance to the miners of this country if anything of that kind is done, and it will be my duty to bring the matter before them and explain the position clearly. For my own part I believe there is a much more feasible and satisfactory suggestion, one which I have made myself on more than one occasion, and which has been stressed by me to the Hon. Minister of Labour: that is to abolish the defence of "common employment" altogether by repealing the limitation prescribed by the Workers' Compesation Act. All that can be done by repealing a few lines of the Act. Repeal that provision, abolish that limitation, and you may then repeal these special sections as applicable to miners. I think that is all I have to say, sir.

Mr. Parry: Is it correct to say that the amendments now proposed will not interfere in any shape of form with the rights enjoyed by other workers if they become law?—Certainly not.

That is to say, the original intention of the Workers' Compensation Act was not to interfere with any of the rights the people then possesed?—Quite so.

That all the rights they then possessed would be safeguarded?—Yes. The policy of the Workers' Compensation Act is not to curtail any remedies existing indepedently thereof. The Workers' Compensation Act provides what I may call a supplementary remedy. It expressly preserves any rights existing independently or antecedent to the passing of the statute. After the Workers' Compensation Act had been in force in England it was decided—and that decision was followed in New Zealand—that when an injured man accepted weekly payments under that Act he "took proceedings" thereunder, and he thereby debarred himself from the independent remedy which the statute had reserved for him. That was remedied in 1908 by section 43 of the Workers' Compensation Act. That section made it clear that, although the injured man had accepted weekly payments under the Workers' Compensation Act, if he subsequently was advised that he had a good case independently of that Act, the acceptance of the weekly payments does not preclude him from going on with the action for damages. If he is injured by the negligence

either of the employer or a fellow-servant he can take his weekly payments under the Workers' Compensation Act and then afterwards bring an action for damages under the common law; but if he recovers damages in that action the amount paid in weekly payments goes in part satisfaction of the damages awarded. He does not preclude himself from claiming damages merely by accepting payments under the Workers' Compensation Act. These Bills propose to extend the same principle to mining accidents.

So that the miners will enjoy no other special privileges above other workers than they had before the Workers' Compensation Act came along?—Quite so. The special provisions in the Coal-mines Act and the Mining Act have been in operation all the time since 1874.

Mr. Myers: I think you have stated that in your opinion the laws relating to mining and compensation to workers should be brought into harmony: is that your view?—Yes.

What you object to, apparently, in the Workers' Compensation Act is the restriction to £500: you object to the maximum of £500?—Exactly—as the measure of damages for a fellow-servant's negligence.

You are aware, I take it, that there is a Bill before Parliament at the present time having for one of its objects the increase of that maximum from £500 to £750?—I am not aware of that, but I know it has been suggested.

If that were done would that comply with your views?—No, because £750 would still be too low. Take the case of the boy who lost his legs: I got £1,000 for him.

I think you stated that you would be agreeable to the repeal of those sections in the Coal-mines Act and the Mining Act if the maximum compensation payable in the case of an accident under the Workers' Compensation Act were increased?—What I stated was that if the defence of "common employment" was abolished generally I would have no objection to the repeal of those sections.

I will put the question in another way: You would be agreeable to the repeal of section 60 of the Coal-mines Act and sections 267 and 268 of the Mining Act if the amount of compensation payable to miners, in case of accident, under the Workers' Compensation Act was not limited to £500?—Yes, quite so.

You have made a statement that section 60 of the Coal-mines Act and section 267 and 268 of the Mining Act were first made law in 1874?—Quite so.

At that time there was no Workers' Compensation Act in existence?—No.

And no Employers' Liability Act?—Quite so.

And no Lord Campbell's Act?—Not at all.

It was in 1874 that this special legislation in connection with miners was started?—That is quite right.

And since then there has been passed the Workers' Compensation Act, the Death by Accidents Compensation Act, and the Employers' Liability Act (which has been repealed), and the defence of common employment has been eliminated?—Within certain limits, yes.

Within a certain amount?—Yes.

I suppose you will agree that there is not the same necessity for these special provisions relating to coal-miners and other miners now as there was in 1874?—I do, but I say they are still necessary.

