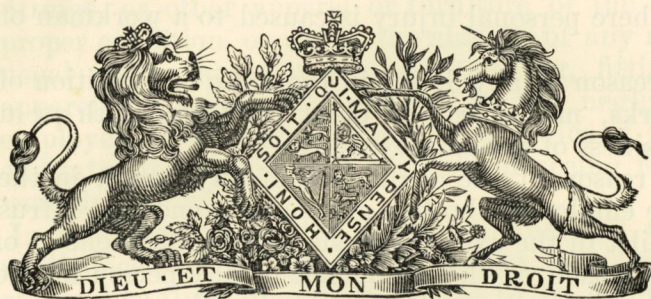


New South Wales.



ANNO SEXAGESIMO PRIMO

VICTORIÆ REGINÆ.

No. XXVIII. (A.D. 1897.)

An Act to consolidate the Acts extending and regulating the liability of employers to make compensation for personal injuries suffered by workmen in their service. [Assented to, 6th December, 1897.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Employers' Liability Act of Short title. 1897."

2. The Acts described in the Schedule hereto are hereby Repeal. repealed.

3. In this Act, unless the context or subject matter otherwise Interpretation. indicates or requires,—

"ship" includes every vessel of whatever kind, whether propelled "Ship." by steam, sails, oars, or otherwise; 56 Vic. No. 6, s. 2.

"employer" includes a body of persons whether corporate or "Employer." unincorporate, and a corporation sole; 50 Vic. No. 8, s. 9.

"seaman" means any person employed upon a ship owned in "Seaman." New South Wales, or who has signed articles of engage- 56 Vic. No. 6, s. 2. ment in the said Colony;

"workman" means a seaman as above defined, a railway "Workman." servant, and any other person who being a labourer, 50 Vic. No. 8, s. 9. servant in husbandry, journeyman, artificer, handicraftsman, 56 Vic. No. 6, s. 5. miner, or otherwise engaged in manual labour, whether under or above the age of twenty-one years, has entered into or works under a contract with an employer, whether the

Employers' Liability.

- the contract was made before or after the passing of this Act, is express or implied, oral or in writing, and whether it is a contract of service or a contract personally to execute any work or labour ;
- “ Person who has superintendence.”
50 Vic. No. 8, s. 9. the expression “ person who has superintendence intrusted to him ” means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour.
- Right of compensation for personal injury.
50 Vic. No. 8, s. 1. 4. Where personal injury is caused to a workman other than a seaman—
- (I) by reason of any defect in the state or condition of the ways, works, machinery, or plant connected with or used in the business of the employer ; or
- 50 Vic. No. 8, s. 1. (II) by reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him whilst in the exercise of such superintendence ; or
- 50 Vic. No. 8, s. 1. (III) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed ; or
- 50 Vic. No. 8, s. 1. (IV) by reason of the act or omission of any person in the service of the employer, done, or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf ; or
- Ibid.* (v) by reason of the negligence of any person in the service of the employer who has the charge or control of any signal-points, engine, or train upon a rail or tramway ; or—
- when within the jurisdiction of New South Wales a ship is moored or at anchor, receiving or discharging cargo, coals, ballast, or dunnage, and personal injury is caused to a workman being a seaman—
- 56 Vic. No. 6, s. 3 (VI) by reason of any defect in the condition of the spars, tackle, machinery, gearing, fittings, or other apparel or furniture of the ship, or by reason of the absence of any necessary and usual spars, tackle, machinery, gearing, fittings, or other apparel or furniture of such ship ; or
- 56 Vic. No. 6, s. 3. (VII) by reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him by such employer whilst in the exercise of such superintendence ; or
- 56 Vic. No. 6, s. 3. (VIII) by reason of the negligence of any person in the service of the employer of the seaman to whose orders and directions the seaman was at the time of the injury bound to conform and did conform, where such injury resulted from his having so conformed,
- 50 Vic. No. 8, s. 1. the workman, or in case the injury results in death, the legal personal
56 Vic. No. 6, s. 3. 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.
- Limiting right of compensation for personal injury.
50 Vic. No. 8, s. 2. 5. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases, that is to say :—
- Ibid.* (I) Under subsection one of section four unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer, and intrusted by him with the duty of seeing that the ways, works, and machinery or plant were in proper condition. (II)

Employers' Liability.

(II) Under subsection four of section four unless the injury 50 Vic. No. 8, s. 2. resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned.

(III) Under subsection six of section four unless the defect therein 56 Vic. No. 6, s. 4. mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer, and intrusted by him with the duty of seeing that the spars, tackle, machinery, gearing, fittings, or other apparel or furniture of the ship were in proper condition, or unless the absence of any necessary and usual spars, tackle, machinery, gearing, fittings, or other apparel or furniture was due to the negligence of the employer or of some person in the service of the employer, and intrusted by him with the duty of seeing that the same were duly provided.

