

BECHUANALAND PROTECTORATE.

No. 76 of 1934.

(Promulgated 4th January, 1935.)

PROCLAMATION

By His Excellency the High Commissioner

Making provision for injuries suffered by workmen employed in the Bechuanaland Protectorate in the course of their employment or for death resulting from such injuries, and to provide for compensation in cases of industrial diseases.

Whereas it is expedient to make provision for injuries suffered by workmen employed in the Bechuanaland Protectorate (hereinafter referred to as "the territory") in the course of their employment or for death resulting from such injuries, and to provide for compensation in cases of industrial diseases.

Now therefore under and by virtue of the powers in me vested I do hereby declare, proclaim and make known as follows:

1. In this Proclamation unless inconsistent with the context—

"dependants" shall mean such members of the workman's family specified in the *First Schedule* to this Proclamation as are wholly or in part dependent upon the workman at the time of the injury which caused his death;

"district" shall mean a magisterial district of the territory;

"employer" shall mean any person or any body of persons, corporate or incorporate, hiring or contracting before or after the taking effect of this Proclamation with any workman for the performance of any work and the term "employer" shall include his representative;

"Resident Magistrate" shall mean a Resident Magistrate having jurisdiction in the district in which the injury to the workman occurred;

"medical practitioner" shall mean any person duly registered as such under any law of the Territory relating to the registration of medical practitioners;

"mine" shall mean any working made for the purpose of prospecting for or mining minerals;

"principal" shall mean any person whose trade, business or public function it is or has entered into a contract wholly or in part to do, perform or undertake work and who employs a contractor to do it for him wholly or in part, and whether such contractor employs a sub-contractor or not, and the term "principal" shall include his representative;

"representative" shall mean in the case of a deceased principal, employer or workman, his executor, or failing the appointment of an executor any *curator bonis* lawfully appointed for the taking charge of the deceased's estate; in the case of insolvency of a principal or employer, shall mean the trustee of his insolvent estate, and if the principal or employer is a limited liability company placed in liquidation, shall mean the liquidator of such company; in the case of a minor, shall mean the guardian of such minor; and in the case of a lunatic, shall mean any person lawfully appointed *curator bonis* of such lunatic;

“serious and wilful misconduct” shall include—

- (a) drunkenness;
- (b) a wilful contravention of any law or statutory regulation made for the purpose of ensuring the safety of or preventing accidents to workmen;
- (c) any other act or omission which a court of law, having regard to all the circumstances of an accident, may declare to be serious and wilful misconduct;

“wages” shall mean the average weekly earnings of the workman with the employer at the time of the accident causing incapacity or death whether such wages be paid at a rate per hour, per day, or per month; wages shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated but shall not include remuneration for overtime not habitually performed or remunerated at a special rate or any sums paid by the employer to the workman to cover any special expense entailed on the workman by the nature of his work;

when the workman's wages are fixed at a rate calculated on work done, then, for the purposes of this Proclamation, his wages shall be the average of his weekly earnings at similar employment on the same terms of remuneration for as long a period as possible prior to the accident but not exceeding twelve months; where by reason of the shortness of the time during which the workman has been in the employment of the employer it is impracticable to compute the average weekly earnings of the workman, then the average weekly earnings shall be computed if possible by having regard to the amount that the workman earned at similar work at the same terms of remuneration with another employer during the twelve months immediately preceding the accident, or by having regard to the amount which during the twelve months immediately preceding the accident has been earned by other workmen with the employer at similar employment on the same terms of remuneration, or would have been earned by the workman during such preceding twelve months had he been so employed;

where the workman has entered into concurrent contracts of service with two or more employers, and worked under those contracts at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident;

“Work” shall mean—

- (a) employment at or about a “mine” as herein defined;
- (b) employment at or about such trade, industry, business or public undertaking (other than domestic service) as the High Commissioner may from time to time specify by Notice in the *Gazette*;

“workman” shall mean any person other than a native labourer as defined in the Native Labourers Compensation Proclamation 1934 engaged by an employer to perform work under agreement of service in the Territory whether such agreement be expressed or implied, be oral or in writing, and whether payment be made by time or calculated on work done; provided that the term “workman” shall not include—