You know, Mr. O'Regan, that according to the provisions of section 307 of the Mining Act miners can claim damages before the Wardens' Courts?—Yes.

And that the case would be tried by the Warden and by the assessors?—Yes.

And the panel of assessors is limited to a maximum of fifty?—That is so.

And when the case comes to trial the parties are limited to two challenges?—That is right.

And the assessors, as a rule, are miners, are they not?—Yes, that is specially provided.

Do you think that is fair to the employers?—Yes, I think so. It is much more reasonable than having a special jury composed of, say, land agents and shopkeepers, to try a wharf accident.

I am not referring to a special jury. In the case of a common jury you would have a panel composed of both employers and employees?—Yes.

Well, you do not get that in the Wardens' Courts?—They are practical miners, and some of them are shift bosses or underviewers.

Speaking generally, you do not advocate employers on the panel at all?—Yes, that is correct.

What is the difference between the conditions of ordinary miners and the conditions of coal-miners?—They differ in many respects, but they have much in common.

They have much in common, but they differ in many respects?—Yes. Tunnelling is just the same.

And yet, as you know, by reason of a paragraph inserted in the Coal-mines Act of 1905 coal-miners were then excluded from taking their cases to the Wardens' Courts in case of accident?—That was a paragraph which was evidently inserted in that Act inadvertently.

Do you place any real value upon these sections of the Mining Act which require these claims to be brought before the Wardens' Courts? Would you be prepared to place miners in the same position as any other workers, and have their claims tried in the ordinary Courts of the land?—I would not object, subject to an unlimited right to bring an action for damages without the defence of common employment being allowed. I would then have no objection to the cases being taken in the Supreme Court.

I take it that, so far as you are concerned, you would have no objection to section 307 of the Mining Act being amended by a new proviso something like this: "Provided that no claim for compensation or damages in respect of any accident shall be cognisable by the Warden's Court"?—Yes, something to that effect.

You would have no objection to such an amendment as that in the Mining Act?—No, provided miners can claim unlimited damages in the other tribunals.

I take it that if the amount of compensation would still be unlimited you would have no objection to such an amendment as I have proposed to section 307 of the Mining Act?—No; under those circumstances I would have no objection.

You think that would be quite fair?—Yes, quite fair.

So that really, Mr. O'Regan, I may take it that the main question between us is this: that while you agree that the miners should be brought under the same tribunals as other workers, you claim that miners should retain the right to claim any sum as damages in case of accident, and that they should not be limited to a maximum of £500?—Quite so.

That is really the position you take up?—Yes.

And you would like to bring all workers into the same position as the miners?—Exactly, in that respect.

You wish to bring the law respecting miners into harmony with the law respecting other workers on that one point?—Yes. I think what I have suggested is perfectly clear. I quite agree that in consequence of the passing of the Deaths by Accidents Compensation Act, 1880, the Employers' Liability Act in 1882, and of the Workers' Compensation Act, 1908, there is not so much reason for these special sections originally provided by the Regulation of Mines Act of 1874, but I submit that it would be unfair to take away from the miners the right granted practically half a century ago of claiming unlimited damages. Preserve their rights in that respect, and I would have no objection to advising the miners of the country to agree to all you suggest.

Presumption of negligence on the part of the miner is not now of such importance?—It is practically of no importance nowadays.

Mr. M. MYERS examined.

The Chairman: Whom are you representing, Mr. Myers?—I ask leave to represent the New Zealand Employers' Association.