(IV) In any case where the workman knew of the defect or *Ibid.* negligence which caused his injury, and failed within a reasonable time to give or cause to be given information thereof to the employer or some person intrusted with any duties of superintendence, in or over that department in which the defect or negligence existed, whether such superintendent be ordinarily engaged in manual labour or not, unless the injured person should himself perform duties of superintendence, in which case such injured person must have given notice to the employer or to a person intrusted with any superintendence over himself, unless the employer or person so intrusted already knew of the said defect or negligence.

6. An action for the recovery under this Act of compensation Notice of injury. for an injury shall not be maintainable unless notice that injury 50 Vic. No. 8, s. 4. has been sustained is given within six weeks, and the action is Commencement of commenced within six months from the occurrence of the accident action. causing the injury, or in case of death within twelve months from the time of death :

Provided always that the want of such notice shall be no bar Proviso as to want of to the maintenance of such action if upon motion made for leave to notice. proceed notwithstanding no such notice has been given, a Judge *Ibid.* shall be of opinion that there was reasonable excuse for such want of notice; and where the action is intended to be brought in any District Court, the Judge thereof shall, for the purpose of this proviso, have all the powers of a Judge of the Supreme Court.

7. The Court in which any action for recovery of compensation Defective notice may under this Act is commenced or is pending, may at any stage of the be amended. proceedings, amend any defect in a notice of injury or death, or direct 50 Vic. No. 8, s. 7. that the action shall proceed and be maintainable notwithstanding that such notice has not been given duly if the Court having regard to the circumstances of the case thinks just so to direct.

8. (i) Notice in respect of any injury under this Act shall give Form of notice. the name and address of the person injured, and shall state in ordinary 50 Vic. No. 8, s. 8. language the cause of the injury, and the date at which it was sustained.

(II) No such notice shall be deemed invalid by reason of any Defect or inaccuracy. defect or inaccuracy therein unless the judge who tries the action *Ibid.* arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy.

9. (i) Notice in respect of any injury under this Act shall be Service of notice. served on the employer, or if there is more than one employer, upon *Ibid.* one of such employers.

(II)

Employers' Liability.

(II) Such notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(III) Such notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(IV) Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at, or by sending it by post in a registered letter addressed to the office, or if there be more than one office, any one of the offices of such body.

Limit of sum
recoverable as
compensation.
50 Vic. No. 8, s. 3.

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

Money paid as
penalty to be
deducted from
compensation.
Ibid. s. 5.

11. (I) There shall be deducted from any compensation awarded to any workman or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which has been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action.

No penalty in
respect of any injury
for which action has
been brought.
Ibid.

(II) Where an action has been brought under this Act by any workman or the representatives of any workman, or any persons claiming by, under, or through such workman for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act in respect of the same cause of action, such workman, representatives, or persons shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act in respect of the same cause of action.

Expenses under
27 Vic. No. 13, s. 66,
to be deducted.
56 Vic. No. 6, s. 3.

(III) There shall be deducted from any compensation awarded to any seaman (or representatives of a seaman, or persons claiming by, under, or through a seaman) in respect of any cause of action arising under this Act, any expenses which the employer of such seaman has had to pay on account of the injury to such seaman under the provisions of the Act twenty-seventh Victoria number thirteen.

Employer entitled to
credit for insurance
effected by him.
50 Vic. No. 8, s. 6.

12. In determining in any case the amount of compensation payable under this Act by an employer, the Court shall take into consideration the value of any payment or contribution made by such employer to or for the injured person in respect of his injury, and also the value of any insurance or compensation to which such person shall have become entitled by virtue of any payment or arrangement made by such employer.

SCHEDULE.

Title of Act.	Reference to Act.
Employers' Liability Act of 1886	50 Victoria No. 8.
Employers' Liability Act Amendment Act, 1893	56 Victoria No. 6.

I Certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Legislative Council Chamber,
Sydney, 30th November, 1897.* }

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO SEXAGESIMO PRIMO

VICTORIÆ REGINÆ.

No. XXVIII. (A.D. 1897.)

An Act to consolidate the Acts extending and regulating the liability of employers to make compensation for personal injuries suffered by workmen in their service. [Assented to, 6th December, 1897.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Employers' Liability Act of Short title. 1897."

2. The Acts described in the Schedule hereto are hereby Repeal. repealed.

3. In this Act, unless the context or subject matter otherwise Interpretation. indicates or requires,—

"ship" includes every vessel of whatever kind, whether propelled "Ship."
by steam, sails, oars, or otherwise; 56 Vic. No. 6, s. 2.

"employer" includes a body of persons whether corporate or "Employer."
unincorporate, and a corporation sole; 50 Vic. No. 8, s. 9.

"seaman" means any person employed upon a ship owned in "Seaman."
New South Wales, or who has signed articles of engage- 56 Vic. No. 6, s. 2.
ment in the said Colony;

"workman" means a seaman as above defined, a railway "Workman."
servant, and any other person who being a labourer, 50 Vic. No. 8, s. 9.
servant in husbandry, journeyman, artificer, handicraftsman, 56 Vic. No. 6, s. 5.
miner, or otherwise engaged in manual labour, whether
under or above the age of twenty-one years, has entered
into or works under a contract with an employer, whether
the

Employers' Liability.

