EXPERT GIVES THE TELEGRAPH HIS VIEWS ON WORKMEN'S COMPENSATION INSURANCE AND OPERATION OF NEW LAW

[Continued From First Page.]

laws are of two forms, one requiring the employer to act and the other presuming acceptance, if employer does not reject.

"The presumed acceptance is the form used in Pennsylvania. Under this form, if an employer takes no action whatever he is presumed to have accepted the compensation act, and the same presumption extends to his employes. The law declares that all contracts of employment continued after January first will be presumed to include, first, an agreement on the part of the employer that he will accept the obligation of the compensation act, waving his constitutional rights, and second, an agreement on part of the employe that he will accept the compensation, provided by the act, waiving his right to claim damages under common law procedure. This agreement on the part of the employe binds not only himself, but those who may be dependent upon him in case of a fatal accident. This provision also extends to minor employes. The act becoming effective January 1, 1916, unless an employer shall have given notice at any time before December 31, 1915, he is presumed to have fully accepted the provisions of the act. If such notice is given after January first an employer is bound by the act for sixty days after such notice has been served. The same privileges of rejection are given to employes of an employer to have accepted under the same conditions and requirements. An employe, however, must notify sixty days prior to the occurrence of an accident, if he elects not to accept compensation.

"If an employer does reject he becomes liable to his employes in the event of injury and in defending against a claim for damages he cannot plead in defense that the injury was occasioned by the negligence of a fellow servant, or that the injury was due to the hazard of the employment or that the injury was due to the negligence of the injured person himself, the burden of proof resting upon the employer, and the resulting question being one of fact for the jury to determine. There is practically no limit to liability for damages, and therefore the majority of employers will doubtless accept the provisions of the compensation law, rather than run the risk of a heavy judgment being found because of the fact that his defenses are denied him. If an employer has accepted the law and one or more of his employes should notify him of their rejection, the law is not clear as to the obligation of the employer to such employe. He, of course, would be liable to them for damages if injury was due to his negligence, and it is the opinion of many legal minds that it is the intent of the law in such cases to allow the employer all of his common law defenses that are available to him at this time in personal injury damage cases.

"The act only applies to injuries happening in the State of Pennsylvania. It is not extra-territorial. It covers all accidents sustained in the course of employment unless self-inflicted or caused by a third person, who intends to injure for personal reasons. Occupational diseases are not covered.

"The act does not apply to one whose employment is casual and not in the course of the employer's business, and also excludes domestic servants and agricultural labor.

"The amount of compensation to which employes are entitled is based upon his average weekly wages and, in the language used, means the money rate at which the service rendered is paid for under any contract of hiring in force at the time of the accident. It does not include any gratuities received from either the employer or others. The schedule is divided into nonfatal injuries and fatal injuries. No compensation is payable for the first two weeks after the injury, but the employer is required to furnish medical and hospital attendance not to exceed $25, unless a major surgical operation is necessary in which case the cost shall not exceed $75. If the employer fails to provide attention, the employe may provide same at employer's cost within these limits. If employe refuses medical attention compensation is not payable during the time of such refusal.

"For total disability injuries, either permanent or temporary, employes receive 50 per cent. of average weekly wages during such period of disability, but not to exceed 500 weeks, beginning with the fourteenth day after injury. The maximum amount payable is $10 and the minimum $5. Where an employe earns less than $5 he receives full earnings. The total amount payable under total disability claim is $4,000, plus the medical.

"For partial disability, either permanent or temporary, employes are entitled to fifty per cent. of the differences between his weekly wages before and after the injury, not to exceed $10 per week, and not for more than 300 weeks. For the loss of a hand, 175 weeks, an arm, 215 weeks, a foot, 150 weeks, a leg, 215 weeks, an eye, 125 weeks. The loss of both hands or both feet, both arms, both legs, or both eyes constitutes permanent total disability, taking a maximum payment of not more than $10 per week for 500 weeks, limited at $4,000 in the aggregate. To constitute the loss of a member amputation is not necessary, if there is a permanent loss of use.

"For fatal injuries indemnity is provided by paying a certain percentage of wages with a maximum of $20 per week and a minimum of $10. For one of two children, with no widow or widower, 25 per cent., for each additional child, 10 per cent. with a maximum of 60 per cent. for all children. For widow or widower and no children, 40 per cent., with one child 45 per cent., with two children 50 per cent., with three children 55 per cent, with four or more children 60 per cent. If there are no widow, widower or children, then the following provisions: for both parents, or surviving parent, 20 per cent., for a brother or a sister, if no surviving parents 15 per cent., for each additional brother or sister, 5 per cent., with a maximum of 25 per cent. for all brothers and sisters. In addition to these payments, expenses of sickness and burial not to exceed $100. This, of course, means the medical provision on account of the injury, where the word sickness is used. Payments to a child, brother or sister ceases at the age of 16 years. Should a widow or widower remarry, or become capable of self-support, payments cease. The maximum period payable for death is 500 weeks. The payment made to alien relatives who are not residents of the United States shall be two-thirds the amount provided in the above schedule. Actual dependency of alien children must be proven.