Will you make a statement?—Yes, sir. The point of view which I desire to submit will have become apparent to the Committee from my examination of my learned friend Mr. O'Regan. It must not be assumed for a moment that the federation which I am representing is in the least degree antagonistic to the miners. The Employers' Federation merely desire to have the law relating to one class of labour brought into harmony with the law relating to all other classes of labour, and to that extent my friend Mr. O'Regan and I are in agreement. Now I will endeavour to show the Committee that what we are asking for is nothing but what is fair and reasonable. Mr. O'Regan has admitted quite frankly that there is not now the same importance in the provisions contained in section 60 of the Coal-mines Act and section 267 and 268 of the Mining Act as there was at the time that legislation was originally passed. He has admitted that there is no practical importance now whatever in retaining those provisions. So we start off with the fact that there is no importance now in retaining the provision to the effect that an accident in a coal-mine or a gold-mine is *primâ facie* evidence of negligence on the part of the owner. Now, what I wish to point out to the Committee is this: When this legislation to which I am referring—I am speaking now of the special provisions in the Mining Acts—was first passed in 1874 there was no Employers' Liability Act, there was no Deaths by Accidents Compensation Act, and there was no Workers' Compensation Act; and the defence at common law, the defence of "common employment," was available to the employer. That was the position which the miners had to face prior to the year 1874, and it was in order to remedy that position that this special legislation was passed. But what is the necessity for that legislation now?—Since then there have been passed the Deaths by Accidents Compensation Act, the Employers' Liability Act (which by reason of later legislation became unnecessary and has been repealed), and that humanitarian measure the Workers' Compensation Act, 1908. With regard to the Deaths by Accidents Compensation Act, I wish the Committee to note that it gives the legal representatives or the dependants, as the case may be, of a worker who sustains a fatal accident a right of action against the employer in a case where the accident was caused by negligence for which the employer is liable, and the amount of damages in such an action is entirely at large, irrespective of the common-law defence of "common employment." The miner can claim under two different sets of legislative provisions, and has an additional privilege over any other worker. He or his representatives can claim under the Workers' Compensation Act or the Deaths by Accidents Compensation Act, or he can claim under the Mining Acts. He has retained his privileges under the Mining Acts notwithstanding the passing of the subsequent Acts.

Mr. Parry: That is because of the dangerous nature of his employment?—I do not agree with that. The fact is that in 1874, when this legislation was first passed, the question of limiting the amount of compensation was probably not considered or thought of. The object then was to give a general right of action

In special consideration of the nature of the miners employment?—Oh, no: that is wrong. Mr. Parry wishes to make out that this right of claiming without any limit was given to the miners because of the special nature of their employment. That is not the case. At the time when this right was given to the miners there was no comparison with other workers at all, because there was then no Workers' Compensation Act. A comparison between the miners and other workers did not therefore arise. The object of the Act was simply to give miners the right to bring an action in case of injury and to claim damages, and the question of limiting the amount probably was never considered. So that it cannot be said that it was a special privilege given to the miners because of the dangerous nature of their employment. And the fact that miners have not been given any special privileges since, as against other workers, shows that it has been the intention of the Legislature to adopt the common-sense procedure of placing all workers as far as possible on one and the same footing. The miner now has this right as compared with any other worker: he has the right, in the event of an accident occurring to him through the negligence of the mine-owner, or the mine-owner's employees, to bring an action for damages, without being limited to a maximum of £500. That is the one privilege or right that the miner has over and above the rights and privileges of any other worker. Now Mr. Parry wishes to extend this privilege by his Bill. As I have explained, this privilege was not given by the Legislature to the miners as against other workers, and consequently if Mr. Parry or anybody else desires to extend this privilege of the miners, we are not entitled to say that the miners should be given the extended privilege only on the condition that they are brought into line in every respect with other workers? Are we not now entitled to say that all workers should be included in the same legislation, and that we should no longer have one Act dealing with miners and another Act dealing with workers other than miners? I now come to the question of the tribunal, and in that respect Mr. O'Regan has agreed with me to a certain extent. He admits that it is not fair or reasonable that the provisions of paragraphs (*m*) and (*n*) of section 307 of the Mining Act should remain; and, gentlemen, neither it is. The effect of that paragraph, and of all the other paragraphs that operate with it in the Act, is this: that it gives to the Warden's Court an exclusive jurisdiction, and it ousts the jurisdiction of the Supreme Court, in all claims by miners in connection with accidents. This applies when the miner is claiming damages and not compensation under the Workers' Compensation Act, and it applies whether the accident is a fatal accident or not, with one sole

