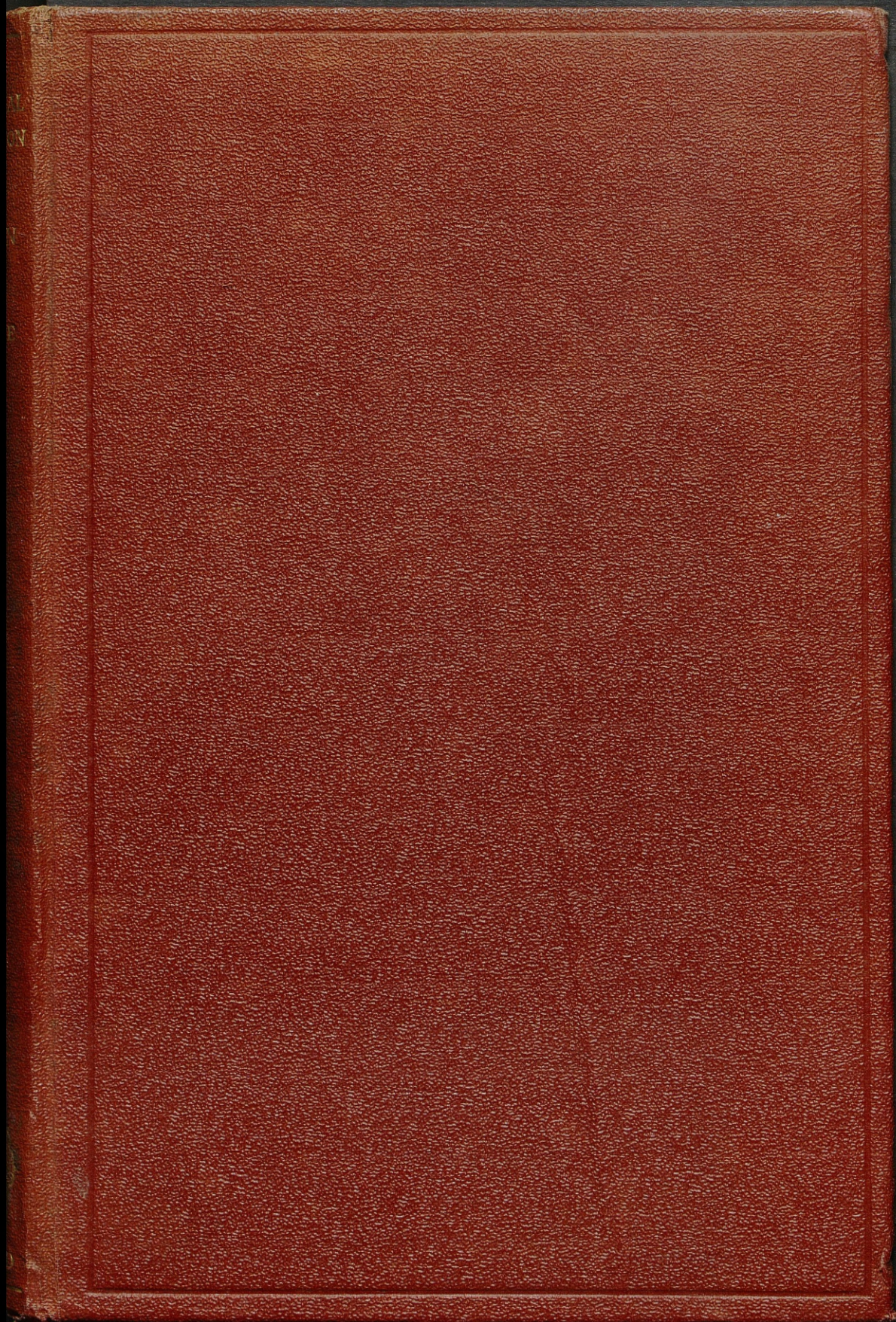


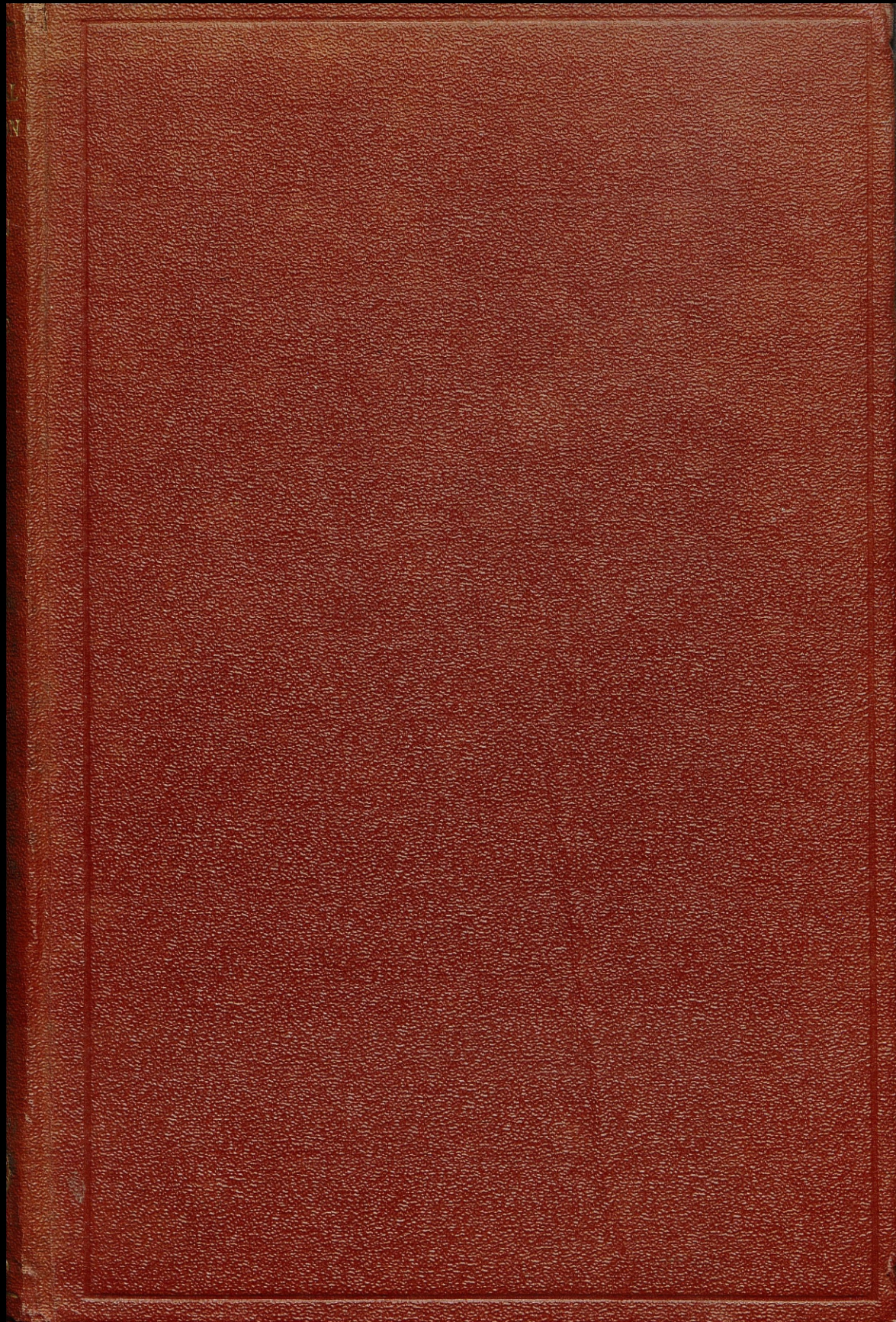
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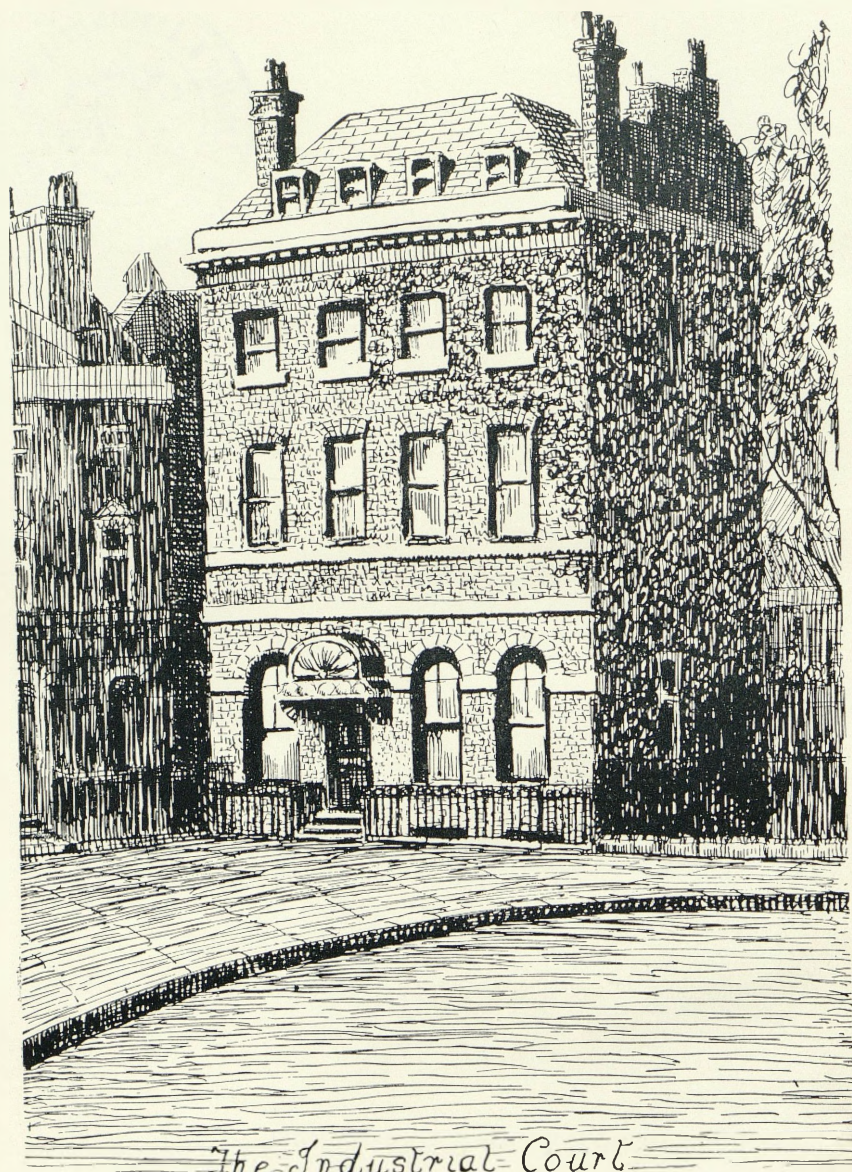
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INDUSTRIAL ARBITRATION
IN GREAT BRITAIN





[From a drawing by Dorothy Mackenzie]

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INDUSTRIAL ARBITRATION IN GREAT BRITAIN



BY
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aut.