- the contract was made before or after the passing of this Act, is express or implied, oral or in writing, and whether it is a contract of service or a contract personally to execute any work or labour ;
- the expression "person who has superintendence intrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour.
4. Where personal injury is caused to a workman other than a seaman—
- (I) by reason of any defect in the state or condition of the ways, works, machinery, or plant connected with or used in the business of the employer ; or
- (II) by reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him whilst in the exercise of such superintendence ; or
- (III) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed ; or
- (IV) by reason of the act or omission of any person in the service of the employer, done, or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf ; or
- (v) by reason of the negligence of any person in the service of the employer who has the charge or control of any signal-points, engine, or train upon a rail or tramway ; or—
- when within the jurisdiction of New South Wales a ship is moored or at anchor, receiving or discharging cargo, coals, ballast, or dunnage, and personal injury is caused to a workman being a seaman—
- (VI) by reason of any defect in the condition of the spars, tackle, machinery, gearing, fittings, or other apparel or furniture of the ship, or by reason of the absence of any necessary and usual spars, tackle, machinery, gearing, fittings, or other apparel or furniture of such ship ; or
- (VII) by reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him by such employer whilst in the exercise of such superintendence ; or
- (VIII) by reason of the negligence of any person in the service of the employer of the seaman to whose orders and directions the seaman was at the time of the injury bound to conform and did conform, where such injury resulted from his having so conformed,
- 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.
5. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases, that is to say :—
- (I) Under subsection one of section four unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer, and intrusted by him with the duty of seeing that the ways, works, and machinery or plant were in proper condition.
- (II)

"Person who has
superintendence."
50 Vic. No. 8, s. 9.

Right of compensa-
tion for personal
injury.
50 Vic. No. 8, s. 1.

50 Vic. No. 8, s. 1.

50 Vic. No. 8, s. 1.

50 Vic. No. 8, s. 1.

Ibid.

56 Vic. No. 6, s. 3.

56 Vic. No. 6, s. 3.

56 Vic. No. 6, s. 3.

50 Vic. No. 8, s. 1.

56 Vic. No. 6, s. 3.

Limiting right of
compensation for
personal injury.

50 Vic. No. 8, s. 2.

Ibid.

Employers' Liability.

- (II) Under subsection four of section four unless the injury 50 Vic. No. 8, s. 2. resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned.
- (III) Under subsection six of section four unless the defect therein 56 Vic. No. 6, s. 4. mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer, and intrusted by him with the duty of seeing that the spars, tackle, machinery, gearing, fittings, or other apparel or furniture of the ship were in proper condition, or unless the absence of any necessary and usual spars, tackle, machinery, gearing, fittings, or other apparel or furniture was due to the negligence of the employer or of some person in the service of the employer, and intrusted by him with the duty of seeing that the same were duly provided.
- (IV) In any case where the workman knew of the defect or *Ibid.* negligence which caused his injury, and failed within a reasonable time to give or cause to be given information thereof to the employer or some person intrusted with any duties of superintendence, in or over that department in which the defect or negligence existed, whether such superintendent be ordinarily engaged, in manual labour or not, unless the injured person should himself perform duties of superintendence, in which case such injured person must have given notice to the employer or to a person intrusted with any superintendence over himself, unless the employer or person so intrusted already knew of the said defect or negligence.
6. An action for the recovery under this Act of compensation Notice of injury. for an injury shall not be maintainable unless notice that injury 50 Vic. No. 8, s. 4. has been sustained is given within six weeks, and the action is Commencement of action. 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:
- Provided always that the want of such notice shall be no bar Proviso as to want of notice. to the maintenance of such action if upon motion made for leave to proceed notwithstanding no such notice has been given, a Judge *Ibid.* shall be of opinion that there was reasonable excuse for such want of notice; and where the action is intended to be brought in any District Court, the Judge thereof shall, for the purpose of this proviso, have all the powers of a Judge of the Supreme Court.
7. The Court in which any action for recovery of compensation Defective notice may be amended. under this Act is commenced or is pending, may at any stage of the proceedings, amend any defect in a notice of injury or death, or direct 50 Vic. No. 8, s. 7. that the action shall proceed and be maintainable notwithstanding that such notice has not been given duly if the Court having regard to the circumstances of the case thinks just so to direct.
8. (I) Notice in respect of any injury under this Act shall give Form of notice. the name and address of the person injured, and shall state in ordinary 50 Vic. No. 8, s. 8. language the cause of the injury, and the date at which it was sustained.
- (II) No such notice shall be deemed invalid by reason of any Defect or inaccuracy. defect or inaccuracy therein unless the judge who tries the action *Ibid.* arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy.
9. (I) Notice in respect of any injury under this Act shall be Service of notice. served on the employer, or if there is more than one employer, upon *Ibid.* one of such employers.

(II)

Employers' Liability.