exception. The sole exception is that, if it is a fatal accident, and the claimant is a person other than the legal representative of the deceased miner then the action has to be brought in the Supreme Court and not in the Warden's Court. But for all practical purposes the Committee may take it that the miners are able to carry their claims to a special tribunal, and, although I do not say it in any way offensively, I say that that tribunal is a biased tribunal. It is biased naturally—it is biased by the very nature of the employment of the assessors, and the fact that the person who is making the claim is a fellow-worker, perhaps an intimate of their own. The bias may not necessarily be a conscious bias: it may be a quite unconscious bias. The assessors are part of the Court, and if the assessors come to a certain conclusion the Warden has no power to reverse that conclusion or to give a judgment of his own. With respect to an ordinary jury, as everybody knows, the panel is a very large one, and it consists both of employers and employees alike, and there is the right of six challenges on each side. When you get a jury in the Supreme Court you get a jury of mixed ideas, but you do not, and you cannot, by the very nature of things, get that under the Mining Act in the Warden's Court. You have a limited panel to begin with. Practically speaking they are all working miners. And not only that, but each side is limited to two challenges. And you also have gold-miners trying matters affecting coal-miners, while the nature and conditions of the gold-mining industry are in many respect quite different from those of coal-mining. The result is therefore that you have a tribunal which Mr. O'Regan himself practically admits is not satisfactory. He has stated candidly that so far as he is concerned he would be quite agreeable to the addition of a proviso to section 307 of the Mining Act reading as follows: "Provided that no claim for compensation or damages in respect of any accident shall be cognisable by the Warden's Court." Very well, that is one of the amendments I ask this Committee to make to the Mining Act, or to insert in the Bills now on the table for consideration. Now I come to a point where Mr. O'Regan and I differ. He says he is prepared to agree to that amendment to section 307, but I go further: I ask that not only should that proviso be inserted in section 307, but that sections 267 and 268 of the Mining Act, and section 60 of the Coal-mines Act, should also be repealed. Section 60 of the Coal-mines Act corresponds to sections 267 and 268 of the Mining Act. I have already explained to the Committee the reason why these sections are no longer of any importance, and Mr. O'Regan has candidly admitted that they are no longer of any importance. He admits that there is no importance now in retaining the provision to the effect that an accident in a mine is *primâ facie* evidence of negligence on the part of the owner, which is contained in these sections. These sections entitle the miner, in case of an accident which is not a fatal accident, to claim any amount he likes, whereas if those sections are cut out he would be able to claim in such a case not anything he likes, but up to a maximum of £500 or such other maximum as may be provided by the law for the time being. I believe the maximum proposed in Mr. Howard's Bill is £750. I may say that I have just been informed by Mr. Pryor, the secretary of the Employers' Federation, that the Minister has intimated that he intends himself to bring down a Bill for the purpose of, among other things, increasing the amount of compensation, but to what extent of course I do not know. So that if these sections are cut out, as I ask that they should be cut out, then the miner will be placed in the same position as any other worker. All workers would then have equal rights and privileges, and would be entitled to claim up to a maximum of £500, or whatever amount may be decided upon by Parliament from time to time by appropriate legislation. If the Committee is prepared to make recommendations in accordance with my suggestions, then we are quite prepared to agree to the provisions in these Bills.

Mr. O'Regan: They would then be unnecessary?—Yes, you are quite right. They would then be unnecessary, because the adoption of my suggestions would give the miner the right or privilege proposed to be given him by these Bills.

Mr. Holland: You are referring to the Mining Amendment Bill and the Coal-mines Amendment Bill?—Yes. They are both practically the same. They both stand on the same footing. At the present time the employer, with regard to miners, is placed in a somewhat difficult position. He can only insure up to £500: that is to say, he can only insure miners up to the same limit of £500 as he can insure any other worker, whether at common law or in any other way.

Mr. Parry: That applies to all employers?—Yes, that is my argument. In the case of every employer the maximum compensation he can insure for is £500, and we want that maximum to apply to all employees. We want to place the miners on the same footing as any other workers.