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PREFACE

ANY addition to the multitude of books needs a word of explanation, if not of apology. This is especially the case where the subject forms part of a field already occupied by a number of competent treatises. History tends to become increasingly specialized and selective, however, and it has appeared to me (partly no doubt on account of my personal interests in later years), that one phase of our industrial life might well receive fuller treatment than could well be accorded to it in the excellent but more general works of such writers as S. and B. Webb, J. L. and Barbara Hammond, and Lord Askwith, to say nothing of the still more classical Cunningham and Thorold Rogers.

I believe that the subject of industrial peace and the efforts made to secure it is one which can be studied not only with interest but with profit. History written with a purpose is open to suspicion, and I have endeavoured to record with all due detachment the facts as I have ascertained them. One conclusion, however, stands out prominently from the mere narrative, namely that the settlement of industrial differences otherwise than by means of a trial of strength between employers and workpeople is primarily not a matter of administrative machinery or legislative provision, but of goodwill and common sense. To say this is not to depreciate the value of such aids as the State may give the parties. It is all to the good that at the present time the means by which disputes can be avoided and settled are ready to hand; that they possess that variety and simplicity which permit their use without friction or irritating formality, and that there has come into existence a class of able public servants whose business it is to see that the will to peace is not frustrated by want of knowledge of the facilities available.

I hope, however, that the volume may be of some service to those practically concerned with industrial arbitration and conciliation. It has always seemed to me that while it is essential that a person called upon to arbitrate should possess certain qualities such as industrial knowledge, patience, and impartiality, it is also an advantage to have that philosophic background which comes of acquaintance with the history of this and cognate methods of settling industrial differences.

The main facts were collected by me during the time I was actively engaged as a single arbitrator and conciliator, as a member of various tribunals, and finally as president of the Industrial Court. No one could hold the last-mentioned office without coming face to face with the question whether an inherent, or, as one might almost say, an instinctive, sense of fairness is always sufficient to lead to a right conclusion in deciding issues between parties; or whether, on the other hand, the time may not soon come when the arbitrator must consciously seek guidance in principles tested by experience and having the general approval of mankind. It has sometimes been contended that because of the absence of rules as precise and ascertainable as those recognized in courts of law, there is no place in industry for the settlement of differences by a third party. This is an overstatement of the case. It is, however, arguable that to the extent to which the principles or rules applicable to the respective rights of parties as employers and workmen are formulated arbitration must become more satisfactory. The rules of the Common Law were not enunciated overnight; they were a matter of slow growth and of much thought and experience. Once stated, however, they achieve two ends: first, the occasions of dispute are reduced since men guide themselves in the light of expressed law; second, the administration of justice becomes more certain. I confess to the hope that in the fullness of time the Industrial Court,

as a continuing tribunal, may build up a body of rules of similar value and purpose for guidance in that field of industrial relationships which lies between private ethics on the one hand and law on the other.

It seemed desirable to include certain matters with the motive of showing the relation of industrial arbitration to the larger subject of the regulation of wages and working conditions. Each reader must judge for himself whether I have observed the proper limits of my subject or have said too much on some topics and not enough on others.

I desire to place on record my indebtedness to the Minister of Labour for allowing me to consult the Ministry's library; to friends who have given me the benefit of their counsel, and strangers whom I have troubled by correspondence and visits. Above all I wish to thank the Librarian of Lincoln's Inn and his assistants for their unwearying attention and help in my researches among the extensive and varied collection of papers on industrial subjects which it is the good fortune of that Inn to possess. My thanks are also due to Mrs. H. McL. Reid for kindly preparing the Index.

STAFFORD PLACE,

WESTMINSTER. *May* 1929.

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I

EARLY LEGISLATION REGULATING WAGES

LEGISLATION on the subject of wages and conditions of labour has a long and complicated history extending almost to the beginning of Parliament itself. The statutes present a maze of detail; but the apparent chaos may be reduced to some order if attention is directed to a few broad facts which explain the aim or purpose of the legislation at different periods.

The great visitation of the year 1349, known as the Black Death, was followed by lesser outbreaks in 1361 and 1369, and had a lasting effect on the economic life of the country. The mortality was so great that labour became scarce and wages rapidly rose. An ordinance of Edward III addressed to the sheriff of Kent explains in its preamble the state of affairs.¹ 'Because a great part of the people and specially of the workmen and servants late died of the pestilence, many, seeing the necessity of masters and great scarcity of servants, will not serve unless they may receive excessive wages.' The ordinance then proceeds to require all able-bodied persons under the age of sixty to occupy themselves and serve at the 'wages, liveries, hire or salaries which used to be offered'. The ordinance is typical of the attempts made for two centuries to defeat the tendency of price to rise when demand outstrips supply.

¹ The ordinance referred to is what is generally known as the Statute of Labourers, 1349 (23 Edw. III, c. 1). A distinction at this period was drawn between an ordinance which was a Bill entered with the Royal Assent on the Parliament roll and a statute which was a Bill entered on the Statute roll. If the new provision would stand with the laws in force and not tend to alter any statute, it might be entered as an ordinance, otherwise it was entered as a statute. (Cf. Roughhead, *Statutes at Large*, 1786, p. xiii). The distinction was, in course of time, lost sight of. It was then the practice to send new legislation to the sheriff for proclamation to the 'full county'.

The chief measure which characterizes this period is the well-known Statute of Labourers of 1388.¹ This Act severely restricted the movement of workmen and aimed at the prevention of vagrancy and idleness. And 'because servants and labourers will not and for a long time have not been willing to serve and labour without outrageous and excessive hire and much greater than has been given to such servants and labourers in any time past', it lays down the rates to be paid to various classes of agricultural workers, ranging from 13s. 4d. a year for a 'bailiff for husbandry' to 6s. for a swineherd. It further provided that 'no servant of artificers or victuallers within cities, boroughs or other towns take more than the labourers and servants above named according to their estate'. The punishment of those who gave or took more was a fine based on the excess of what was paid and 'if the taker so attainted have nothing wherewith to pay the said excess, he shall go to prison for forty days'.

The frequency with which legislation of this kind is repeated² indicates that it failed to fulfil its purpose. Wages continued to rise in spite of Acts of Parliament to the contrary, and those responsible for legislation continued, quite justifiably in the circumstances, to think in terms of maximum wages and not minimum wages. The penalties attached to those who should give or take more³ and not to those who gave less, the latter class being apparently non-existent.

Various economic causes which it is beyond the scope of this book to examine, but which included a debasement of

¹ 12 Ric. II, c. 4.

² Cf. e.g. 7 Hen. IV, c. 17 (1405-6); 2 Hen. V, c. 4 (1414); 2 Hen. VI, c. 14 (1423); 6 Hen. VI, c. 3 (1427); 8 Hen. VI, c. 8 (1429); 6 Hen. VIII, c. 3 (1514-15).

³ The penalty on those who gave more was repealed, see 4 Hen. V, c. 4 (1416), 4 Hen. VIII, c. 5 (1512); while the penalty on those who received more remained in full force.

the currency between 1543 and 1559 by Henry VIII and Edward VI, resulted in a reversal of the relatively happy position of the working classes. Prices rose much more rapidly than wages and the position of the labourer became or threatened to become one of some distress. It was in these circumstances that the famous Statute of Artificers¹ in 1562 was passed. The preamble is instructive. It states that 'although there remain and stand in force presently a great number of statutes concerning . . . apprentices servants and labourers . . . the said laws cannot conveniently without the greatest grief and burden of the poor labourer and hired man be put in good and due execution'. The Act then resorts to a new method of regulating wages, tentatively tried in 1389 and again in 1427. It does not itself, as had generally been done hitherto, prescribe the rates to be paid. It requires justices of the peace yearly at the Easter Quarter Sessions to call unto them such 'discreet and grave' persons as they shall think meet and confer together 'respecting the plenty or scarcity of the time and other circumstances necessarily to be considered' and to 'limit, rate and appoint' the wages by the year or by the day, week, month or otherwise. The workers concerned were artificers, handicraftsmen, husbandmen, labourers, servants, workmen, and apprentices. The assessment of wages was regarded as an important duty and a full attendance of justices was required. Any justice who was absent, not being hindered by sickness or other lawful excuse, was liable to a fine of £10.² Justices were required to make 'special and diligent enquiry' of the good execution of the Act twice a year and

¹ 5 Eliz., c. 4.

² Justices were each allowed five shillings per diem for their 'pains and travel' provided that the sitting be not at one time above three days. 5 Eliz., c. 4, s. 38; Dalton's *Country Justice* (1727), p. 188. The Act of Elizabeth required artificers, 'as be meet', to work in the hay or corn harvest for getting in hay, corn, or grain, subject on refusal to imprisonment in the stocks by the space of two days and one night.

'where they shall find any defaults' to see 'the same severely corrected and punished without favour, affection, malice or displeasure'.