- (a) a person whose wages in respect of his work exceeds four hundred pounds a year; or

- (b) a person, whose work is of a casual nature, and who is employed to do work for an employer other than in such employer's trade, business or industry; or
- (c) a person who contracts or sub-contracts for the carrying out of work and himself engages other persons independently of his employer to perform such work; or
- (d) an outworker—that is to say, a person to whom articles or materials are given out by an employer to be made up, cleaned, washed, altered, ornamented, finished or repaired or adapted for sale on premises not under the control and management of the employer; or
- (e) a person in the Police or Public Service of the Bechuanaland Protectorate, except those in respect of whom no provision exists in any law or regulation as to payment of a gratuity or pension in cases of injury or death.

Any reference to a workman who has been injured shall where the workman is dead or is a minor or has become a lunatic include a reference to his representative or to his dependents as the context may require.

2. No compensation shall be payable under this Proclamation in respect of any injury to a workman—

- (1) which did not arise out of and in the course of his work; or
- (2) which was due to the workman's own serious and wilful misconduct; or
- (3) if the accident which resulted in the injury would not have occurred, or if, or in so far as, the death or incapacity would not have been caused, but for a pre-existing diseased condition of the workman and such condition was unknown to the employer.

3. Save as in section *two* provided, if personal injury is caused by any accident to a workman necessitating his absence from work for a longer period than one week, the employer and every principal shall be liable to pay such workman compensation as provided in section *eight*.

4. (1) Any such workman who is desirous of obtaining compensation under this Proclamation shall give or cause to be given notice of such injury at his option either to his employer or to any principal. Such notice shall be given within fourteen days of the injury, and if not given within such period no compensation shall be payable under this Proclamation to a workman unless he shall have obtained from the Resident Magistrate a certificate that the time for giving notice should, having regard to all circumstances, have been extended. If he shall have obtained such certificate and given notice to the employer or such principal within a period of one week after the receipt of such certificate, the notice of injury shall be deemed to have been given within the time required by this sub-section.

(2) The employer or the principal to whom notice has been given may, on receiving such notice, require the workman to submit himself for examination by a medical practitioner named by the employer or such principal.

(3) If the employer or such principal shall not within one week after transmission to him of such notice agree with the workman for payment of compensation for the injury, the workman may transmit to the Clerk of the Court of the Resident Magistrate notice in writing of such injury and of the name of the employer or such principal, and with such notice shall transmit a certificate by a medical practitioner to the effect that in his opinion the injury necessitated the workman's absence from work for a longer period than one week. Such Clerk shall cause such information and certificate to be laid at once before the Resident Magistrate.

5. Such Resident Magistrate shall thereupon hold an enquiry into the circumstances of the accident, and shall record the evidence taken by him. Notice of the date and place at which such inquiry will be held shall be given by the Resident Magistrate to the employer or to such principal as the case may be.

6. A Resident Magistrate holding an inquiry or trying an action under this Proclamation shall be deemed to sit in a judicial capacity and shall have all the powers conferred on Magistrates by Proclamation of the 10th June, 1891, or any amendment thereof.

7. (1) Every party to an application may appear—

- (a) in person; or
- (b) by an attorney or law agent; or
- (c) by an advocate; or
- (d) by a member of his family; or
- (e) by a person in the permanent and exclusive employment of such party; or
- (f) in the case of a workman, by an officer of a trade union of which such workman is a member; or
- (g) in the case of a company, by any director, secretary, or other officer thereof, and in the case of a corporate body which is not a company by an officer thereof, or by leave of the Resident Magistrate, by any other person.

(2) No person, other than an advocate, attorney or law agent, shall be entitled for so appearing to recover any fee or reward except necessary out-of-pocket disbursements and expenses.

