

## New Zealand.



### ANALYSIS.

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1891, No. 10.

AN ACT to amend "The Employers' Liability Act, 1882." Title.  
[19th August, 1891.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Employers' Liability Act Amendment Act, 1891." Short Title.

2. In this Act, unless inconsistent with the context,— Interpretation.  
 "Ship" includes any vessel of whatever kind, whether propelled by steam, sails, oars, or by any other motive-power:  
 "Seaman" includes every person employed upon a ship, whether at sea or in port.

3. For the purposes of "The Employers' Liability Act, 1882" (hereinafter called "the said Act"), and this Act, the expression "workman" means any person, male or female, whether under or over the age of twenty-one years, who, under contract with an employer, whether made before or after the passing of the said Act or this Act, contracts personally to do or perform any work or manual labour of any kind, whether technical, skilled, or unskilled, and whether such contract be oral or in writing, express or implied. Amendments of definition of workman in "The Employers' Liability Act, 1882."

A "seaman" as defined by this Act is also included in the expression "workman" hereinbefore contained; but such expression does not include a domestic servant of either sex.

The definition of the expression "workman" in the said Act is hereby repealed.

Remedy for injury to seamen employed in ships.

4. Where, after the commencement of this Act, in any navigable waters within or in the jurisdiction of New Zealand, personal injury is caused to a seaman—

- (1.) By reason of any defect or unfitness in the condition of any spars, rigging, tackle, machinery, fittings, apparel, or furniture of any ship, or by reason of the absence of any necessary spars, tackle, machinery, fittings, or other apparel or furniture, if such defect, unfitness, or absence could by reasonable care or diligence have been discovered by the employer or by some person in his service intrusted by him with the care, custody, or control of such spars, tackle, machinery, fittings, apparel, or furniture respectively; or
- (2.) 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
- (3.) By reason of the negligence of any person in the service of the employer to whose orders or directions the seaman or any other person was at the time of the injury bound to conform and did conform:

then and in any of such cases, if injury results to the seaman, he, or in case of his death his legal personal representatives and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as a workman or his legal personal representatives or such persons as aforesaid would, under the provisions of the said Act, have in like cases against his employer.

Repeal of section 5 of "The Employers' Liability Act, 1882."

Court or jury to assess compensation.

Proviso as to limitation in certain cases.

5. The fifth section of the said Act is hereby repealed, and in lieu thereof it is enacted that—

The amount of compensation recoverable under this Act shall be estimated and determined at such amount and in such manner as the Court, before which the case is heard, or as the jury, or the assessors, as the case may require, think fair and reasonable:

Provided that in cases heard before a jury the amount of compensation recoverable shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed, unless the Judge shall, at the instance of the foreman of the jury, upon being requested by three-fourths of such jury, direct that in his opinion such earnings would not be a fair and reasonable compensation under the circumstances:

Provided further that nothing in the last proviso shall apply to the case of an apprentice or articled pupil:

Provided further that the amount of compensation recoverable under this Act shall not exceed five hundred pounds in respect of any one cause of action.

Payments by employer in respect of an injury to be considered when compensation awarded.

6. In determining in any case the amount of compensation payable 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 payment or contribution made by such employer to any insurance or compensation fund to the extent to which any person who would

otherwise be entitled to compensation has received, or is entitled to receive, compensation out of such fund. In any action the fact of any payment or contribution having been made by the employer as aforesaid shall not of itself be any admission of liability on his part.

7. Where a workman has a right of action under the said Act the notice required by the sixth section thereof may be given by such workman, his solicitor or agent; and if such workman has sustained injury under such circumstances as render him physically or mentally incapable of giving or directing the giving of such notice, or if, in the opinion of his medical adviser, it would be injurious to such workman to give or direct the giving of such notice, and so as in any of such cases to be unable or unfit to give the notice required by the said sixth section, then, notwithstanding anything contained in the said section, such notice may be given not later than one month after the workman becomes physically or mentally capable of giving or directing the giving thereof, or when his medical adviser shall consider it would not be injurious to such workmen to give or direct the giving of such notice, as the case may be.

Extension of time within which notice of action may be given in certain cases, also of period within which action may be brought.

And, in any such case as herein provided for, the right of action shall be extended to a period of three months from the date when the person is capable or fitted to give or direct the giving of such notice as aforesaid, and shall not reckon from the occurrence of the accident causing the injury.

8. Where it may be necessary to make an affidavit for the purposes of any action or suit brought or proposed to be brought under the said Act or this Act, such affidavit may, notwithstanding any Act or law to the contrary, be made and taken before any person authorised by law to take affidavits in the Supreme Court.

Affidavits may be taken before any person authorised to take affidavits in Supreme Court.

9. Every covenant, contract, or agreement hereafter made or entered into whereby any workman or person binds himself or his personal representatives, either expressly or by implication, not to claim any benefit or enforce any right under the said Act or this Act shall be null and void.

Contracts in bar of benefit of Acts to be void.

10. Where personal injury to a workman who is illegitimate results in death, the same rights of compensation shall exist for the benefit of his mother, or of brothers and sisters by the same father and mother, as if he and such brothers and sisters were legitimate.

Workman being illegitimate no bar to claim.

11. In an action against an employer a workman shall not, by reason of his continuing in the employment of the employer with knowledge of the defect, negligence, act, or omission which caused his injury, be deemed to have voluntarily incurred the risk of the injury.

Workman knowing of defect, &c., not deemed to have voluntarily incurred risk.

12. A workman shall not be entitled to any right of compensation or remedy against his employer in any case where the employer was ignorant of the defect, negligence, act, or omission which caused his injury, and such workman knowing of the same failed, without a reasonable excuse, to give or cause to be given, within a reasonable time, information thereof to his employer or to some person superior to himself in the service of his employer.

Workman not informing of defect not to recover damages.

13. No workman shall be entitled to recover damages or compensation in respect of any injury arising from his own negligence.

No redress for damage caused by negligence.

Judge or Magistrate  
may divide  
compensation.

14. Where compensation is awarded in case of the death of a workman for an injury sustained by him in the course of his employment, the amount recovered, after deducting the costs not recovered from the defendant, may, if the Judge or Magistrate so directs, be divided between the wife, husband (where the deceased was a wife), parents, and children of the deceased, in such shares as the Judge or Magistrate may determine.

Representatives  
of deceased  
employer may  
be sued.

15. An action under the said Act and this Act shall lie, and may be maintained, against the representatives of a deceased employer.