Mr. Seddon: With respect to the Watterson *v.* Westport Coal Company case, what do you suggest with respect to that kind of a case, from your point of view?—If the Committee asks me for a suggestion I should say, repeal those sections I have mentioned and also amend section 307 with respect to the Warden's Court, and then the position will be precisely the same in regard to the miners as in regard to any other class of workers, and the position which arose in the Watterson case could not happen.

And what would be the effect of Mr. Parry's Bill?—The effect would be the same under Mr. Parry's Bill so far merely as Watterson's case is concerned.

Mr. Horn: Do the employers really think that £500 is sufficient for a widow and family, say, of eight children?—You have not appreciated my point. If the man dies, then the maximum of £500 does not apply.

Supposing the man does not die, but is most seriously injured and incapacitated: do you contend that £500 is adequate compensation?—That £500 limitation applies to everybody else.

Well, now, supposing the woman and her children get that £500. Her husband may not be dead, but he may be very seriously injured and incapacitated. What is going to happen when that £500 has been paid?—The same as might happen in any case. Take the case of any worker that is injured and recovers damages, say, to the extent of £400, and subsequently finds that his injuries are more serious than he at first thought. Could he claim a further amount?

Mr. Horn: I cannot answer a question of that sort. It is a legal question which might arise under the Workers' Compensation Act, and I am unable to answer it. Of course, you understand the position?—Well, our experience—the experience of the legal profession—is that often what we call "common-law" claims are made which should really be made under the Workers' Compensation Act. That kind of thing should not be encouraged. Give the worker compensation by all means; give the worker damages for negligence by all means; but do not unnecessarily encourage the bringing of actions for damages higher than the amount for which compensation should be paid.

Do you appear on behalf of the insurance companies?—No, I am appearing on behalf of the Employers' Federation only. I am in no way appearing for the insurance companies.

Mr. Holland: Does not the Employers' Federation include the coal-mine owners?—Yes, that is so.

Supposing a man who has a wife and family is seriously injured in a coal-mine, and cannot work any more, is it not necessary in such a case that there should be an unlimited right to claim damages?—Why so in the case of a miner more than in the case of any other worker?

We are not dealing with other workers at the present time. We are prepared to deal with the other industries when the time comes. There was one case where a man had his spine injured in a coal-mine, and he was practically incapacitated for life, and in that case there was some technicality operating which prevented him receiving adequate damages from the employers——

Mr. O'Regan: They were only liable for £500.

Mr. Holland: Well, in a case like that, should the liability be borne by the employers, or by the wife and children of the injured man? What do you say to that?—I say that reasonable compensation should be given to the man in respect of his injury.

Then it would be a fair thing to allow him to come before a jury and claim damages up to any amount: that would be right and proper?—If the damage were caused by some negligence for which the owner is personally directly responsible that would be right and proper. But if the accident happens by reason not of any negligence on the part of the owner or of some superior employee, but because of negligence on the part of some other employee engaged in the same class of work as the injured man, then I say that he should not be entitled to claim unlimited damages.

Then the liability is to be thrown on the wives and children?—No. I say that such a man should have the right to claim damages, but no more and no less than any worker in any other employment.

Because the law is inadequate in regard to other workers you consider it would be a fair thing to apply that inadequate law to the miners?—My contention is this: First of all, bring all workers into line, and then if it is considered right and proper that higher compensation should be paid than at present, let such compensation be paid. But that should apply to any worker, no matter what his employment may be. First of all, you want to bring the law into harmony.

You admit, of course, that when a man who has a wife and family is injured for life the sum of £500 is altogether too small?—It certainly is not large.

You admit that a sufficient sum should be allowed for the maintenance of himself and his dependants?—I quite understand what you mean. It may be right in theory, but I very much doubt whether it would work out practically.

Mr. Parry: From your evidence, Mr. Myers, I understand that you think that the miners, in view of the Employers' Liability Act, the Workers' Compensation Act, and the other Acts having been passed since 1874, should forgo their special privileges under their own Acts?—Well, if you put it that way, I should say Yes. I myself do not like to put it that way. What I say is that all workers should be treated alike, and that the remedy may be to increase the statutory maximum.

Is it true that the miners are enjoying special privileges?—Certainly. And you are asking for the extension of those special privileges for the miners at the present time by this Bill of yours.