The Act provided that a person giving more wages than was taxed was liable on conviction to be imprisoned for ten days and fined £5, and a servant taking more than was taxed was liable to be imprisoned for twenty-one days.¹ 'But yet a master may reward a well deserving servant etc. (over and above his wages) according as he shall deserve; so that 'tis not by way of promise or agreement upon his retainer.'²

It is to be observed that although the Act was passed presumably in the interests of the workers and for their protection, it still reflected the old view that danger would arise from the payment of more and not less than the prescribed rate. A good deal of confusion appears to have arisen on this point in the discussions on the Act of Elizabeth which were to take place two centuries later.³ In strict construction there appears to be nothing in the Act to give a worker a summary remedy to the rate as taxed by the justices since penalties were attached only to the payment of more than the rate and not to the payment of less. It was an instance, however, of expressing a new meaning in old terms, since forty years later in 1603 an Act⁴ was passed which explains that the Act of Elizabeth 'hath not according to the true meaning thereof been duly put into execution' and proceeds to enact that 'if any clothier or other shall refuse to obey the said order, rate or assessment of wages

¹ During a part of the War period there was a penalty for making any change in the rate in 'controlled' establishments without the approval of the minister of munitions. Munitions Act, 1915 (5 & 6 Geo. V, c. 54), s. 4. Certain collective agreements now in force between Employers' Associations and Workmen's Unions prohibit the payment of rates in excess of the agreed rates.

² Dalton's *Country Justice* (1727), p. 180; Burn's *Justice* (20 edn. 1805), vol. iv, pp. 179 et seq.

³ *Post*, p. 12.

⁴ 1 Jac. I, c. 6.

as aforesaid and shall not pay so much or so great wages to their weavers, spinsters, workmen or workwomen as shall be so set down rated and appointed . . . that then every clothier and other person or persons so offending shall forfeit and lose for every such offence to the party aggrieved ten shillings'.¹

The Act of Elizabeth is specially interesting for the reason that it makes a permanent change in method. Hitherto the rates of wages payable had, except on two occasions,² been laid down by Parliament itself. Under the new Act Parliament delegated this power to a subordinate authority, namely, the justices of the peace in Quarter Sessions. A comparison of dates shows that in this respect the English Parliament was not entirely original. The method by which the authority to determine rates was given to people on the spot had already been adopted as a fixed principle by both the Scottish and the Irish Parliaments.

The Scottish Parliament in 1426 empowered town councils to fix the wages of craftsmen,³ and craftsmen who took exorbitant prices were liable to punishment.⁴ In 1551, the power of fixing prices for each craft was conferred on the burgh magistrates, these prices having to receive the approval of the Lords of the Articles.⁵ In 1617 Scottish practice was assimilated to that of England as established by the Act of Elizabeth and by 1 Jac. I, c. 6.⁶ In that year

¹ The worker would have his ordinary common law remedy for the wages 'assessed and appointed by proclamation' (Dalton, p. 186). What the Act of 1603 did was to give a summary remedy for the time rate with a penalty.

² See 13 Ric. II, c. 8 (1389); 6 Hen. VI, c. 3 (1427).

³ (1426), c. 3, 4.

⁴ (1496), c. 5.

⁵ (1551), c. 18. The Lords of the Articles were a Committee to receive petitions and prepare a programme of bills for the consideration of Parliament. See *Scottish Review*, October 1885, Art. 'The Scottish Parliament'.

⁶ 1617, c. 8, s. 14. See also Acts of 1655 and 1661.

the Scottish Parliament empowered Quarter Sessions in the months of August and February to fix the ordinary hire and wages of workmen, labourers, and servants, to imprison such as refused to serve for the appointed time and to compel payment by employers.

In Ireland the anticipation of the English provisions is even more obvious. In 1542 the Irish Parliament ¹ passed an Act which, after reciting 'that hard it is to limit in certain what wages servants at husbandry should take by the year and other artificers and labourers by the day; by reason whereof they now ask and take unreasonable wages within the land of Ireland', proceeded to empower justices of the peace to proclaim at their discretion at every Easter and Michaelmas Sessions the wages of artificers and labourers having respect to such prices as victuals, cloth, and other necessities then shall be at and the wages of servants in husbandry at Easter Sessions for the ensuing year. All wages taken above the proclaimed rates were liable to be forfeited and the offender imprisoned at discretion on conviction at Sessions.²

The Act of Elizabeth may be regarded as forming part and parcel of the policy, which became characteristic of the seventeenth century, of regulating trade and industry in all its aspects. It was one of an enormous number of statutes constituting that system of minute regulation against which the doctrine of *laissez faire* was, two centuries or so later, the not unnatural reaction. Whether the policy was well conceived, having regard to the simple form of society to which it first applied, is a debatable question; but of this we are assured that as time passed the attempt by the State to regulate the increasingly diverse economic life of the country

¹ In 1447 the Irish Parliament declared that sons of husbandmen and labourers (travailleurs of the ground) should not be idle but should labour according to their state under a penalty of imprisonment for one year and fine at discretion (1447) 25 Hen. VI, c. 7 (Ir.).

² (1445) 33 Hen. VIII, c. 9 (Ir.); (1568) 11 Eliz. Sess. 1, c. 5 (Ir.).

failed utterly, and resulted in a mass of irritating and contradictory legislation that was either ignored or was enforced merely to satisfy particular and selfish interests.

The merits of the Act of Elizabeth, as amended by that of James I, obviously depended upon the manner in which it was administered. If the justices determined fair rates and adjusted them regularly to the cost of living, and, if the rates so determined were enforced with impartiality and effectiveness as against both employer and workman, there was much to be said for legislation of this character. Unfortunately the means are not available for forming a just opinion on these vital points. It is doubtful whether the wages clauses of the Act of Elizabeth ever had much effect, and it is clear that by the middle of the eighteenth century wages assessments under that Act had become very rare indeed.¹ By the end of the century the Act was but a vague memory. In 1795 a Lancashire assessment of wages for 1725 was published as an historical curiosity.²

So long as Parliament held to the policy of regulating wages by law it was at least consistent to forbid combinations of workmen which had as their aim the alteration of the rates for which the State took responsibility; and the earlier laws against combinations can to some extent be defended on this ground. What was lacking was even the appearance of impartiality, since the law was directed against the workman but not, apparently, against the employer. 'We have no Acts of Parliament', writes Adam Smith in 1776, 'against combining to lower the price of work; but many against combining to raise it.'³ This

¹ In 1721 certain tailors at Cambridge were convicted for conspiracy in refusing to work for a less sum than they demanded which was higher than the maximum wages fixed under the Statute of Elizabeth: *Rex v. Journeymen Tailors of Cambridge*, 8 Mod. 10.

² *Annals of Agriculture*, xxv. 305. The Spitalfields Weavers Act (*post*) assessing wages survived into the nineteenth century.

³ *Wealth of Nations*, Bk. I, Ch. VIII.

inequality in the law was not remedied as the result of attention being directed to it. On the contrary, in spite of the mordant terms in which Smith wrote and the fact that Pitt professed to take the *Wealth of Nations* as the groundwork of his policy, the laws against the combination of workmen multiplied and became of increased severity as the century reached its close. The reasons are numerous. It sometimes happened that combinations of workmen were attended by a good deal of violence and disorder. There was also apprehension lest a combination formed for an economic purpose should become political in its aim. The progress of events across the channel excused, if it did not justify, this fear. Finally, there was the new philosophy which regarded State interference with industry as mischievous. Regarded as part of a complete system and as taught by the more distinguished economists there was much to be said for such a view. But the doctrine of *laissez faire* was far from being observed generally, and its application to the relationship between employers and workmen simply gave an excuse for tolerating a state of affairs that otherwise would have been regarded as intolerable. Certain it is that by the end of the eighteenth century the condition of the wage-earning classes was one of great hardship.

II

WAGES AND POOR-LAW ADMINISTRATION; ANTI-COMBINATION LAW; PITT'S POLICY

It has already been noted that the Act of Elizabeth in so far as it provided for the assessment of wages had fallen into disuse, and had indeed almost been forgotten by the middle of the eighteenth century. Towards the end of the century, however, there was a revival of interest in the subject. In 1773 an Act¹ had been passed, known as the 'Spitalfields Weavers Act', which provided that the 'wages and prices for work of the journeyman weavers' within the City of London should be settled, regulated, and declared by the Lord Mayor, Recorder, and Aldermen of the said City; in the County of Middlesex, by the justices of the peace for the said County; and in the City and Liberty of Westminster and in the Liberty of the Tower of London by the justices at General Quarter Sessions. The wages determined under this Act were, like those under the Act of Elizabeth, as amended by that of James I, the wages actually to be paid, penalties being prescribed for the payment of either more or less than those laid down.

The Spitalfields Act appears to have been effective and to have been enforced for a number of years. It is referred to as though still operative in 1813 in the Cotton Weavers' Petition of that year;² and in 1823 a Government Bill to repeal it, which had passed the Commons, met with so much opposition from workpeople outside and its character was modified by so many amendments in the Lords, that on its return to the Commons the measure was abandoned.³

¹ 13 Geo. III, c. 68.

² 68 Commons' Journals, 229. 25 Feb. 1813.

³ 78 Commons' Journals, 1823; 55 Lords' Journals, 1823; Parl. Deb. (11 June, 1823), 831; Annual Register, 1823, p. 192. The Act was repealed in 1824. 5 Geo. IV, c. 66. A later Act of the same

The Spitalfields Act afforded a practical demonstration of the possibility of regulating wages. When, therefore, the pressure of circumstances in the years between 1790 and 1800 caused many people to consider in what way the acute distress of the wage-earning classes could be alleviated, the fixing of minimum rates of wages seemed to many an obvious remedy; and the question came to be asked in many quarters: Why not enforce the wages clauses of the Act of Elizabeth?