"An employer having accepted the law shall purchase insurance in either stock or mutual company, or become a contributor to the State insurance fund, unless he has been granted the privilege of self insurance by showing sufficient financial strength and being granted such permission by the industrial board. Notice of accident must be given by an injured employe within fourteen days after it happened, unless employer has actual knowledge of this occurrence. Claims are forever barred unless within one year after the accident the parties have agreed to settlement, or one of them has started proceedings to collect compensation. Settlements may be made by agreement between the employer and the injured on and after the fourteenth day after the injury. The agreement must be in writing and signed by the parties, a certified copy of agreement must be delivered to compensation board, who must approve same. If parties fail to agree the claim goes before compensation board for hearing. There is no indemnity paid if it can be proven that an employe deliberately injured himself to draw indemnity, or if the employe was intoxicated at the time of the injury.

"A law has been passed for the creation of mutual associations and also for the creation of an insurance fund. Speaking of the fund it will be administered by the insurance board appointed by the governor without liability on part of the State beyond the amount of the contribution or premiums by the subscribers. The administration expense, however, will of premiums by the subscribers. The 1919, for which an appropriation of $300,000 was made by the last Legislature. There is in the act creating the fund, and I refer to Section 6 of Act No. 340, the following language: 'In fixing the premiums payable by any subscriber, the board may take into account the condition of the plant, shop, workroom, etc., and they may from time to time change the amount of premiums payable by any of the subscribers as circumstances may require, and they may increase the premiums of any employer neglecting to provide safety devices, or disobeying the rules or regulations made by the board. The insurance of any subscriber shall not be effective until he shall have paid in full the premiums so fixed and determined.'

"In addresses which have been made in different parts of the State by members of the insurance board its manager and assistant manager have laid great stress on the fact that the law says that any subscriber to the fund is relieved of all further liability. This only means, that, in case of an injury an employe must make his claim against this fund, and not against the employer. It does not mean that the fund will make any payment or any defense should claims be made for damages under common law procedure, as the fund can only cover for compensation payments as provided by the law, and I might say there are many accidents occurring in compensation States that are found not entitled to compensation payments, and naturally procedure is then taken under common law with the hope of recovery.

"A further statement made by the managers of the fund is that there is no place in the law where the word 'assessment' is mentioned. This is perfectly true. But the provision for the changing of the premium at any time that circumstances may require referred to above allows the board the same latitude that would be granted if the word 'assessment' had been made use of, and seems to indicate that, without doubt, if the fund should become bankrupt, there will be ways and means for the board to collect a sufficient amount of extra premium to meet such a contingency.

"While I desire to deal with the fund in all fairness, there are some statements of facts which should be kept in mind. The fund has no capital or surplus, and the State assumes no responsibility or guarantee of the fund. The fund cannot issue a policy of insurance. Its protection is limited to compensation payments only.

"The rates of the fund are to be 10 per cent. under stock companies, and I think this should be so, for the class of protection it gives. Its expenses are all paid by the State. Its premiums are exempt from taxation, and while there is a provision that proper reserves must be created, there is no rule by which they are created, and there is no one to see that they are properly maintained as the board is not subject to any departmental investigation. The sky is the limit in case of a catastrophe accident. The test of real insurance always comes with such a disaster, and the fund is not, or never will be in position to withstand such a test, I believe.

"As to mutual insurance, I do not think that any well informed businessman will resort to any such means to relieve himself of the obligation of the law. Mutual insurance may be all right for underwriting fire risks, where the loan can be determined but the underwriting of compensation is an entirely different matter. Payments are deferred into the future for 500 weeks, or practically ten years and I do not think that any employer of labor desires to hold the bag and take the chance that a mutual association will be in existence ten years in the future. I will quote from two sections of the law No.342, which is provided for the incorporation and regulation of mutual companies. Section II reads 'that the board of directors may make reasonable rules and regulations, and that any subscriber who disregards such rules shall forfeit one-half of the unearned premiums previously paid by him. That should a member terminate his insurance, it shall not release him from liability for the payment of assessments then, or thereafter, made by the board of directors to make up any deficiencies existing at the termination of his insurance,' and Section 12 reads, 'Every subscriber to such association shall be under a contingent mutual liability for the payment of losses and expenses in excess of the cash funds of the association to an amount equal to the premium paid by him during the current year.'