All I am asking for is to preserve the rights enjoyed by miners previous to the Workers' Compensation Act being passed?—Oh, no. The object of your Bill is to place the miners in a certain respect on the same footing as other workers, by giving the miners not the same privileges which they previously possessed, but a privilege which the Courts of law have held that they do not possess, but which all other workers do possess.

Let us go back to the time previous to when the first Workers' Compensation Act came into existence, with reference to sections 311 to 313 of the Mining Act dealing with the Wardens' Courts?—The first Workers' Compensation Act came into force in 1900, and I think that at that time the coal-miners did not go before that tribunal with respect to claims for damages for accidents. The first Act which I think gave the Wardens' Courts jurisdiction with respect to coal-miners' claims was passed in 1905. The gold-miners, I know, have always had the right to go to the Warden's Court, but not the coal-miners.

Mr. O'Regan: The whole difficulty arose in this way: The Regulation of Mines Act applied indiscriminately to all miners' claims up to 1886, when it was repealed and separate Acts were passed. Separate Acts were passed for coal-mines, and mines other than coal-mines. In the Mining Act these sections with respect to the Wardens' Courts were incorporated from the Regulation of Mines Act, but they were not incorporated in the Coal-mines Act at that time.

Mr. Parry: What is the special privilege the miners are asking for by this amending Bill?—You are asking that the miner should have his present rights extended. Under the Workers' Compensation Act the worker has a right to accept weekly compensation payments, and is not thereby debarred from bringing an action for damages. The miner has not that right. The miner, if he accepts weekly compensation payments, cannot afterwards bring an action for damages. In that respect the miner is in a worse position than the ordinary worker. You want to improve the miner's position by giving him a privilege which other workers have and which he has not.

Are not the miners seeking to have the full benefits of the Workers' Compensation Act given to them, based upon their privileges before the Workers' Compensation Act came into force?—No. I would put it in this way: it is a matter of contract. It is similar to a case of contract at law. If you want to have the benefit of a contract you must accept the burden of the contract. You should not be allowed to take the benefit of a contract without also undertaking the burden. You say you want to put the miner into a better position—into the same position as an ordinary worker under the Workers' Compensation Act; but we say that they should not be put into the better position of taking those benefits unless they also take the corresponding disadvantage. In other words, we say that the miner should have the same limitation as any other worker. Do not think that I am saying that £500 should be the limit: I am not saying that; I am not expressing an opinion with regard to that. What I say is that the miner should be placed in the same position as any other worker, and that his maximum should be £500, or anything higher than £500 which is decided upon, but the same maximum should apply to all workers.

With respect to your objection to the assessors of the Warden's Court, it is not necessary that they should be engaged in mining at the time the case is being heard?—No.

Do you contend that an ordinary jury would be better qualified to deal with such a case than these assessors who are practical miners?—Yes, I would prefer an ordinary jury.

You contend that the assessors are likely to be biased?—That is only part of the reason. The fact is that the Warden's Court is not satisfactory from any point of view. You are dealing with claims which have to be made in a Court of law, and the first thing is to see that justice is done. What we are trying to do is to secure what looks like the fairest possible way of seeing that justice is done.

You say that common-law cases should not be encouraged?—Yes.

If a miner meets with an accident, and brings an action at common law and fails, can he then claim compensation under the Workers' Compensation Act?—I am glad you have mentioned that. There is a difference between the ordinary worker and the miner, and the difference is this: an ordinary worker can bring an action in the Supreme Court for damages, and if he fails the Supreme Court has the jurisdiction, and exercises it, of awarding him compensation under the Workers' Compensation Act. The miner has no such right. The miner brings his action in the Warden's Court for damages, and, as the Warden's Court has no power to grant compensation under the Workers' Compensation Act, that compensation cannot be granted to him.

If he fails in the Warden's Court what can he do?—He can do nothing.