The question was to some extent bound up with the administration of the Poor Law. An Act had been passed in 1782,¹ which gave legal authority for supplementing the wages of labourers by poor relief. It does not appear that much advantage was taken of the measure before 1795. The war with France, which began in 1792, coupled with a succession of bad harvests, was causing considerable distress. In 1795 the Berkshire justices inaugurated a system of poor relief which was adopted by nearly every county in England and continued until the Poor-Law Reform of 1834. The circumstances are worth noting by reason of the fact that the meeting at which the resolutions were passed providing for the supplementing of wages was apparently called for a different purpose. The justices had given notice of the General Meeting 'to limit, direct and appoint the wages of day labourers'.² They met at the Pelican Inn, Speenhamland, now part of the borough of Newbury, Berkshire, on the 6th of May 1795, for this purpose. At this meeting they resolved 'that it is not expedient for the Magistrates to grant assistance by regulating the Wages of Day Labourers according to the directions of the Statutes of the 5th Elizabeth and 1st James: But the Magistrates very earnestly recommend to the Farmers and others throughout Session (5 Geo. IV, c. 95) by some oversight regarded it as an existing Act and purported to repeal it in part only.

¹ 22 Geo. III, c. 83.

² The notice appears as an advertisement in the *Reading Mercury*, 20, 27 April and 4 May 1795.

the county to increase the pay of their labourers in proportion to the present price of provisions'. They then resolved that they would make 'calculations and allowances' for the relief of all poor and industrious men and their families on a sliding scale based on the cost of 'the gallon loaf of second flour'. When the loaf was 1s. every poor and industrious man was to have 3s. weekly for his own support and 1s. 6d. for the support of each member of his family, and, to the extent that these sums were not derived from his own or his family's labour, an allowance was to be made from the Poor Rate.¹

We do not know what exactly was in the minds of the justices when they declared that it was not expedient to

¹ County of Berks Sessions Order Book (6 May 1795) Shire Hall, Reading. The resolution was afterwards published in the *Reading Mercury*, 11, 18 May 1795. An alternative scheme in operation in part of Hants was to let the labouring poor 'have their bread at one shilling a gallon, ordinary labourers for wages one shilling and sixpence a day and others what they can earn by the quarter for thrashing. At least the expedient being tried in the parish of Micheldever for many months past is pleasing to the benefactors and comfortable to the poor, who are really better provided for in this way than with fourpence a day, their usual wages and wheat at ten pounds a load.' *Reading Mercury*, 11 May 1795. See examples of other 'scales' in Report of the Poor Law Commissioners for 1834.

The Berkshire justices at their meeting on 6 May 1795, wishing to alleviate the distress of the poor with as little burden on the occupiers of the land as possible, recommended the overseers of every parish to appropriate a few acres of ground to the raising of potatoes, and plough it ready for the crop, and poor persons to plant, hoe, and dig up, being allowed a third or fourth of the crop, the remainder to be graded or housed by the overseers at the expense of the parish and sold out at one shilling per bushel, one day in each week. They also recommended overseers during the summer to lay in a stock of peat when it can be obtained and a stock of faggots, furze, or other fuel, retailing the same out again one day in the week in the winter, at a loss. It was hoped that landlords having faggots to dispose of would give a decided preference to overseers willing to purchase any for the above purposes. The justices in the different divisions were requested to inquire in their several districts what parishes were adopting these measures and report. And the Agricultural Society were requested

assess wages under the Act of Elizabeth. We know, however, that the assessment of wages by justices was regarded by most people as an ancient and disused device which ought not effectively to be revived—whatever the merits of the legal regulation of wages might be—without fresh legislative authority. That the Act might be revived for the benefit of the labourers was, however, a view held by many people who felt that something had to be done to relieve existing distress.

On 9 December 1795, Samuel Whitbread¹ introduced a Bill into the House of Commons to explain and amend the Act of Elizabeth by empowering justices of the peace in Sessions to 'fix and appoint' the wages of labourers in husbandry (which were to be minimum wages) and to 'fix and declare', &c. hours of working.² Under the Act of Elizabeth a person giving more than the 'appointed' rate was liable to fine and imprisonment, although he might reward a deserving servant more than the rate as a gratuity after service performed but not under any contract or antecedent promise (see *ante*, p. 4). The Bill would get rid of this limitation, as well as perhaps tend to revive the exercise of the powers of justices which under the Act of Elizabeth had not been exercised for many years. Vansittart (afterwards Chancellor of the Exchequer, 1812–23, and Lord Bexley) argued that the 'minimum' rate was already secured under the Act of James I, but, as we have seen, there was also a limitation on the maximum; so that the minimum and the maximum were the same.

to consider of some premium to those overseers who made the best provision. *Reading Mercury*, 11 May 1795. There is no note of these recommendations in the Sessions Order Book for Berkshire.

¹ Samuel Whitbread (1758–1815) was elected M.P. for Bedford in 1790; advocated negro emancipation, extension of civil and religious rights, national education, and reform of the poor laws.

² Parl. Hist., vol. xxxii, cc. 699 et seq.; Parl. Register, 9 Dec. 1795; 12 Feb. 1796; *Annals of Agriculture*, vol. xxv, p. 345.

The whole question of the remuneration of labour was the subject of popular attention at this time, and Whitbread's Bill gave an opportunity for a general discussion on the principles of fixing minimum wages. The main objects of the Bill had the support of Fox and Jekyll. Most of the members who took part in the debate appeared to have agreed that 'if the price of labour could be made to find its own level, it would be much more desirable than to assess it by any arbitrary statute'. Differences arose principally on the question whether desperate times did not require desperate remedies, and whether the condition of the wage-earning classes was not so bad as to justify special and urgent measures which would bring some relief while wages were finding their 'level'.

Whitbread's Bill was rejected.¹ The debate on the second reading is, however, of much interest on account of the speech of Pitt, then Chancellor of the Exchequer. Pitt's views were expressed very tentatively, but the general drift of his argument was that the less the legislature endeavoured directly to control the rate of wages the better. If left to itself, and assuming the unrestricted play of economic forces, the rate of wages would reach a satisfactory figure. The problem, therefore, was twofold: first, what could be done to promote economic freedom, and second, what measures could be taken to alleviate distress while economic forces were producing their desired and expected fruit. In respect of both of these matters Pitt looked to a reform of the Poor Law. He spoke in strong terms of the harmful effects of the Laws of Settlement of the poor. 'The laws of settlement', he said, 'prevented the workman from going to that market

¹ 51 Commons' Journals, 386, 12 Feb. 1796. Whitbread introduced another Bill on the same lines on 13 Feb. 1800, after the failure of Pitt's proposals, but it was also rejected. 55 Commons' Journals, 216, 21 Feb. 1800. On this occasion Lord William Russell, Mr. Tierney, and Mr. Saint John were associated with him in preparing and bringing in the Bill. *Ibid.*, 171.

where he could dispose of his industry to the greatest advantage, and the capitalist from employing the person who was qualified to procure him the best returns for his advances.' He looked forward, therefore, to a drastic amendment of these laws. As a more temporary measure he approved of the new system of adjusting the amount of poor relief to the size of the family. 'Let us', said he, 'make relief in cases where there are a number of children a matter of right and honour instead of a ground for opprobrium and contempt. This will make a large family a blessing and not a curse.' He also threw out the suggestion that greater advantage could be taken of the industry of children and of early employing them in such branches of manufacture as they were capable to execute, and to this end to establish 'schools of industry'.¹

The legislation that Pitt's speech foreshadowed was introduced by the Government in 1796.² The Bill was an elaborate measure of 130 clauses. It sought to set up schools of industry and to establish a fund to be maintained by subscriptions, voluntary contributions, and benefactions, and by the Poor Rate, the fund to be used for the relief and maintenance of the subscribers in sickness, infirmity, and old age, and for the relief of widows and children of deceased subscribers. Persons entitled to the benefit of the Act were to have work found for them, either by living with some inhabitant or by a school of industry. Quarter Sessions were to fix the rate of wages to be paid to the poor employed in the schools of industry or at their own homes, the rate to be by the piece according to quality and not by time or hour. The Law of Settlement of the poor was to be amended.

¹ A fairly full report of Pitt's speech is contained in Eden's *State of the Poor* (1797), vol. iii, App. XI, cccviii.

² Leave was given to bring in the Government Bill on 1 Mar. 1796 (51 Commons' Journals, 454, 1 Mar. 1796), but the Bill was not proceeded with. In the following session, leave was again given on 22 Dec. 1796, 52 Commons' Journals, 229, 22 Dec. 1796.

Allowances might be made in aid of earnings and advances might be made to persons to enable them to obtain land, maintain a cow, or acquire a competence in trade. The Bill was considered on 31 December 1796, and reported to the House.¹ There were thirty-eight petitions against the Bill² and none in favour.

Pitt's confidence in his own proposals may have been shaken by a pamphlet written by Jeremy Bentham, entitled 'Observations on the Poor Bill introduced by Mr. Pitt'. The pamphlet was not published at the time the Bill was being considered,³ but, according to Sir George Nicholls, was probably communicated to Pitt and other Members of Parliament.⁴ The pamphlet was a characteristic and trenchant piece of criticism. Whether it influenced Pitt or not, the Bill was eventually dropped.

Meanwhile a succession of bad harvests was making living dear, and the War was having a bad effect on trade. In 1798-9 the journeymen millwrights of London were seeking by joint action a general increase in their wages. The master millwrights took exception to this, and on the 5th April 1799 presented a petition to the House of Commons alleging that a 'dangerous combination' had for some time existed among the journeymen 'within the Metropolis and 25 miles around' for enforcing a general increase of wages, for preventing the employment of such journeymen as refused to join the 'confederacy' and for 'other illegal purposes'; that frequent conspiracies of this sort had been set on foot by journeymen and that the only methods of punishing such delinquents under existing laws was by indictment at the Sessions or Assizes, a method which was

¹ 52 Commons' Journals, 262, 31 Dec. 1796. The amendments in Committee are set out in Eden's *State of the Poor* (1797), vol. iii, App. XXI.

² 52 Commons' Journals, 278 et seq.

³ It was published in 1828.