(II) Such notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(III) Such notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(IV) Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at, or by sending it by post in a registered letter addressed to the office, or if there be more than one office, any one of the offices of such body.

Limit of sum recoverable as compensation.
50 Vic. No. 8, s. 3.

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

Money paid as penalty to be deducted from compensation.
Ibid. s. 5.

11. (I) There shall be deducted from any compensation awarded to any workman or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which has been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action.

No penalty in respect of any injury for which action has been brought.
Ibid.

(II) Where an action has been brought under this Act by any workman or the representatives of any workman, or any persons claiming by, under, or through such workman for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act in respect of the same cause of action, such workman, representatives, or persons shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act in respect of the same cause of action.

Expenses under 27 Vic. No. 13, s. 66, to be deducted.
56 Vic. No. 6, s. 3.

(III) There shall be deducted from any compensation awarded to any seaman (or representatives of a seaman, or persons claiming by, under, or through a seaman) in respect of any cause of action arising under this Act, any expenses which the employer of such seaman has had to pay on account of the injury to such seaman under the provisions of the Act twenty-seventh Victoria number thirteen.

Employer entitled to credit for insurance effected by him.
50 Vic. No. 8, s. 6.

12. In determining in any case the amount of compensation payable under this Act by an employer, the Court shall take into consideration the value of any payment or contribution made by such employer to or for the injured person in respect of his injury, and also the value of any insurance or compensation to which such person shall have become entitled by virtue of any payment or arrangement made by such employer.

SCHEDULE.

Title of Act.	Reference to Act.
Employers' Liability Act of 1886	50 Victoria No. 8.
Employers' Liability Act Amendment Act, 1893	56 Victoria No. 6.

In the name and on the behalf of Her Majesty I assent to this Act.

FREDK. M. DARLEY,
Lieutenant-Governor.
Government House,
Sydney, 6th December, 1897.

Memo. and Certificate to accompany the Employers' Liability Bill.

THIS Bill consolidates two Acts, viz. : —

Employers' Liability Act of 1886, 50 Vic. No. 8; Employers' Amendment Act, 56 Vic. No. 6.

The former of these Acts gave a remedy to workmen in respect of personal injuries suffered by them. The latter extended it to seamen. Some questions of considerable difficulty arose in consequence of the generality of the fifth section of the Amending Act, which, however, have been dealt with without in any way altering the law contained in the Acts.

In clause 4, in the words immediately preceding subclause (vi), the words "ballast or dunnage" are an addition. I understand that some difficulties have arisen in consequence of the limitation of the original Act to "cargo and coals." There seems no good reason why a seaman who is injured while his ship is discharging "cargo or coals" should be entitled to compensation while another who is injured whilst "ballast or dunnage" is being discharged should be deprived of it, and I have therefore ventured to add the words and respectfully submit them as an amendment necessary to supply a defect in the present Acts.

The words "or port," in clause 10, are also new, but they are not an amendment, they were necessary to make the section apply clearly to seamen as well as to other workmen.

With these exceptions I certify that this Bill solely consolidates and in no way alters, adds to, or amends the law as appearing in the Acts consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

Employers' Liability Bill of 1897.
No. , 1897.

TABLE showing how the sections of Acts intended to be consolidated have been dealt with.

Section of Act.	Section of Bill.	Remarks.
50 VICTORIA No. 8.		
1	4	
2	5	
3	10	
4	6	
5	11 (I), (II)	
6	12	
7	7	
8	8 (I), (II), 9 (I), (II), (III), (IV).	
9	3	
10	
11	Commencement of Act. Short title.
56 VICTORIA No. 6.		
1	Short title.
2	3	
3	4, 11 (III)	
4	5 (III)	
5	3	

9	3	
8	2 (m)	
7	1 (m)	
6	3	
5		From age
4		20 August 20 0
3		
2		From age
1		Commencement of year
11	3	
10	(m) (m) (m)	
9	2 (m) (m) 2 (m)	
8	1	
7	13	
6	11 (m) (m)	
5	0	
4	10	
3	0	
2	0	
1	0	
		20 August 20 0

Section of year	Section of year	Section of year
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From age 20 0

From age 20 0

20 1800

Embryology, General Bill of 1800

Employers' Liability Bill of 1897.

No. 1897.

ARRANGEMENT OF SECTIONS.

Section.

1. Short title.
2. Repeal.
3. Interpretation.
4. Right of compensation for personal injury.
5. Limiting right of compensation for personal injury.
6. Notice of injury and commencement of action.
7. Amendment of defective notice.
8. Form and validity of notice.
9. Service of notice.
10. Limit of sum recoverable as compensation.
11. Penalty and expenses to be deducted from compensation.
12. Employer entitled to credit for insurance effected by him.