Would not this Bill get over that difficulty?—No; my suggestion would, but this Bill would not. The ordinary worker can bring an action for damages at common law in the Supreme Court, of course, basing his claim upon negligence, and if he fails in that the Supreme Court can still give him compensation under the Workers' Compensation Act. So that my suggestion of striking out the sections already referred to in the Mining Act and Coal-mines Act, and adding the proviso that I have suggested, would give the miner that right. Of course, what I am asking for is a compromise, but I am giving as much as I am getting.

What about the limit of £500?—It may be £500 or more.

It is the amount we know now?—Yes, but the amount will probably be raised.

Mr. O'Regan: When you commenced your statement, Mr. Myers, you made a reference to Lord Campbell's Act. You referred to the right of a dependant to obtain damages under Lord Campbell's Act, but you did not, I think, make it clear that that right of action only applies to the widow or child?—When I used the word "dependants" I did not mean it in any other sense.

The point I wish to make clear is that Lord Campbell's Act is not so comprehensive as the Workers' Compensation Act?—That is so.

Under Lord Campbell's Act, if the worker has been killed by the negligence of a fellow-servant the amount of damages the widow can claim is not limited to £500?—No.

In other words, the £500-limit only applies where a worker has not been fatally injured?—Yes.

And where a miner is not fatally injured, but is seriously injured, in a coal-mine or a gold-mine there is no limitation of £500 by reason of the special provisions of the Mining Act and the Coal-mines Act?—Yes, that is so.

But the effect of the amendments you proposed would limit the miners' claims to £500?—That is so; or such other maximum as Parliament may fix.

You do not for a moment suggest to this Committee, Mr. Myers, that the boy I have referred to, the boy who lost both his legs, would be adequately compensated with £500?—I can only answer that question in this way: that no amount of money can be adequate compensation for such injuries.

I will put the question in another way: whereas that boy can now claim an unlimited amount, if your amendments are adopted he would be limited to £500?—That is practically the difference between us.

Well, if you will agree to abolish the maximum, I will agree to your amendments. My object is to preserve to the miners the right of unlimited damages which they have in their Acts at the present time?—Yes, that is the difference.

Can you tell me how many cases are brought in the Wardens' Courts?—I cannot say.

Not more than two or three every year?—If that is so, perhaps I could give you a good reason.

Mr. O'Regan: The difference between Mr. Myers and myself is this: the practical position nowadays is that the miner can claim unlimited damages under the Mining Acts by reason of the negligence of a fellow-servant, and no other class of worker can. I suggest that the common-law doctrine of the negligence of the fellow-servant should be abolished altogether—that it should not apply either to the miner or to any other class of worker.

Mr. Reed: What is the position with regard to insurance? Do not the insurance companies take over the liability in regard to the payment of damages?

Mr. Myers: I understand that the insurance companies will not insure for an unlimited amount. By the insurance policies they limit their liability to £500, whether under the Workers' Compensation Act or at common law, and there is a good reason for that. Supposing Parliament passed Mr. Howard's Bill, the maximum would then be £750, and every item in the schedule of the Workers' Compensation Act would have to be increased correspondingly, and the insurance companies would then insure up to the higher amount and charge higher premiums; but they would not in any case insure beyond the limit fixed for the time being by the Workers' Compensation Act.

Mr. O'Regan: The position is that the insurance companies take covers up to £500, and any amount over that the employer has to pay himself.

OPINIONS OF LAW OFFICERS.

Coal-mines Act, Section 60; Mining Act, Sections 267 and 268.

THE recent decision of the Supreme Court in the Westport-Stockton Coal Company *v.* Watterson (1819 N.Z.L.R. 177) illustrates the imperfections and disadvantages of the existing provisions as to damages or compensation for accidents which are contained in the above sections. It was decided in that case that an injured miner lost his right to recover damages for the negligence of the mine-owner under section 60 of the Coal-mines Act by accepting weekly payments of compensation under the Workers' Compensation Act. No such acceptance of workers' compensation has any such effect upon an action for damages outside the special provisions of the Coal-mines Act or the Mining Act.