8. (1) If the Resident Magistrate shall satisfy himself from the evidence taken at the said inquiry that the injury is one in respect of which compensation is payable under this Proclamation, he shall make a provisional order for the payment to the workman by the employer or such principal of periodical amounts at the rate of fifty per centum of the wages which the workman was receiving at the time of the injury. The order shall be for the payment of such amounts from the date of the injury until the workman is sufficiently recovered therefrom to resume the work which he was employed to perform at the time of the accident or work similar thereto, but in no case shall the periodical payments be made for a period exceeding six months after the date of the accident. Any such order shall be subject to the provisions of section *twenty-five*. Payment of such amounts shall be made at such times or at such intervals as payment of wages was habitually made to the workman at the time of the injury.

Provided that when the Magistrate is satisfied that the workman was at the time of such accident earning wages at so small a rate that it would be impossible for him to maintain himself and those dependent upon him on a sum equal to fifty per centum of those wages, he may make an order for periodical payments exceeding fifty per centum of the wages which the workman was earning at the time of the accident, but not exceeding those wages.

(2) A memorandum of any agreement made between any workman and his employer or principal as to the payment of periodical amounts for the payment of which a workman might claim a provisional order under this section if proceedings were taken under sub-section (3) of section *four* may be registered by the Resident Magistrate in whose Court such proceedings might have been taken, subject to regulations made under section *twenty-nine* and upon such registration the terms of such agreement shall for all purposes of this Proclamation be deemed to have the force and effect of a provisional order granted under this section.

9. During the course of any proceedings under this Proclamation the Resident Magistrate may, if he thinks fit, at the request of any party to the proceedings, reserve any question of law arising therein for the decision of the Special Court, and such question shall be stated in the form of a special case, and may be argued before and shall be determined by that Court, which may give such directions in the matter, and may make such order as to costs, as to it may seem fit.

10. (1) A party aggrieved by any decision of the Resident Magistrate on the questions enumerated in sub-section (2) of this section may appeal from that decision to the Special Court.

(2) The questions upon which an appeal shall lie under this section are—

- (a) any question as to the interpretation of this Proclamation or any other law or of the common law;
- (b) whether there was or was not evidence to support the finding of the Resident Magistrate, or whether any evidence has been improperly admitted or rejected;
- (c) whether the accident causing the incapacity or death of the workman was attributable to his own serious and wilful misconduct;
- (d) whether the amount of any compensation awarded is in the circumstances so excessive or so inadequate that the award could not reasonably be made.

(3) The appellant shall in his notice of appeal state concisely the question upon which he is appealing and the grounds of the appeal.

(4) Upon the hearing of the appeal the Special Court aforesaid may remit the matter to the Resident Magistrate for further hearing, with such instructions as regards the taking of further evidence or otherwise as it may deem necessary, or may give such judgment or order as may appear just, including any order as to costs.

11. If the Resident Magistrate shall have refused to make a provisional order on the ground that the injury would not necessitate or has not necessitated the workman's absence from work for a period longer than one week, such workman may give or cause to be given notice to the employer or such principal aforesaid of such fact, and the provisions of sections *four* to *eight* inclusive shall apply *mutatis mutandis* as if notice of such fact were a notice of injury given under sub-section (1) of section *four* to the employer or such principal.

12. Every such provisional order shall (unless and until it is set aside or varied in the manner hereinafter provided, and if varied then to the extent of the order as varied) have for a period not exceeding six months from the date of the injury the full force and effect of an order made by a Court of a Resident Magistrate for periodical payments of money; provided that if such workman shall within such period resume work, or die, or leave the Territory without the written consent of the employer or such principal (as the case may be) or obtain judgment in his favour in any such action as is mentioned in section *eighteen* the provisional order shall lapse.

13. The employer or such principal aforesaid may set down with the Clerk of the Court of the Resident Magistrate who granted the provisional order an application to set aside or vary the same, and subject to the provisions of sub-section (2) of section *fourteen*, such application may be set down at any time during the period that the order is in force; provided always that he shall give to the workman forty-eight hours' notice of his intention to make such application, stating the day for which it is set down and the ground or grounds upon which it is being made.