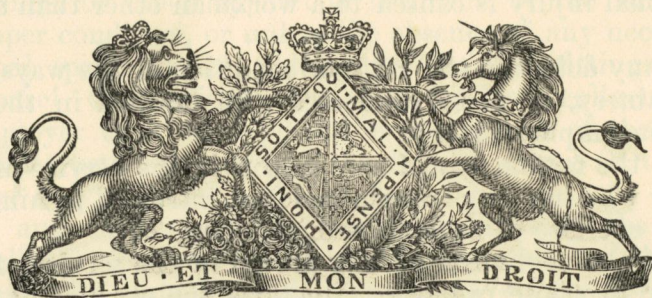
SCHEDULE.

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

*Legislative Council Chamber,
Sydney, 28th October, 1897.*

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO SEXAGESIMO PRIMO

VICTORIÆ REGINÆ.

No. . (A.D. 1897.)

An Act to consolidate the Acts extending and regulating the liability of employers to make compensation for personal injuries suffered by workmen in their service.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 1. This Act may be cited as the "Employers' Liability Act of Short title. 1897."

2. The Acts described in the Schedule hereto are hereby Repeal. repealed.

3. In this Act, unless the context or subject matter otherwise Interpretation. 10 indicates or requires,—

"ship" includes every vessel of whatever kind, whether propelled "Ship." by steam, sails, oars, or otherwise; 56 Vic. No. 6, s. 2.

"employer" includes a body of persons whether corporate or "Employer." unincorporate, and a corporation sole; 50 Vic. No. 8, s. 9.

15 "seaman" means any person employed upon a ship owned in "Seaman." New South Wales, or who has signed articles of engage- 56 Vic. No. 6, s. 2. ment in the said Colony;

"workman" means a seaman as above defined, a railway "Workman." servant, and any other person who being a labourer, 50 Vic. No. 8, s. 9.

20 servant in husbandry, journeyman, artificer, handicraftsman, 56 Vic. No. 6, s. 5. miner, or otherwise engaged in manual labour, whether under or above the age of twenty-one years, has entered into or works under a contract with an employer, whether

Employers' Liability.

the contract was made before or after the passing of this Act, is express or implied, oral or in writing, and whether it is a contract of service or a contract personally to execute any work or labour ;

- 5 the expression "person who has superintendence intrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour. "Person who has superintendence." 50 Vic. No. 8, s. 9.

4. Where personal injury is caused to a workman other than a seaman— Right of compensation for personal injury. 50 Vic. No. 8, s. 1.

- (I) by reason of any defect in the state or condition of the ways, works, machinery, or plant connected with or used in the business of the employer ; or 50 Vic. No. 8, s. 1.
- 15 (II) by reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him whilst in the exercise of such superintendence ; or 50 Vic. No. 8, s. 1.
- (III) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed ; or 50 Vic. No. 8, s. 1.
- 20 (IV) by reason of the act or omission of any person in the service of the employer, done, or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf ; or 50 Vic. No. 8, s. 1.
- 25 (v) by reason of the negligence of any person in the service of the employer who has the charge or control of any signal-points, engine, or train upon a rail or tramway ; or— Ibid.
- 30 when within the jurisdiction of New South Wales a ship is moored or at anchor, receiving or discharging cargo, coals, ballast, or dunnage, and personal injury is caused to a workman being a seaman—
- (VI) by reason of any defect in the condition of the spars, tackle, machinery, gearing, fittings, or other apparel or furniture of the ship, or by reason of the absence of any necessary and usual spars, tackle, machinery, gearing, fittings, or other apparel or furniture of such ship ; or 56 Vic. No. 6, s. 3.
- 35 (VII) by reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him by such employer whilst in the exercise of such superintendence ; or 56 Vic. No. 6, s. 3.
- 40 (VIII) by reason of the negligence of any person in the service of the employer of the seaman to whose orders and directions the seaman was at the time of the injury bound to conform and did conform, where such injury resulted from his having so conformed, 56 Vic. No. 6, s. 3.
- 45

the workman, or in case the injury results in death, the legal 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. 50 Vic. No. 8, s. 1. 56 Vic. No. 6, s. 3.

5. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases, that is to say :— Limiting right of compensation for personal injury. 50 Vic. No. 8, s. 2.

- 55 (I) Under subsection one of section four unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer, and intrusted by him with the duty of seeing that the ways, works, and machinery or plant were in proper condition. Ibid.
- 60 (II)

Employers' Liability.

(II) Under subsection four of section four unless the injury 50 Vic. No. 8, s. 2.
resulted from some impropriety or defect in the rules, by-laws,
or instructions therein mentioned.

5 (III) Under subsection six of section four unless the defect therein 56 Vic. No. 6, s. 4.
mentioned arose from or had not been discovered or remedied
owing to the negligence of the employer or of some person
in the service of the employer, and intrusted by him with
the duty of seeing that the spars, tackle, machinery, gearing,
10 fittings, or other apparel or furniture of the ship were in
proper condition, or unless the absence of any necessary and
usual spars, tackle, machinery, gearing, fittings, or other
apparel or furniture was due to the negligence of the
employer or of some person in the service of the employer,
and intrusted by him with the duty of seeing that the same
15 were duly provided.