⁴ See Nicholls, *History of English Poor Law* (1854), vol. ii, p. 128.



so expensive and dilatory that the journeymen carried on their combinations with boldness and impunity.¹

The House referred the Petition to a Committee of which Sir John Anderson, the Lord Mayor of London, was Chairman, to consider and report.² The Committee sat to take evidence but the only witness mentioned in the report was one John Rennie who gave evidence to the effect that a dangerous combination existed, that the masters were obliged to submit to it and that the men had established a general fund for the support of those of their number who were thrown out of work.³

The Committee reported in the sense of this evidence, and leave was given 'to bring in a bill to prevent unlawful combinations of workmen employed in the millwright business and to enable Magistrates to regulate their wages', within certain limits. There appear to have been some 3,000 journeymen millwrights 'within the metropolis and 25 miles around'.⁴ Sir John Anderson and Alderman Lushington were instructed to prepare and bring in the Bill.⁵ Mr. Wilberforce contended that the principles of the Bill should be extended and the Bill made general against combinations of all workmen. He was, however, ruled out of order by the Speaker.⁶ The Bill was brought in in due course. In addition to preventing combinations, &c., it purported to transfer the method of trial from a jury to one or more justices. Two petitions against it were presented by the journeymen millwrights who prayed to be heard by Counsel. After directing that Counsel be heard against the Bill as well as

¹ 54 Commons' Journals, 405, 5 Apr. 1799.

² Ibid., 406.

³ Ibid., 412, 9 Apr. 1799.

⁴ Petition of Journeymen Millwrights (James McDonald and others) to House of Lords against the Bill, 24 June 1799. House of Lords Library.

⁵ 54 Commons' Journals, 413. 8 Parl. Register, 323, 9 Apr. 1799.

⁶ 8 Parl. Register, 323.

those in favour, the House declined to hear any Counsel¹ and passed the Bill on 10 June 1799.²

A week later Pitt moved for leave to bring in a Bill to prevent unlawful combinations of workmen,³ apparently having accepted Wilberforce's suggestion. Meanwhile the millwrights' Bill was before the House of Lords. Petitions were there presented in favour of the Bill from several brewers, manufacturers, and other employers of master millwrights. There were also petitions against it.⁴ Eventually, in view of the progress made with the Government Bill, the millwrights' Bill was dropped.⁵

The Government took steps to push their Bill rapidly through both Houses. It applied to all industries and sought to prevent workpeople combining to obtain advances in wages. It declared that all contracts theretofore entered into by workmen for obtaining any advance in wages, altering the usual time of working or decreasing the quantity of work done, were illegal. It gave summary jurisdiction to justices and inflicted a series of penalties. Lord Holland strenuously opposed the measure in the House of Lords. According to the report, 'The Lord Chancellor (Lord Loughborough) and Lord Grenville, were on the Woolsack, but neither of their Lordships replied',⁶ nor did any one else; and Lord Holland's motion for rejection was negatived without a division.⁷ The Bill without amendment became law on the 12th July 1799.⁸

There has been much speculation as to the causes which led to the sudden passing of this Combination Act. There

¹ 54 Commons' Journals, 604, 6 June 1799.

² Ibid., 613, 10 June 1799.

³ Ibid., 653, 17 June 1799; Woodfall, *Parl. Deb.*, 18 June 1799.

⁴ 42 Lords' Journals, 282, 285, 298, 21, 24 June, 1 July 1799.

⁵ Ibid., 329, 11 July 1799.

⁶ 9 *Parl. Register*, 565, 9 July 1799.

⁷ 42 Lords' Journals, 325, 9 July 1799.

⁸ 39 *Geo. III*, c. 81.

was little debate and no reasons given. Some evidence had been adduced and some discussion had taken place on the principles of collective bargaining on the millwrights' Bill, but this hardly seems sufficient to justify the drastic provisions of the Government Bill. It is to be noted, too, that the millwrights' Bill, while forbidding combinations, contained certain provisions for regulating wages. These were not, however, incorporated in the Government Bill. Neither does the Act as an expression of policy appear to reflect Pitt's general outlook. His speech on Whitbread's Bill showed he was not unsympathetic towards the difficulties in which the wage-earning classes found themselves. Nor was he likely to mistake the mere appearance of economic freedom for the reality. As the Act passed in the next year showed, he was not unmindful that the individual workman, if left entirely to himself without the aid either of his fellow workers or the legislature, was hardly 'free' to bargain with his employer. He was also too good a student of Adam Smith to overlook the fact pointed out by Smith that whereas combinations of workmen can hardly exist in secret, combinations of employers may be exceedingly difficult to discover and suppress. The most likely explanation of what appears to have been a piece of emergency legislation is that Pitt became alarmed and thought that there were dangerous conspiracies of a political character afoot, which purported to have an economic aim, merely to disguise their true purpose. No one knows, however, what Pitt thought.

III

INDUSTRIAL ARBITRATION IN THE COTTON INDUSTRY IN ENGLAND

THE next year, 1800, is memorable. The cotton industry, which was then partly domestic and partly factory, was particularly depressed. In the outwork section of the industry the occasions of dispute, not only over the question of the price to be paid for the work done but also for such matters as spoilt material and bad workmanship, were frequent. Each dispute was no doubt theoretically capable of being settled by civil process of law, but so cumbersome and costly a process of arranging differences between those who gave out work to be done and those who did it was for all practical purposes out of the question. There was also at the back of the minds of the operatives the desire to remedy the hardships which they suffered from a continual reduction of wages.

A movement for legislative relief began with the weavers in Lancashire. In May 1799, an association, called the Association of Weavers, issued an appeal from Bolton to their fellow workers in which they declared that the existing laws which should protect weavers from imposition were being trampled underfoot for want of a union among them and that they had determined to appeal to the Legislature for such further regulations as it might in its wisdom deem fit to make when the real state of the cotton manufactory should have been laid before them. The members of the Association, they continued, had no other object but the mutual interests of employers and employed—well knowing that to combine their interests together was the only method to ensure success. Every necessary of life had increased in price while the price of labour had undergone a continual decrease. The appeal, in order to convince the landed

interests that the absence of regulations in the cotton industry affected them, detailed the situation thus: We will suppose a man to be married in 1792, he at that time received 22s. for 44 yards of cloth; we will follow him year after year; his family keeps increasing, together with the price of every necessary of life, while his wages for labour decrease—let us look at the year 1799, and we shall perhaps find him surrounded with five or six small children and lo! instead of 44 yards of cloth, they have increased the length to 60 and give him 11s. for it, and to make matters worse he must work with finer weft. No wonder the poor rates increase when people are situated in this manner—a little reflection will show how matters of this kind affected the landed interest. The appeal was signed by John Seddon, President; James Holcroft, Secretary, and by representatives from Bolton ‘and adjoining country’, Manchester and Salford, Stockport, Oldham, Wigan, Warrington, Blackburn, Chorley, Newton, Bury, Whitefield, Chowbent, and New Chapel, near Leigh.¹

One of the objects of this appeal, according to a letter sent to the Home Secretary on behalf of a Wigan magistrate, was to raise £500 ‘to procure an Act of Parliament for an advance in wages’.²

In the following year two petitions were presented to the House of Commons, one from the cotton operatives of Cheshire, Yorkshire, Lancashire and Derbyshire, and the other from the cotton manufacturers of Cheshire, Yorkshire and Lancashire.³

The operatives complained in their petition that they had been greatly injured for a series of years past by the reduction of their wages and other oppressions, although the price of provisions had borne no proportion to such reduction, but

¹ House Office Papers, 42, 47, in Record Office.

² Ibid.; letter from Sam Singleton, 28 Apr. 1799.

³ 55 Commons’ Journals, 261, 262, 5 Mar. 1800.

on the contrary had been progressively increasing; that these oppressions had been effectuated by a powerful combination of master weavers or manufacturers and had created divers differences and disputes between the masters and workmen throughout the said counties, to the great injury of both parties and the trade that the petitioners, scarcely earning bare subsistence by their daily labour, were totally unable to seek the suppression of combinations of such secrecy, wealth, and power or any redress of their grievances by any existing law; that it would be a great convenience and advantage to all parties concerned and an encouragement to the manufactory if a more speedy and summary mode than at present were established for the general regulation of abuses in the trade, which were of a nature that could not be corrected by any existing law, and for the settling of the wages, pay, and price of labour from time to time as occasion should require.

The manufacturers in their petition were silent on the subject of the reduction of wages but, like the operatives, they alleged that the trade had for some years past laboured under considerable difficulties and suffered more inconveniences owing to there being no power under any existing law of properly and promptly settling and regulating the wages of labour of the journeymen and workpeople, and pointed out that some legislative regulations providing for a more speedy and summary mode than at present for the regulation of abuses would be a great convenience and advantage to all parties concerned.

The House referred these petitions for consideration and report.¹ A system of industrial arbitration was suggested and evidence submitted as to its desirability, particularly if the arbitration were by persons who were familiar with the intricacies and technicalities of the trade.

¹ 55 Commons' Journals, 377, 4 Apr. 1800.

Some of the evidence is worth noting. James Holcroft,¹ a weaver at Bolton, said, 'I got 16s. for what in general was paid 24s. 1792. I worked that work until he (the manufacturer) had reduced it to 9s. . . . 6s. upon some kinds of work and 10s. upon others, clear money, is what the workmen can get by working one week, so that we have not got money to go to law with our masters when any dispute arises.'

The witness believed that if a clause could be inserted in the Bill respecting arbitration it would answer the purpose of both manufacturers and weavers better than any law on the subject, because each party would then be at liberty to choose as arbitrators men who understood the nature of the manufactures. Disputes as to damaged material or unworkmanlike work could, under the then law, be referred to justices,² but if it was submitted, they could not tell what was the nature of the dispute unless they were manufacturers. Workpeople were alleged to embezzle warps, wefts, &c.³ Masters were paying less wages than they agreed to pay on some pretence such as that the work was spoilt. The operative

'summoned the master to a justice meeting and the work was

¹ 55 Commons' Journals, 487, 8 May 1800. Holcroft was Secretary of the Association of Weavers, afterwards becoming a warehouseman. He was an energetic advocate of industrial arbitration. 'Holcroft and his new law' became a by-word.