14. The grounds on which a provisional order may be set aside or varied shall be one or more of the following:—

- (1) That the workman has sufficiently recovered to resume work, or has wilfully done an act calculated to retard his recovery and has in consequence retarded his recovery, or that when the employer or such principal has desired to ascertain any such fact the workman has refused to allow himself to be examined by a medical practitioner nominated by the employer or such principal;
- (2) that the employer or such principal did not receive the notice of injury aforesaid in time to be present or represented at the said enquiry, and proves that the injury did not arise out of and in the course of the workman's work or that it was caused by the workman's own serious and wilful misconduct; provided always that an application to set aside or vary a provisional order on any ground in this sub-section mentioned shall not be entertained unless the same be set down within a week after the provisional order has been served upon the employer or such principal as the case may be.

15. At and upon the hearing of the application to set aside the provisional order the applicant or the workman or the Court may produce or call such further evidence or recall such witnesses at the original inquiry as may be deemed necessary, and such evidence shall be recorded by the Resident Magistrate with and in addition to the evidence taken at the original inquiry.

16. If on any such application the applicant shall rely upon the ground that the workman is sufficiently recovered to resume work, the Resident Magistrate may require the workman to be further examined by a medical practitioner appointed by the Resident Magistrate, and may further require any such medical practitioner to give evidence on such application, and the cost of such further examination and evidence shall be borne by the unsuccessful party on such application.

17. Upon hearing the parties on such application, the Resident Magistrate may confirm or set aside or vary the provisional order, and if he confirms or varies it he may do so for such period or from such date as to him may seem fit, subject to the provisions of section *twelve*, and the confirmation or setting aside or variation of such order shall be deemed to be a final civil judgment of the Court of the Resident Magistrate.

18. If any workman became permanently incapacitated by reason of a personal injury arising out of and in the course of his work caused by any accident, he shall, in addition to the right to obtain a provisional order as aforesaid, and subject to the conditions of section *four* relative to notice to the employer or principal of the injury, have a right of action against the employer or such principal in the Court of the Resident Magistrate of the district in which he received such injury. The amount recoverable in such action shall be—

- (a) in case of permanent total incapacitation for work, an amount equal to three years' wages at the rate of wages earned by him at the time of the injury, less any sums received under such provisional order aforesaid, or *seven hundred and fifty pounds*, less any sums so received, whichever amount shall be the less, and in addition the hospital and medical expenses not exceeding one hundred pounds necessarily incurred as a result of the injury;
- (b) in case of permanent partial incapacitation for work (which shall mean a permanent inability owing to the injury to resume work similar to that at which he was employed at the time of the accident or for which he

was previous to the injury fitted by trade or apprenticeship) an amount equal to the probable deficiency in his wages for the next three years consequent on his diminished capacity to earn wages as the same rate as he was earning at the time of the injury, less any sums received under such provisional order aforesaid, or *three hundred and seventy-five* pounds, less any sums so received, whichever amount shall be the less.

Provided that in deducting sums in terms of sub-sections (a) and (b) hereof, granted under provisional orders, no account shall be taken of amounts so granted for a period of three months or under.

Any such action and the amounts recoverable shall be subject to the provisions of section *twenty-five*.

19. The Court hearing any such action may, if the employer's or the principal's liability to pay compensation under this Proclamation be proved, postpone giving judgment for a period or periods not exceeding six months in all, in order to obtain more certain evidence of the workman's permanent incapacity for work and whether the same be total or partial; provided that the Court may order, in anticipation of judgment, advances to be made to such workman by the employer or such principal not exceeding in all *three hundred and seventy-five* pounds.

20. (1) If any workman who has neither obtained judgment on an action under section *eighteen* nor otherwise received compensation in satisfaction of his right of action under the said section shall die from personal injury received, and the employer or principal would be liable under this Proclamation but for such death to pay him compensation for such injury, the dependants of the workman shall have a right of action in respect of such injury against the employer or such principal in the Court of the Resident Magistrate of the district in which the injury was received. The amount recoverable in such action shall be—

- (a) if the dependants are wholly dependent upon the workman, a sum not exceeding three years' wages at the time of his death;
- (b) if the dependants are only in part dependent upon the wages of the workman, a sum not exceeding three times the amount or value of the benefits received by such dependants from the workman during the twelve months immediately preceding the accident or which would, but for the death or incapacity caused by the accident, have been reasonably expected to be received by such dependants from the workman out of his wages during the twelve months immediately succeeding such accident, whichever can be best calculated to give the amount or value of the benefits;

and such sum shall be subject to the deduction of any advances made to the workman under the last preceding section, but shall not be subject to deduction of any payments made to such workman under any provisional order if such payments did not continue for a period longer than three months, and if such payments did so continue shall be subject to the deduction only of the amount of such payments made after the first three months during which such payments continued. Any such action and the amount recoverable thereon shall be subject to the provisions of section *twenty-five*.