(IV) In any case where the workman knew of the defect or *Ibid.*
negligence which caused his injury, and failed within a
reasonable time to give or cause to be given information
thereof to the employer or some person intrusted with
20 any duties of superintendence, in or over that department
in which the defect or negligence existed, whether such
superintendent be ordinarily engaged in manual labour or
not, unless the injured person should himself perform duties
of superintendence, in which case such injured person must
25 have given notice to the employer or to a person intrusted
with any superintendence over himself, unless the employer
or person so intrusted already knew of the said defect or
negligence.

6. An action for the recovery under this Act of compensation *Notice of injury.*
30 for an injury shall not be maintainable unless notice that injury 50 Vic. No. 8, s. 4.
has been sustained is given within six weeks, and the action is *Commencement of*
commenced within six months from the occurrence of the accident *action.*
causing the injury, or in case of death within twelve months from the
time of death :

35 Provided always that the want of such notice shall be no bar *Proviso as to want of*
to the maintenance of such action if upon motion made for leave to *notice.*
proceed notwithstanding no such notice has been given, a Judge *Ibid.*
shall be of opinion that there was reasonable excuse for such want
of notice ; and where the action is intended to be brought in any
40 District Court, the Judge thereof shall, for the purpose of this proviso,
have all the powers of a Judge of the Supreme Court.

7. The Court in which any action for recovery of compensation *Defective notice may*
under this Act is commenced or is pending, may at any stage of the *be amended.*
proceedings, amend any defect in a notice of injury or death, or direct 50 Vic. No. 8, s. 7.
45 that the action shall proceed and be maintainable notwithstanding that
such notice has not been given duly if the Court having regard to the
circumstances of the case thinks just so to direct.

8. (I) Notice in respect of any injury under this Act shall give *Form of notice.*
the name and address of the person injured, and shall state in ordinary 50 Vic. No. 8, s. 8.
50 language the cause of the injury, and the date at which it was
sustained.

(II) No such notice shall be deemed invalid by reason of any *Defect or inaccuracy.*
defect or inaccuracy therein unless the judge who tries the action *Ibid.*
arising from the injury mentioned in the notice shall be of opinion
55 that the defendant in the action is prejudiced in his defence by such
defect or inaccuracy.

9. (I) Notice in respect of any injury under this Act shall be *Service of notice.*
served on the employer, or if there is more than one employer, upon *Ibid.*
one of such employers.

(II)

Employers' Liability.

(II) Such notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(III) Such notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(IV) Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at, or by sending it by post in a registered letter addressed to the office, or if there be more than one office, any one of the offices of such body.

10. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earning during the three years preceding the injury of a person in the same grade employed during those years in the like employment, and in the district or port in which the workman is employed at the time of the injury. Limit of sum recoverable as compensation. 50 Vic. No. 8, s. 3.

11. (I) There shall be deducted from any compensation awarded to any workman or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which has been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action. Money paid as penalty to be deducted from compensation. Ibid. s. 5.

(II) Where an action has been brought under this Act by any workman or the representatives of any workman, or any persons claiming by, under, or through such workman for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act in respect of the same cause of action, such workman, representatives, or persons shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act in respect of the same cause of action. No penalty in respect of any injury for which action has been brought. Ibid.

(III) There shall be deducted from any compensation awarded to any seaman (or representatives of a seaman, or persons claiming by, under, or through a seaman) in respect of any cause of action arising under this Act, any expenses which the employer of such seaman has had to pay on account of the injury to such seaman under the provisions of the Act twenty-seventh Victoria number thirteen. Expenses under 27 Vic. No. 13, s. 66, to be deducted. 56 Vic. No. 6, s. 3.

12. In determining in any case the amount of compensation payable under this Act by an employer, the Court shall take into consideration the value of any payment or contribution made by such employer to or for the injured person in respect of his injury, and also the value of any insurance or compensation to which such person shall have become entitled by virtue of any payment or arrangement made by such employer. Employer entitled to credit for insurance effected by him. 50 Vic. No. 8, s. 6.

SCHEDULE.

50	Title of Act.	Reference to Act.
	Employers' Liability Act of 1886	50 Victoria No. 8.
	Employers' Liability Act Amendment Act, 1893	56 Victoria No. 6.

Memo. and Certificate to accompany the Employers' Liability Bill.

THIS Bill consolidates two Acts, viz. :—

Employers' Liability Act of 1886, 50 Vic. No. 8; Employers' Amendment Act, 56 Vic. No. 6.

The former of these Acts gave a remedy to workmen in respect of personal injuries suffered by them. The latter extended it to seamen. Some questions of considerable difficulty arose in consequence of the generality of the fifth section of the Amending Act, which, however, have been dealt with without in any way altering the law contained in the Acts.

In clause 4, in the words immediately preceding subclause (vi), the words "ballast or dunnage" are an addition. I understand that some difficulties have arisen in consequence of the limitation of the original Act to "cargo and coals." There seems no good reason why a seaman who is injured while his ship is discharging "cargo or coals" should be entitled to compensation while another who is injured whilst "ballast or dunnage" is being discharged should be deprived of it, and I have therefore ventured to add the words and respectfully submit them as an amendment necessary to supply a defect in the present Acts.