² This would be under the Act of 1747 (20 Geo. II, c. 19) which enabled justices to settle disputes between employers and workpeople, extended in 1757 (31 Geo. II, c. 11). There was an appeal to Quarter Sessions against a conviction or order, the costs of which were not to exceed 40s. In 1715, by an Act of the Irish Parliament (2 Geo. I, c. 17, amended in 1751 by 25 Geo. II, c. 58), justices were given civil jurisdiction to adjudicate in Ireland on differences between any employer (not being a Peer) and his workpeople and to settle wages claims not exceeding £3.

³ 55 Commons' Journals, 492, 8 May 1800, per John Settle. In order to protect themselves against persons who made a practice of 'embezzling and keeping warps, wefts, etc. on various pretences', employers kept a book of the names and addresses and offences of such defaulters, the book being open to their inspection. *Ibid.*, 490.

produced, and the justices could not determine it, and it was turned over to Quarter Sessions. The man was poor and, not being able to pursue it, lost his wages. Another circumstance which happened to myself was—I took out a warp of fancy muslin of four pieces at 15*d.* per yard, and before I had well begun, I was told I must have 13½*d.* per yard. I was obliged to agree or my utensils would have been unemployed, which cost me so much; and when I took in the first piece he would only pay 1/- per yard, and told me if I did not like that I must work the remainder plain, which would have been a loss to me of at least 2/- per week.¹

As the result of the consideration of these petitions a Bill was introduced² and became law on 28 July 1800. The new Act³ 'for settling disputes that might arise between masters and workmen engaged in the cotton manufacture in that part of Great Britain called England' set up machinery of a detailed character for determining differences. The language of the Act is relative to the technicalities and particular requirements of the cotton trade.⁴ It provided that 'where the masters and workmen could not agree respecting the *price or prices to be paid for work done or to be done . . .* whether such dispute' shall happen or arise between them respecting the reduction or advance of wages or the damage done by the workman to the work, or delay in finishing the work or not finishing it in a good and workmanlike manner, or compensation to be made for any new pattern, or the length of pieces, or the manufacture of various specified articles and the wages to be paid in respect thereof then either party to the dispute might demand and have an arbitration. Each of the parties was empowered to nominate and appoint an arbitrator and the arbitrators were authorized to summon and examine upon oath the parties and

¹ Ibid., 494, per Thomas Beaumont.

² Ibid., 657, 16 June 1800.

³ 39 & 40 Geo. III, c. 90. This Act is the first Act of general application prescribing a system of industrial arbitration.

⁴ See Appendix III.

their witnesses and forthwith to determine the matters in dispute. The award was to be final and conclusive. Provision was made for cases in which the arbitrators appointed by the respective parties could not agree. If the arbitrators did not make and sign an award within three days after the submission to them, they were required forthwith to go before one of the justices of the peace in the district and state the point upon which they were unable to agree. The justice of the peace was then required to act as umpire or referee and determine the points of difference, the determination to be made and signed within the space of three days after the expiration of a further three days. The method was at any rate intended to be expeditious.

The Act is of special interest for the reason that it seems to anticipate in essential respects a method of settling industrial differences which was again to occupy men's minds a century later. Looked at from the modern point of view, its provisions were both wise and foolish; wise because they recognized that questions arising between employers and workmen should be determined in a judicial atmosphere, impartially and on a calm survey of the facts; foolish because they overlooked the fact that industrial arbitration is not a task to be entrusted to anybody and that a justice of the peace as such was not necessarily a well-qualified person to appreciate the social, ethical, and economic issues that underlie almost all differences respecting wages. Moreover, as we shall see, the fact that the arbitration was compulsory and that the award when given had legal sanction was a source of weakness rather than of strength. Compulsory arbitration is not without its advocates at the present time, and a strong logical case can be made out in its favour. Generally, however, instructed opinion is to the effect that time is not ripe for it. Was this Act of a century and a quarter ago, therefore, merely an anticipation of something that would prove practicable as

well as desirable in time to come? The answer is probably No. It is true that certain of its features resemble those of actual or projected modern schemes of arbitration; but its motive and intention, as regarded by many of those responsible for its enactment, were different. Its compulsory provisions were of its essence, and it is to be regarded as a descendant of the Act of Elizabeth rather than as an ancestor of the Conciliation Act of 1896 and the Industrial Courts Act of 1919.

IV

AMENDMENT OF ANTI-COMBINATION LAW; INDUSTRIAL ARBITRATION IN ENGLAND, SCOTLAND, AND IRELAND; RESTRICTION OF ARBITRATION TO 'WORK DONE'

It is not unreasonable to assume that the Combination Act of 1799 had been hastily rushed through Parliament to meet a real or supposed political emergency, and that, considered solely as an industrial measure, it appeared to Pitt to deal with no more than half the problem. The Act forbade the workman to achieve equality of bargaining with the employers by means of combination with his fellow workmen. Deprived of this means of helping himself, it was apparently thought by many that he should have the help of the law. The Arbitration Act for the cotton industry embodied a principle which could be applied generally, that is to say, it enabled a workman who was unable to come to terms with his employer as regards 'the price or prices to be paid for work done or to be done' to demand arbitration. A new Combination Bill was introduced ¹ and this, while altering in some degree the repressive provisions of the Act of 1799, differed, as it emerged from Parliament, from that measure principally in the respect that it embodied elaborate procedure for arbitration similar to that set up for the cotton industry.

The Bill, as originally introduced, simply dealt with combination proceedings, explaining and amending the Act of 1799, but the Committee to whom the Bill was referred incorporated arbitration provisions following almost exactly those of the Cotton Arbitration Bill, with the omission only of the technicalities peculiar to that trade.² The arbitration

¹ 55 Commons' Journals, 707, 716, 27, 30 June 1800.

² See amendments of Committee on Bill, 11 July 1800, House of Commons Library.

clauses applied to disputes arising on work 'done or to be done' and to disputes or differences 'arising or happening by or between masters and workmen *employed or to be employed*'.¹

When the Bill with these provisions came up for consideration, those members who disliked any interference with the 'natural forces' determining rates of wages apparently took alarm. The Attorney-General, Sir John Freeman Mitford,² moved the omission of the arbitration clauses. He argued that the 'obvious tendency of the clauses was to fix the wages. . . . The object of the clause in reality was to settle and adjust wages and not such differences as may arise on the contract itself.' It was in vain that Colonel Gascoigne,³

¹ Cf. Amendments of Committee, *supra*, which contain procedure for arbitration. The material parts of the clause describing disputes that may be referred are: 'And whereas it will be a great convenience and advantage to Masters and Workmen engaged in Manufactures that a cheap and summary mode be established for settling all disputes that may arise between them respecting wages and work, Be it further enacted by the authority aforesaid That from and after the first day of August, in the year of our Lord one thousand eight hundred, in all cases that shall or may arise within that part of Great Britain called England, where Masters and Workmen cannot agree respecting the price or prices to be had for *work done or to be done* in any manufacture, whether such dispute shall happen or arise between them respecting the reduction or advance of wages, or any injury or damage done or alleged to have been done by the Workmen to the work, or respecting any delay or supposed delay on the part of the workman in finishing the work, or not finishing the such work in a good and workmanlike manner; and in all cases of dispute or difference arising or happening by and between Masters and Workmen *employed or to be employed* in such manufacture, out of, or touching such trade or manufacture, which cannot be otherwise mutually adjusted and settled by and between them, it shall and may and it is hereby declared to be lawful for such Master and Workmen between whom such Dispute or Difference shall arise as aforesaid, or either of them to demand and have an Arbitration or Reference of such Matter or Matters in dispute. . . .'

² Afterwards Speaker (1801-2) and Lord Chancellor of Ireland (1802-6) as Lord Redesdale.

³ Gascoigne (1770-1841) was Member for Liverpool, and he,

supported by Sheridan and others, showed that the arbitration clauses were taken from the Cotton Arbitration Bill. It was, they pointed out, admitted that a summary mode of proceeding was necessary and the clauses facilitated this; they reconciled the tradesmen to other parts of the Bill who, before, were much irritated against it. The clauses were the only security that workmen had for the good behaviour of masters towards them, combinations being as frequent among the masters as journeymen.¹

Pitt moved the adjournment of the debate until the following day. We have no exact knowledge of what took place behind the scenes, but the next day, 23 July, an amendment was accepted, read three times, and passed.² Five days later the Bill was read three times in the Lords and passed without amendment.³ Since there is no record of any further amendment after that which followed the Attorney-General's opposition, a comparison of the Act⁴ as passed with the terms of the arbitration clauses as originally proposed shows what was in fact done to placate those who opposed any legislative interference with the rate of wages. The Act provided only for cases 'where the masters and workmen cannot agree respecting price or prices to be paid for work *actually done*'. Unlike the Cotton Act, it made no provision as regards work 'to be done'. It is obvious that this alteration changed the significance of the

Sheridan, General Tarleton, the Lord Mayor of London, and others were members of the Committee that prepared the Bill and to whom the House referred the Bill for consideration. 55 Commons' Journals, 716, 730, 744: 30 June, 4, 8 July 1800.

¹ 12 Parl. Register, 218, 30 June 1800; 55 Commons' Journals, 766, 772; 18, 22 July 1800.

² 12 Parl. Register, 28 July 1800.

³ 42 Lords' Journals, 646, 28 July 1800.