Provided that the employer shall not be liable to pay in all as compensation for the death of a workman more than *seven hundred and fifty* pounds, or three years' wages of the deceased workman, whichever shall be the less.

(2) In cases where by agreement the employer or principal is liable to pay compensation to dependants, but the workman has not been required to make any contribution, the employer or principal shall pay to the dependants the amount due under the said agreement or the amount due under this section, whichever sum shall be the greater.

21. No action for compensation under sections *eighteen* and *twenty* shall be maintained unless such action shall have been commenced within six months from the date of the injury; or in the case of death resulting therefrom within six months from the date of such death. If the employer or principal (as the case may be) shall in either case have admitted his liability to pay compensation, then such action shall be commenced within six months from the date of such admission.

Provided that the Court of a Magistrate may, on notice of motion, extend the time within which the action may be commenced, if satisfied that the failure to commence the action within the prescribed period was occasioned by mistake, absence from the Territory, or other reasonable cause.

22. The representative of the deceased workman shall be the person to sue in any action mentioned in section *twenty*. Such representative shall, after deducting an amount not exceeding *forty-five* pounds to pay the medical attendance upon such workman during his last illness and the expenses of his burial, forthwith either pay the remainder of any sum recovered from the employer or principal (whether by action or otherwise) into the Court of the Resident Magistrate of the district in which the injury was received or pay the remainder of such sum to any dependants who are entitled thereto in the order of preference set forth in the First Schedule to this Proclamation. Such remainder shall be divided amongst the dependants so entitled in such proportions as may by agreement amongst them be determined; provided that the said Court may in the absence of such agreement determine the amount payable to any such dependants, and may further determine whether a person claiming to be entitled under this Proclamation to any amount as a dependant is or is not so entitled; provided, further, that if one of such dependants is a minor, the said Court shall determine the amount payable to the minor, and the Resident Magistrate shall pay such amount into the hands of the Master of the Resident Commissioner's Court.

23. No sum payable to any dependent under this Proclamation shall be liable to attachment for any debt due by the deceased workman, nor shall the amount of any compensation recovered or recoverable on behalf of a dependant form part of the deceased workman's estate for the purposes of any law for the time being relating to the administration of or the duty on estates of deceased persons; provided that the representative of the deceased workman shall transmit to the Master of the Resident Commissioner's Court within a reasonable time a statement supported by vouchers and acquittances showing—

- (a) the amount recovered under this Proclamation from the employer or principal;
- (b) the amount deducted and paid for medical attendance and the expenses of the burial;
- (c) the amount awarded to any dependant.

24. If the injured workman shall die from the injury and leave no dependant, the employer or any principal shall be liable to pay the reasonable expenses of the medical attendance upon such workman during his last illness and of his burial not exceeding the sum of *sixty* pounds in all.

25. Where it shall appear from a certificate granted by a medical practitioner that a workman is suffering from a disease mentioned in the Second Schedule to this Proclamation (hereinafter referred to as a scheduled disease) causing incapacity, or where the death of a workman was caused by any such disease and the disease is due to the nature of any work to which the Proclamation applies, and in which the workman was employed at any time within twelve months previous to the date of such certificate or of his death, as the case may be, the workman or his dependants shall be entitled to claim compensation under this Proclamation as if

the contracting of such disease were a personal injury caused by accident arising out of and in the course of his work within the meaning of this Proclamation, and the provisions of this Proclamation shall *mutatis mutandis* apply.