The words "or port," in clause 10, are also new, but they are not an amendment, they were necessary to make the section apply clearly to seamen as well as to other workmen.

With these exceptions I certify that this Bill solely consolidates and in no way alters, adds to, or amends the law as appearing in the Acts consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

Employers' Liability Bill of 1897.

No. , 1897.

TABLE showing how the sections of Acts intended to be consolidated have been dealt with.

Section of Act.	Section of Bill.	Remarks.
50 VICTORIA No. 8.		
1	4	
2	5	
3	10	
4	6	
5	11 (I), (II)	
6	12	
7	7	
8	8 (I), (II), 9 (I), (II), (III), (IV).	
9	3	
10	Commencement of Act.
11	Short title.
56 VICTORIA No. 6.		
1	Short title.
2	3	
3	4, 11 (III)	
4	5 (III)	
5	3	

Employers' Liability Bill of 1897.

No. 1897.

ARRANGEMENT OF SECTIONS.

Section.

1. Short title.
2. Repeal.
3. Interpretation.
4. Right of compensation for personal injury.
5. Limiting right of compensation for personal injury.
6. Notice of injury and commencement of action.
7. Amendment of defective notice.
8. Form and validity of notice.
9. Service of notice.
10. Limit of sum recoverable as compensation.
11. Penalty and expenses to be deducted from compensation.
12. Employer entitled to credit for insurance effected by him.

SCHEDULE.

Legislative Council.

NO. , 1897.

A BILL

To consolidate the Acts extending and regulating the liability of employers to make compensation for personal injuries suffered by workmen in their service.

[MR. WANT;—13 October, 1897.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

5 1. This Act may be cited as the "Employers' Liability Act of 1897." Short title.

2. The Acts described in the Schedule hereto are hereby Repeal. repealed.

3. In this Act, unless the context or subject matter otherwise Interpretation. indicates or requires,—

"ship" includes every vessel of whatever kind, whether propelled "Ship."
by steam, sails, oars, or otherwise; 56 Vic. No. 6, s. 2.

"employer" includes a body of persons whether corporate or "Employer."
unincorporate, and a corporation sole; 50 Vic. No. 8, s. 9.

15 "seaman" means any person employed upon a ship owned in "Seaman."
New South Wales, or who has signed articles of engage- 56 Vic. No. 6, s. 2.
ment in the said Colony;

c 102—

"workman"

"Workman."

50 Vic. No. 8, s. 9.

56 Vic. No. 6, s. 5.

"workman" means a seaman as above defined, a railway servant, and any other person who being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under or above the age of twenty-one years, has entered 5 into or works under a contract with an employer, whether the contract was made before or after the passing of this Act, is express or implied, oral or in writing, and whether it is a contract of service or a contract personally to execute any work or labour ; 10

"Person who has superintendence."

50 Vic. No. 8, s. 9.

the expression "person who has superintendence intrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour.

Right of compensation for personal injury.

50 Vic. No. 8, s. 1.

4. Where personal injury is caused to a workman other than a 15 seaman—

50 Vic. No. 8, s. 1.

(I) by reason of any defect in the state or condition of the ways, works, machinery, or plant connected with or used in the business of the employer ; or

50 Vic. No. 8, s. 1.

(II) by reason of the negligence of any person in the service of 20 the employer who has any superintendence intrusted to him whilst in the exercise of such superintendence ; or

50 Vic. No. 8, s. 1.

(III) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did 25 conform, where such injury resulted from his having so conformed ; or

Ibid.

(IV) by reason of the act or omission of any person in the service of the employer, done, or made in obedience to the rules or by-laws of the employer, or in obedience to particular in- 30 structions given by any person delegated with the authority of the employer in that behalf ; or

(V) by reason of the negligence of any person in the service of the employer who has the charge or control of any signal- points, engine, or train upon a rail or tramway ; or— 35

when within the jurisdiction of New South Wales a ship is moored or at anchor, receiving or discharging cargo, coals, ballast, or dunnage, and personal injury is caused to a workman being a seaman—

56 Vic. No. 6, s. 3.

(VI) by reason of any defect in the condition of the spars, tackle, machinery, gearing, fittings, or other apparel or furniture of 40 the ship, or by reason of the absence of any necessary and usual spars, tackle, machinery, gearing, fittings, or other apparel or furniture of such ship ; or

56 Vic. No. 6, s. 3.

(VII) by reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him 45 by such employer whilst in the exercise of such superintendence ; or

56 Vic. No. 6, s. 3.

(VIII) by reason of the negligence of any person in the service of the employer of the seaman to whose orders and directions the seaman was at the time of the injury bound to conform 50 and did conform, where such injury resulted from his having so conformed,

50 Vic. No. 8, s. 1.

56 Vic. No. 6, s. 3.

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 55 the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

Limiting right of compensation for personal injury.