⁴ 39 & 40 Geo. III, c. 106. See Appendix III. The Bill became law on 29 July 1800, the day after the Cotton Arbitration Act became law. (See *ante*, p. 23, n. 3). Note the difference in language of the two Bills passed on successive days on the subject of arbitration.

arbitration provisions altogether.¹ The workman was to be protected against the unscrupulous master who broke the terms of his contract or sought to make unfair deductions from the wages agreed to be paid. But it did not assist the workman in driving a better bargain with the employer in respect to the work he was about to undertake. In other words, there was to be no interference with individual bargaining between the employers and workers.²

The Cotton Arbitration Act and the arbitration clauses of the Combination Act applied only to England and Wales. On 11 February 1803, a petition was presented to the House of Commons by several persons engaged in the cotton trade for the extension of the arbitration clauses with modification to Scotland.³ It was alleged in the petition that in disputes which arise between masters and workmen engaged in the cotton manufacture, the workman must either submit to the master or be liable to be harassed and distressed by proceedings at law of which he has not the means of affording the expense, and that it was desirable that a proper mode should be devised to deal with abuses by some speedy and summary procedure, and that the arbitration provisions of the two Acts of 1800 might be applied to Scotland. A Committee of the House heard evidence on the allegations in the petition and found them proved, and the House ordered a Bill to be drafted.⁴ This was done, and in due course petitions against the Bill were received from the Chamber

¹ The alteration referred to in the text further restricted the operation of the arbitration clause. The Committee's amendment applied the clause to the United Kingdom, the Act as passed confined it to England.

² The arbitration clauses in the new Act merely gave the parties in England an alternative remedy to proceeding before justices. In Ireland the parties could go before justices under the Irish Acts of 1715 and 1751 and in Scotland under the Acts of 1747 and 1757. See *ante*, p. 22, n. 2; Craies, *Statute Law* (1911), p. 411.

³ 58 Commons' Journals, 152, 11 Feb. 1803.

⁴ *Ibid.*, 216, 1 Mar. 1803.

of Commerce of Glasgow and from Paisley, in which it was set out that all matters were already provided for by existing laws and committed to the jurisdiction of the justices of the peace, who were much better qualified to act with impartiality and determine all differences between masters and workmen than were arbitrators selected by the parties over each particular case.¹ The matter was debated and the necessity of having similar provisions in England and Scotland was recognized. The Bill was accordingly passed.²

In the meantime the operation of the English Acts was somewhat chequered. The arbitration provisions applicable to the cotton industry were for some time taken much advantage of, but later seemed to fail in their purpose. A Select Committee of the House of Commons was, in 1804, appointed to 'consider of the most speedy and effectual mode of adjusting' industrial differences in that industry.³ Some striking figures were given in evidence before the Committee.⁴ Richard Needham, a weaver, had already acted as arbitrator in about 100 claims; James Holcroft in about 1,200; ⁵ Thomas Thorpe in about 200; James Wilson, 20; James Bury, 20; and so on. One good feature was that sometimes a workman would be nominated by an employer as his arbitrator. As often happens in remedial legislation, more was sought to be extracted from these provisions than was actually there. It was thought by the operatives that when the claim was in the nature of a general claim it might be adjudicated as one against the employers as a body.

¹ 58 Commons' Journals, 278, 22 Mar. 1803.

² 43 Geo. III, c. 151; See Appendix III.

³ 59 Commons' Journals, 79, 15 Feb. 1804. The Committee consisted of 21 members among whom were the Chancellor of the Exchequer (Addington) and Sir Robert Peel, the elder.

⁴ A number of petitions had been presented in previous sessions and a committee to whom the petitions had been referred took evidence. 58 Commons' Journals, 422, 18 May 1803.

⁵ About 900 had arisen at Whitefield as to which see *infra*.

After the Act came into operation, the mechanics in the district of Whitefield 'found themselves awkwardly situated, they had been reduced in their wages from $6\frac{1}{2}d.$ to $3\frac{1}{2}d.$ per yard; the price of provisions had been increased nearly double to what they were when they received $6\frac{1}{2}d.$ They made frequent application to their masters to obtain a meeting to see if, by mutual agreement, something could not be done to ease their situation; as often as they applied they treated them with contempt and language to this effect was made use of: "You may go to Holcroft and his new Act".'¹ The question arose—could the mechanics (about 900) as a body proceed under the Act against the manufacturers as a body?

They were properly advised by counsel that this was not warranted by the Act. Mr. Gurney (counsel) advised them that 'they could not arbitrate their masters in a body', but each individual for himself might demand an arbitration for work to be done. This course was adopted and about 900 separate claims were put in. The employers objected that this was an abuse of the Act. It was then agreed that a second opinion should be taken, the operatives and the employers each paying half counsel's fee. The opinion of Mr. Sylvester was taken and it agreed with that of Mr. Gurney. The employers were still dissatisfied, and decided to take a separate opinion of their own. They consulted Mr. Edward Law² who 'gave an opinion in the opposite way'. In their submission to Mr. Law the employers stated that the weavers were endeavouring to regulate the wages by the power of the Act and they (the employers) wished to know whether the Act conveyed such power. Mr. Law advised that it did not. This was not the issue between the

¹ Minutes of Evidence before Committee on Cotton Weavers' Petition, 1802-3 (114) viii, p. 33.

² Afterwards Attorney-General (1801-2) and Lord Chief Justice (1802-18) as Lord Ellenborough.

parties, but it seems to have been the one which the employers wished to force upon the operatives. It was thereafter agreed to refer the matter to the magistrates in Sessions.

The accounts of what took place before the magistrates are somewhat conflicting. Apparently the magistrates came to the conclusion that as so many claims had been brought for the same purpose at the same time in the same district to increase the rates of pay, there was evidence that it was an application to regulate wages which the Act did not contemplate.¹ The case caused considerable commotion; the court was crowded with weavers, and the presiding magistrate uttered some ill-timed and ill-deserved *obiter dicta* about 'Mr. Holcroft and this new law',¹ which, like most *obiter dicta* in other places, would have been better left unsaid.

The difference of language alluded to above between the Cotton Arbitration Act and the arbitration clauses of the Combination Act may provide the clue to the nature of the issue between the parties. Apparently the workpeople took

¹ Report of Evidence before Select Committee on Cotton Weavers' Petitions, 1802-3 (114), viii: James Holcroft, p. 34: James Ramsbotham, p. 44. This evidence was submitted to the Committee sitting in 1804. 59 Commons' Journals, 119, 27 Feb. 1804.

It is difficult to follow the procedure in the Whitefield case. Owing to the importance of the decision and the interpretation that was given to the decision by persons concerned in the cotton industry, efforts have been made to get at the actual facts without avail. There is no note of the proceedings in the files of Quarter Sessions of Lancashire which have been searched through the kind permission of Sir George Etherton, the Clerk of the Peace. The matter could not have come before the Sessions as an appeal, as there was no appeal from an Award. No contemporary record, other than the Minutes of Evidence of the Select Committee, has been found. Mr. Thomas Butterworth Bayley, referred to in that evidence as the presiding magistrate at the hearing, had long been Chairman of Quarter Sessions, and it is probable that the matter had been referred to him alone or to him and his fellow magistrates by agreement between the parties for a decision on the question of mixed law and fact arising under the Act.

their stand on the application of the Cotton Arbitration Act to 'work to be done', while the employers thought that, notwithstanding these words, the Cotton Act, like the Combination Act, was intended to do no more than provide means, alternative to the regular processes of law, by which past or present contracts could be construed and enforced.

In the cotton trade, notwithstanding this dispute, the Cotton Arbitration Act appears to have been invoked to a considerable extent. A number of 'professional' arbitrators arose, and these, in some cases, stirred up unnecessary strife.¹ One, described as an Irish deserter, went from district to district soliciting cases, making a charge of half a guinea a case.¹ On the other hand many men were trustworthy, and acted in numerous instances without fee. In evidence before the House of Commons Committee respecting the working of the arbitration provisions it was said by one witness that 'the more respectable part of the manufacturers had been very fair if any submissions were delivered to them'.² The machinery did not, however, by any means work without friction. The provisions of the Act were such that an employer who did not wish a dispute to go to arbitration could take advantage of a loophole by nominating a person as arbitrator who he knew could not or would not act.³ There was no provision in the Act to meet this difficulty.

The Committee, inquiring into the working of the Act, reported ⁴ that:

'(1) The Act had not produced the good effects that were expected of it.

¹ Minutes of Evidence on Cotton Weavers' Petitions 1803, *Ibid.*, Joseph Gee, p. 66; John Hammeril, p. 68. It was the practice of many workmen who acted as arbitrators, if the arbitration took place after working hours, to make no charge; if during working hours to charge a nominal fee of 2s. 6d.

² *Ibid.*, p. 39, per James Holcroft.

³ *Ibid.*, p. 38.

⁴ 59 Commons' Journals, 187, 28 Mar. 1804. Report of Committee respecting the Cotton Manufacture, 1803-4 (41) v. 211.

- '(2) The principle and object of the Act was the establishment of a short summary, impartial and competent, tribunal for the determination of disputes.
- '(3) The power given to masters and workmen to nominate persons to hear disputes had been productive of great inconvenience and delay.
- '(4) Accordingly they recommended that such disputes be referred to a justice of the peace if the parties to the dispute so required; if they did not so require, then the justices should nominate four impartial persons residing in or near the place where the dispute had arisen, two of whom should be masters or agents or foremen of masters, and the other two workmen. Out of the persons so nominated the parties should each have power to choose one.
- '(5) The expenses of the arbitration should be regulated by some specific regulation.'

It should be noted that, following a provision which was peculiar to the Scottish Act, the Committee recommended that tickets be delivered to the workpeople showing particulars of the quantity of materials delivered out, the nature of the work to be done, and the price or terms agreed upon.

An Act was passed in 1804, embodying the recommendations of the Committee.¹ It closed up the loophole by which the Act of 1800 could be evaded by providing in short that if one party to the dispute was recalcitrant and failed to nominate an arbitrator, or nominated some one who would not act, the arbitrator appointed by the other party could act alone. A penalty of £10 for non-compliance with an award was prescribed.

The principal difficulty of the Cotton Arbitration Act which the amendment of 1804 remedied was the possibility of deadlock if either party to a dispute nominated an arbitrator who neglected to act. This difficulty was latent in an equal degree in the arbitration clauses of the Com-

¹ 44 Geo. III, c. 87; rep. 5 Geo. IV, c. 96, s. 1.

bination Act of 1800. The amendment of 1804 applied, however, only to the cotton trade, and it is a fair inference that no demand for it came from other industries. The explanation is probably that in other industries the arbitration provisions were not of much practical effect.