26. (1) The compensation shall be recoverable from the employer who last employed the workman during the twelve months referred to in the preceding section in the work to the nature of which the disease was due, unless that employer shall be able to establish that the disease was not contracted while the workman was in his employment.

(2) The workman or his dependants, if so required shall furnish to the employer from whom compensation is claimed such information as he or they may possess as to the names and addresses of all other employers who, during the said twelve months, employed the workman in the work to the nature of which the disease is due.

(3) If the employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer and not whilst in his employment, he may cause such other employer to be joined as a party to the application, and if the allegation is proved, that other employer shall be the employer from whom the compensation is to be recoverable.

(4) If the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the work to the nature of which the disease is due shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined by the Resident Magistrate on application.

(5) The provisions of section *two* of this Proclamation with regard to the pre-existing diseased condition of the workman shall not apply to a schedule disease under this Proclamation.

27. (1) The date of the certificate referred to in section *twenty-five* or of the death of the workman, as the case may be, shall be treated for the purposes of scheduled diseases as the date of the happening of the accident.

(2) Notice as provided by section *four* shall be given to the employer who last employed the workman during the said twelve months in the work to the nature of which the disease is due.

(3) The wages of the workman shall be his average weekly earnings in the work to the nature of which the disease is due with the employer from whom compensation is recoverable, at the date of the certificate or at the date of his death (if there is no previous period of incapacity immediately preceding his death), and, if the workman is not then so employed, the wages shall be the average weekly earnings of the workman when he was last so employed with the employer from whom compensation is recoverable.

28. If the workman at or immediately before the date of the certificate or of his death, as the case may be, was employed in any work mentioned in the Second Schedule to this Proclamation and the disease contracted is the disease set opposite the description of the work in that Schedule, the disease, unless the certifying medical practitioner certifies that in his opinion it was not due to the nature of the work, shall be deemed to have been due to the nature of that work, unless the employer from whom compensation is claimed proves the contrary.

29. Nothing in this Proclamation contained shall be construed as preventing compensation being recovered from any employer who employed the workman during the twelve months referred to in section *twenty-five*, if the employer who last employed the workman during that period is able to establish that the disease was not contracted while the workman was in his employment, in which case the provisions of section *twenty-six* shall apply.

30. Nothing in this Proclamation contained shall affect the rights of a workman to recover compensation under the Proclamation in respect of a disease, other than a scheduled disease, if the disease is the result of an accident to such workman.

31. (1) Every employer employing five or more workmen shall cause to be exhibited in a prominent place where such workmen are employed a summary in the prescribed form of the requirements of this Proclamation as to the giving of notice of accidents, the making of claims, and the procedure to be followed in cases of industrial disease.

(2) Failure to comply with the requirements of sub-section (1) shall constitute an offence punishable by a fine not exceeding five pounds, or, in default of payment imprisonment with or without hard labour for a period not exceeding fourteen days.

32. (1) The High Commissioner may make arrangements with any other part of the British Empire whereby sums awarded under this Proclamation as amended from time to time to persons residing or about to reside in that other part may, at the request of the Court by which the award is made, be transferred to a competent authority in that other part, and sums awarded under any law relating to workmen's compensation in such other part may be transferred to and administered by the Master of the Resident Commissioner's Court for the benefit of persons residing or about to reside in the Territory.

(2) The High Commissioner may make regulations for the purpose of giving effect to any such arrangement, as is mentioned in the preceding sub-section.

(3) For the purposes of this section the term " Empire " includes any territory under His Majesty's protection and any territory in respect of which a mandate is being exercised by His Majesty or by any part of His Majesty's dominions.

33. If in any proceedings under this Proclamation for the recovery of compensation by or on behalf of a workman, or his dependants, it shall appear—

- (1) that the injured or deceased workman is, or was a member of a benefit society, sick fund, organization or club (hereinafter described as " the society "); and
- (2) that there has been or is to be paid by the society to the workman or his dependants an allowance or gratuity in respect of any illness, absence from work, incapacitation for work or death; and
- (3) that the employer or principal is a contributor to those funds of the society out of which such allowance or gratuity has been or is to be paid;

there shall be deducted from any amount which the employer or principal would have been adjudged liable under this Proclamation to pay to the workman or his dependants a sum which represents the share of the employer's or principal's contribution towards the sum paid or to be paid to the workman or his dependants from the society in the circumstances aforesaid.