"There are some twenty-six States having compensation laws, and there has not been a sufficient amount of mutual business written in these States to make it worthy of the consideration of any employer. While the mutual plan is one that has been provided by the State of Pennsylvania for the administration of the law, and while I, personally, have the honor to represent the United States Fidelity and Guaranty Company of Baltimore, which is a stock company, we want to treat it fair as a competitor. My company is in the insurance business, and we hope to get our fair share of the premiums, but if any employer in the State should ask for advice, after having stated that, under no condition would he insure with my company, I would, without hesitation, advise him that his choice should be between some other good stock insurance company, or arrange under the act, to be granted permission to carry his own insurance. That under no circumstances is he justified in contributing premiums to a mutual organization if he desires to obtain absolute security as a guarantee for payment or compensation to his employes. As between mutual associations and State fund, I should advise him to join a mutual, because he would then, as a member, have some voice in its management. But, as a subscriber to the fund he would be controlled absolutely by the rules and regulations of the industrial commission, the members of which have no interest in the fund whatsoeevr.

"Stock company insurance is the one safe method, I believe, to relieve an employer of the obligations of the compensation law. The policies issued by such companies guarantee, without limits, to administer and pay the compensation provisions of the law, and also to defend, at its own cost, and pay any judgment without limits, as to liability, if an action should be brought for personal injury damages under the common law, thus giving a double covering for the premium you pay. Your premiums will be fixed absolutely. There are no assessments, or no rearranging of the premium during the policy contract. The rates, while they may be 10 per cent. higher than the insurance fund, are only consistent with the class of protection guaranteed. Not only will the policies give full protection, but you will receive the benefit of an inspection service through safety engineers who will show how danger zones may be eliminated, thereby preventing the accidents, and as far as future cost of insurance is concerned, your premiums will be passed absolutely on the experience of your individual business, irrespective of any other business of the same nature in the State of Pennsylvania. Your rating will be an individual rating and not a classified rate as has been in vogue under common law procedure.

"In conclusion my advice to you is to consult freely with some good insurance man before making your decision, should you purchase insurance, as to which of the three plans you select, having in mind that, under any plan, all that can be offered you to relieve you of the obligation is security and service."

PRODUCER OF "THE BIRTH OF A NATION" WINS NEW FAME IN "OLD HEIDELBERG," THE COLONIAL'S COMING TRIANGLE

DOROTHY GISH, WALLACE REID AND KARL FORMES, JR., IN "OLD HEIDELBERG," THE NEW FIVE-PART FEATURE SUPERVISED BY D. W. GRIFFITH FOR THE TRIANGLE PROGRAM.

Dorothy Gish, the famous beauty, and most lovable star of the Griffith Triangle studios, will be the bright particular star in "Old Heidelberg," her latest Triangle success, which will be presented at the Colonial Theater during the first three days of next week. Another interesting incident concerning this particular attraction is the fact that this play was also conducted by David W. Griffith, who, it will be remembered, conducted "The Birth of a Nation" production. Miss Gish will have the assistance of a distinguished cast of players.

"Old Heidelberg" combines the well-known love story of Karl Heinz, hereditary prince of Rutania, and Katie, niece of the innkeeper, with a powerful argument against war.

When he is 20 years old, Karl, who even as a child has rebelled against the strict military rules of the court, is sent to Heidelberg with his tutor, Dr. Juttner. The university atmosphere is faithfully reproduced and the beautiful romance of prince and plebian unfolded. Into this happy life comes a summons from the reigning prince and Karl is called back to join his regiment and engage in a war which is proposed. To find out if his people really want to fight Karl and Dr. Juttner go among them and discover that they are seething with revolt. A veteran of a former war describes a famous victory in the previous conflict, which gives Griffith a chance to stage several thrilling battle scenes. Finally the reigning prince dies, war is averted and Karl becomes the ruler. The end of the play finds him in the palace after a farewell visit to Katie at Heidelberg. To effect a treaty with a neighboring State he is betrothed to a princess for whom he cares nothing.—Advertisement.

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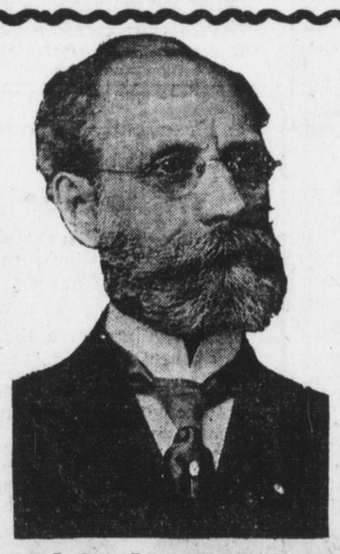

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