It has been suggested in consequence of this decision that the above sections should be amended in order to avoid this result. I strongly recommend, however, that the sections be wholly repealed instead of any attempt being made by amendment to make them workable and intelligible. I do not think that at the present day they serve any useful purpose, having regard to the recent developments of the law as to workers' compensation and as to employers' liability. So far, indeed, from serving any useful purpose, they are, I think, a mere trap to miners, as illustrated by the case above mentioned. There seems to be no reason to suppose that miners will not be adequately protected by the ordinary law as to damages and workers' compensation—a law which is found adequate and just in respect of all other clases of workers.

These sections, indeed, are so badly drafted, and their relationship to the ordinary law as to damages and compensation is so obscure, that their retention on the statute-book is more likely to give rise to heedless litigation and injustice than to produce any good result for the miners.

In other respects than that which was the subject of the above-mentioned Supreme Court decision these special sections are less advantageous to the worker than the general law. For example, they contain provisions as to damages and compensation being a charge on the mine and mining plant, and these provisions are much less advantageous than the corresponding provision contained in section 41 of the Workers' Compensation Act, 1908. Similarly, there is no provision in these sections which corresponds to the provisions of section 46 of the Workers' Compensation Act enabling a plaintiff, if unsuccessful in his claim for damages, to obtain an assessment of workers' compensation in the same Court and in the same action.

It may be thought, indeed, that section 60 of the Coal-mines Act and the corresponding sections of the Mining Act provide for miners certain benefits which they would not have under the ordinary law and which more than counterbalance the corresponding disadvantages. I do not, however, think that this is so. It is true that subsection (1) of section 60 of the Coal-mines Act provides that an accident occurring in a mine shall be *primâ facie* evidence that the accident was due to the negligence of the owner. Apart altogether from any question as to the justice of such a provision, it is not, I think, of any practical use to a plaintiff. I think that miners may well be left to the same protection which is afforded to the rest of the community by the ordinary law as to proofs and presumptions of negligence.

It is true also that subsection (2) of the same section gives a right of action for damages for injury caused by the non-observance of any of the provisions of the Coal-mines Act. I am of opinion, however, that this would be equally the case if no such provision was contained in the Act. If, however, there is any doubt on this point, a special provision can be enacted to that effect at the same time that section 60 was repealed as here suggested.

Summing up the matter, therefore, I do not think that it is either necessary or practicable to make satisfactory special provisions as to claims by miners for compensation or damages. The existing law as to other occupations seems to me not only to be adequate to miners, but in important respects to confer superior advantages over those conferred by the special provisions to which I have referred.

JOHN W. SALMOND, Solicitor-General.

Crown Law Office, 19th July, 1918.

Re Sections 267 and 268 of the Mining Act, and Section 60 of the Coal-mines Act.

In the recent case of the Westport-Stockton Coal Company *v.* Watterson (1918, N.Z.L.R. 177) it was decided that an injured miner lost his right to recover damages for the negligence of the mine-owner under section 60 of the Coal-mines Act by accepting weekly payments of compensation under the Workers' Compensation Act. This provision is similar to the provision in section 268 of the Mining Act. On further consideration of these sections I am of opinion that they ought to be repealed, because as at present they constitute a mere trap to the miners, as is illustrated by the case I have mentioned. If those sections are repealed, then all miners are protected by ordinary law as to damages and workers' compensation, a law which is found adequate and just in respect of all other classes of workers; and I am of opinion that the miners will be in a far better position by a repeal of these provisions than they are at present, for the reasons—

(1.) That acceptance of worker's compensation does not prevent the worker from bringing an action for damages.

(2.) The mining provisions as to damages and compensation being a charge on the mine and mining plant: these provisions are not merely so advantageous as the corresponding provisions contained in section 41 of the Workers' Compensation Act, 1908.

(3.) There is no provision in the sections in the Mining Acts which corresponds to the provisions of section 46 of the Workers' Compensation Act enabling a plaintiff if unsuccessful in his claim for damages to obtain an assessment of worker's compensation in the same Court and in the same action. In my opinion (excepting the Mining Acts) the existing law as to workers in other occupations confers superior advantages over those conferred by the special provisions of the Mining Acts.

I therefore recommend that Mr. Semple's Bill should not be accepted.

P. S. K. MACASSEY, Crown Solicitor.

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