34. Any provision in a contract existing at the date of the taking effect of this Proclamation or hereafter entered into whereby a workman relinquishes any right to compensation under this Proclamation or to damages at common law, whether for himself or for his dependants shall be null and void.

35. (1) Nothing in this Proclamation contained shall be deemed to deprive a workman of any right which he may have at common law to institute proceedings for damages against his employer or any other person in respect of a personal injury.

(2) The workman shall elect whether he will institute proceedings at common law for damages against his employer or a principal in respect of a personal injury or will institute proceedings for compensation under this Proclamation, and if he institute such proceedings at common law he shall be debarred from instituting proceedings under this Proclamation in respect of the same injury, or if he institute proceedings under this Proclamation he shall be debarred from instituting proceedings at common law against his employer or principal in respect of the same injury. Any notice of injury given to the Clerk of the Court of a Resident Magistrate under sub-section (3) of section *four* or the taking out of summons in such Court shall be deemed to be an institution of proceedings under this Proclamation.

(3) If the compensation under this Proclamation has been paid by the employer or a principal and the circumstances of the injury disclose a legal liability on the part of another person to pay damages at common law in respect thereof, such other person shall be liable to pay to the employer or principal (as the case may be) the amount of compensation so paid and the taxed costs of any proceedings on which such amount became payable.

(4) A workman shall not be entitled in any case to recover both damages in an action at common law and compensation under this Proclamation in respect of the same injury.

36. If any person threatens or compels or attempts to compel any workman to do or omit to do any act the doing or omission of which deprives or is calculated to deprive such workman of any claim to compensation which he would have under this Proclamation, such person shall be guilty of an offence, and shall be liable upon conviction to a fine not exceeding *one hundred pounds*, or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

37. The resident Commissioner may from time to time make, alter or rescind regulations not inconsistent with this Proclamation—

- (1) prescribing the manner in and the conditions upon which any such memorandum of agreement as is in sub-section (2) of section *eight* described shall be registered, and the procedure to be followed on any application for such registration and the grounds on which any such application may be refused;
- (2) generally for the better carrying out of the objects and purposes of this Proclamation.

38. This Proclamation may be cited for all purposes as the "Workmen's Compensation Proclamation 1934" and shall have force and take effect from the date of its publication in the *Gazette*.

GOD SAVE THE KING.

Given under my Hand and Seal at Capetown this Twenty-eighth day of December One thousand Nine hundred and Thirty-four.

H. J. STANLEY,
High Commissioner.

By Command of His Excellency the
High Commissioner.

E. COHEN,
for Administrative Secretary.

FIRST SCHEDULE.

The members of a deceased workman's family shall be as herein set out and those mentioned in paragraph (a) may in the discretion of the Resident Magistrate be awarded compensation in preference to those mentioned in paragraph (b) that is to say:

- (a) The widow and any legitimate son or daughter under the age of seventeen years of the deceased workman, including a posthumous child;
- (b) the husband, a son and daughter not included in paragraph (a) (whether such son or daughter be legitimate or illegitimate), a step-son, step-daughter, the father and the mother, a step-father, step-mother, father's sister, mother's sister, brother, sister, half-brother, half-sister, grandfather, grandmother, grandson, granddaughter, and an adopted child under seventeen years of age who has been adopted by, and was dependent on the deceased workman for at least one year prior to the accident which caused the workman's death.

SECOND SCHEDULE.

<i>Description of Disease.</i>	<i>Description of Work.</i>
Silicosis.....	In mining carried on underground.
Tuberculosis.....	In mining carried on underground.
Ankylostomiasis (hookworm).....	In mining carried on underground.
Cyanide rash.....	The handling of cyanide or any work involving the use of cyanide.
Lead poisoning or its sequelae....	The handling of lead or its preparations or compounds or any work involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelae.	Any work involving the use of mercury or its preparations or compounds.