50 Vic. No. 8, s. 2.

Ibid.

5. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases, that is to say :— 60

(I) Under subsection one of section four unless the defect therein mentioned arose from or had not been discovered or remedied
wing

owing to the negligence of the employer or of some person in the service of the employer, and intrusted by him with the duty of seeing that the ways, works, and machinery or plant were in proper condition.

5 (II) Under subsection four of section four unless the injury 50 Vic. No. 8, s. 2. resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned.

10 (III) Under subsection six of section four unless the defect therein 56 Vic. No. 6, s. 4. mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer, and intrusted by him with the duty of seeing that the spars, tackle, machinery, gearing, fittings, or other apparel or furniture of the ship were in proper condition, or unless the absence of any necessary and usual spars, tackle, machinery, gearing, fittings, or other apparel or furniture was due to the negligence of the employer or of some person in the service of the employer, and intrusted by him with the duty of seeing that the same were duly provided.

20 (IV) In any case where the workman knew of the defect or *Ibid.* negligence which caused his injury, and failed within a reasonable time to give or cause to be given information thereof to the employer or some person intrusted with any duties of superintendence, in or over that department in which the defect or negligence existed, whether such superintendent be ordinarily engaged in manual labour or not, unless the injured person should himself perform duties of superintendence, in which case such injured person must have given notice to the employer or to a person intrusted with any superintendence over himself, unless the employer or person so intrusted already knew of the said defect or negligence.

30 6. An action for the recovery under this Act of compensation Notice of injury. for an injury shall not be maintainable unless notice that injury 50 Vic. No. 8, s. 4. has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident Commencement of action. causing the injury, or in case of death within twelve months from the time of death :

40 Provided always that the want of such notice shall be no bar Proviso as to want of to the maintenance of such action if upon motion made for leave to notice. proceed notwithstanding no such notice has been given, a Judge *Ibid.* shall be of opinion that there was reasonable excuse for such want of notice ; and where the action is intended to be brought in any District Court, the Judge thereof shall, for the purpose of this proviso, have all the powers of a Judge of the Supreme Court.

45 7. The Court in which any action for recovery of compensation Defective notice may be amended. under this Act is commenced or is pending, may at any stage of the 50 Vic. No. 8, s. 7. proceedings, amend any defect in a notice of injury or death, or direct that the action shall proceed and be maintainable notwithstanding that such notice has not been given duly if the Court having regard to the circumstances of the case thinks just so to direct.

50 8. (I) Notice in respect of any injury under this Act shall give Form of notice. the name and address of the person injured, and shall state in ordinary 50 Vic. No. 8, s. 8. language the cause of the injury, and the date at which it was sustained.

55 (II) No such notice shall be deemed invalid by reason of any Defect or inaccuracy. defect or inaccuracy therein unless the judge who tries the action *Ibid.* arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy.

Service of notice.
Ibid.

9. (I) Notice in respect of any injury under this Act shall be served on the employer, or if there is more than one employer, upon one of such employers.

(II) Such notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served. 5

(III) Such notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when a letter containing 10 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.

(IV) Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at, 15 or by sending it by post in a registered letter addressed to the office, or if there be more than one office, any one of the offices of such body.

Limit of sum
recoverable as
compensation.
50 Vic. No. 8, s. 3.

10. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earning during the three years preceding the injury of a 20 person in the same grade employed during those years in the like employment, and in the district or port in which the workman is employed at the time of the injury.

Money paid as
penalty to be
deducted from
compensation.
Ibid. s. 5.

11. (I) There shall be deducted from any compensation awarded to any workman or representatives of a workman, or persons claiming 25 by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which has been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons in respect of the same cause of action.

No penalty in
respect of any injury
for which action has
been brought.
Ibid.

(II) Where an action has been brought under this Act by 30 any workman or the representatives of any workman, or any persons claiming by, under, or through such workman for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act in respect of the same cause of action, such workman, 35 representatives, or persons shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act in respect of the same cause of action.

Expenses under
27 Vic. No. 13, s. 66,
to be deducted.
56 Vic. No. 6, s. 3.

(III) There shall be deducted from any compensation awarded to any seaman (or representatives of a seaman, or persons claiming by, 40 under, or through a seaman) in respect of any cause of action arising under this Act, any expenses which the employer of such seaman has had to pay on account of the injury to such seaman under the provisions of the Act twenty-seventh Victoria number thirteen.

Employer entitled to
credit for insurance
effected by him.
50 Vic. No. 8, s. 6.

12. In determining in any case the amount of compensation 45 payable under this Act by an employer, the Court shall take into consideration the value of any payment or contribution made by such employer to or for the injured person in respect of his injury, and also the value of any insurance or compensation to which such person shall have become entitled by virtue of any payment or arrangement made 50 by such employer.

SCHEDULE.

Title of Act.	Reference to Act.
Employers' Liability Act of 1886	50 Victoria No. 8.
Employers' Liability Act Amendment Act, 1893	56 Victoria No. 6. 55