As amended, the Arbitration Acts appear to have worked satisfactorily within a limited range in the cotton industry in England and Scotland during the next few years. So far they had not been extended to Ireland, but on 30 March 1813 the cotton weavers of Ireland presented a petition to the House of Commons¹ setting forth that they had for years suffered many severe grievances occasioned principally from the lack of proper regulations for the cotton trade of Ireland, and they begged leave to state that while suffering from severe privations 'they have conducted themselves as peaceable and loyal subjects', and they craved the application of the Scottish Arbitration Act with such alterations and amendments as might appear proper so as to assimilate the Act to Ireland. A Bill was introduced and passed and became law on 2 July 1813,² following closely on the lines of the English and Scottish Acts.

It may be interesting to note here the differences between the English, Scottish, and Irish Acts as illustrating the conflicting views held regarding the proper scope of the arbitration machinery which was set up.

The English Act, as we have seen, applied to disputes respecting the price or prices to be paid for work done or to be done as well as to other matters. The Scottish Act followed substantially the more restricted formula of the arbitration clauses of the Combination Act and applied to the 'price or prices to be paid for work done or in course of being done'. The Irish Act applied to cases of dispute 'respecting work done or in the course of being done',

¹ 68 Commons' Journals, 362, 30 Mar. 1813.

² 53 Geo. III, c. 75. See Appendix III.

whether the dispute related to bad materials, injury or damage to work, and a number of other specified topics, 'or any other matter connected with the cotton manufacture in Ireland'. In the Irish Act nothing is said specifically about wages or prices. The probability is that, notwithstanding the difference of phraseology, the scope of the arbitration provisions in the three Acts, and also in the Combination Act, was regarded as practically the same, and that, after the Whitefield proceedings referred to above, the usefulness of the arbitration provisions was limited to disputes arising on questions whether work done was well wrought, what allowance should be made for bad materials, the expense of gaiting new patterns or changing from one pattern to another, and so on. The hopes of those who saw in the arbitration provisions a means of redressing the inequality of bargaining power between the workman and the employer which followed from the Combination Act were defeated.

So far, the sturdy upholders of the principle of *laissez faire* had triumphed, and there was ranged on their side a good deal of the popular political economy of the day. The views of those who took what was no doubt regarded as a more sentimental, but was in fact the more logical, survey of the position did not lack expression. In a report on the Calico Printers' Petition ¹ in 1806, the Committee stated:

'Your Committee are persuaded that as the legislature has thought proper to interpose its authority to prevent the journeymen from concerting measures among themselves to settle their affairs with the masters, it would be ready to remove any complaints which might arise from advantage taken by the masters of the existence of such restriction. The wisdom and humanity of Parliament would shrink from sanctioning the Combination Law if it appeared to them, at the time of its enactment, likely to operate only in favour of the strong and against the weak; if

¹ 61 Commons' Journals, 554; App. No. 99, p. 902. 17 July 1806.

it had any apparent tendency to secure impunity to oppressors, and to give undue advantage to the masters who can combine with little danger of detection, and who can carry their projects into execution with little fear of opposition.'

Elsewhere the Committee expressed the 'inclination of their minds' as that 'either all restrictions ought to be abolished and the masters and journeymen left to settle matters between themselves, or an additional restriction ought to be introduced to counteract the evils obviously resulting from the restrictions which already exist'.

The Committee was reporting specially with respect to legislative restriction of the employment of apprentices, but their arguments were equally applicable to questions of wages. As will be shown, however, the Committees of the House did not speak with one voice.

AGITATION FOR MINIMUM WAGE IN COTTON INDUSTRY; REPEAL OF ACT OF ELIZABETH

THE Cotton Arbitration Act of 1800, even as amended by the Act of 1804, did not bring that relief which the cotton operatives had expected, for the good reason, as we have seen, that its scope was restricted (not in the language of the Act but upon the interpretation that had been placed upon it by the magistrates) to disputes arising on work done or in hand, and that it did not enable the operatives to press for any general improvement in the wages or prices to be paid to them.

Attention was again turned, therefore, to the possibility of securing by means of legislation a minimum wage. Petitions to this end were presented between 1808 and 1811, the petitions coming from Manchester, Paisley, and other places. The state of affairs as alleged in these petitions was indeed miserable, the earnings of adults frequently not exceeding 7*s.* or 8*s.* per week. The Committee that considered these petitions were unfavourable to the plea for legislative interference and expressed the *laissez faire* doctrine in unqualified terms. Reporting in 1809, they declared that the fixing of a minimum wage in cotton manufacture was wholly inadmissible in principle, incapable of being reduced to practice by any means which could possibly be devised, and, if practicable, would be productive of the most fatal consequences, and that any legislative interference by the establishment of uniformity of prices would tend to aggravate distress.¹ In 1811, they reported that they were of opinion that no interference of the legislature with the

¹ Cotton Manufacture: Report on Petitions: 1809 (111) iii. 331. Cf. Evidence 1808 (177) ii. 95.

freedom of trade or with the perfect liberty of every individual to dispose of his time and his labour in the way and on the terms which he might judge most conducive to his own interest could take place without violating the general principles of the first importance to the prosperity and happiness of the community.¹ The contrast in tone between the pronouncement of this Committee and that of the Committee on the Calico Printers' Petition in 1806 (*supra*, p. 36) is striking.

Seeing no prospect of fresh legislation on the lines they desired, the workpeople again looked with fond hopes on the old statute of 5 Elizabeth, and a movement was set on foot in Lancashire for applications to be made to the justices at the Easter Quarter Sessions of 1813 to exercise their powers under that Act and determine rates of wages. The Government of the day took alarm, and determined to circumvent this movement. The House of Commons, after a brief sitting in Committee, reported that so much of the Acts of 5 Elizabeth, c. 4 and of 1 Jac. I, c. 6 as empowered justices of the peace in England to rate wages or set prices of work for artificers, labourers, and craftsmen, and similar provisions in certain Acts of the Scots Parliament passed in the time of James VI and Charles II be repealed.² Two days later Lord Castlereagh introduced a Bill to this effect.³ Thereupon a stream of petitions against the repeal began to flow from Lancashire and Scotland.⁴

Petitions came from all the Lancashire centres,⁵ and the

¹ Cotton Trade: Report and Evidence on Several Petitions, 1810-11 (232), ii. 389.

² 68 Commons' Journals, 172, 17 Feb. 1813.

³ *Ibid.*, 185, 19 Feb. 1813.

⁴ *Ibid.*, 25 Feb., 8, 11, 12, 15, 17, 22 Mar. 1813.

⁵ The Lancashire petitions were received from Blackley, Bolton, Chetham, Chorley, Clayton, Clitheroe, Crumpsall, Eccles, Great Harwood, Houghton, Manchester, Moston, Ormskirk, Pleasington, Preston, Rishton, Salford, Stockport, Stockton, Walton-le-dale, and Whalley Road against repeal. There were no petitions in favour of repeal.

petition from the weavers of Bolton gives a glimpse of the privations suffered at that time. It was said that the petitioners had endured almost constant reductions in the prices of their labour for many years, with sometimes a trifling advance, but during the last thirty months they had continued, with very little alteration, so low that the average wages of cotton weavers did not exceed 5*s.* per week, though other trades in general earned from 20*s.* to 30*s.* per week; and that the extravagant prices of provisions of all kinds rendered it impossible for the petitioners to procure food for themselves and their families. Moreover, the parishes were so burthened that an adequate supply could not be obtained. Reference was made to the failure of the Act of 1800 and to the ineffectiveness of the petitions which had been made to Parliament to enact fresh laws for the relief of the trade. It had been found that the statute of 5 Elizabeth was competent to afford the desired relief and that petitions to the magistrates were almost general at the last Quarter Sessions and had been graciously received, much hope being entertained that by the next Easter Sessions the magistrates would settle the wages of the petitioners. The Bill before the House to repeal 5 Elizabeth 'sunk the spirits of the petitioners beyond description, having no hope left'. It was pointed out that although 5 Elizabeth was wisely designed to protect all trades and workmen, yet none would essentially suffer by its repeal save the cotton weavers, the silk weavers having a law to secure their prices, as had other artisans; tradesmen generally received their contracted wages, but cotton weavers, when their work was done, knew not what they should receive, as they depended on the goodness of the employer's heart.¹ Allowance can be made for exaggeration usually found in petitions, but even so, the position of the cotton operatives was clearly very bad. The petitions were laid on the table of the House, but no atten-

¹ 68 Commons' Journals, 229, 25 Feb. 1813.

tion was paid to them, and the Bill passed rapidly through all its stages in the Commons.¹

In the House of Lords the measure was in charge of Lord Sidmouth, the Home Secretary. He

‘observed that the existence of these Acts had until lately been unknown, particularly the Act of Elizabeth which had fallen into desuetude, and the existence of which was unknown to magistrates and even to high authorities in the law as well as the Committee of the House of Commons which had the subject of wages under consideration last Session. By that Act, magistrates were directed to assemble in every county at Easter Quarter Sessions (anyone being absent without sufficient cause being liable to a penalty) to fix the rate of wages of artisans, etc., and any person of that description receiving less or more wages than the rate thus fixed, was liable to imprisonment for 14 days, and any master paying less or more wages to imprisonment for 7 days. Had the Act remained in desuetude there would perhaps have been no necessity to repeal it, but as it had in some instances recently been vexatiously attempted to carry the Act into effect, it became necessary to repeal it. He was satisfied there was no necessity for him to point out to the enlightened minds of their lordships the pernicious consequences which must result from the operation of Acts of this description. He should, therefore, merely now move that the bill be read a second time.’²

This speech which contains many inaccuracies was made on 6 April 1813. If it is correctly reported the Minister must have presumed on the credulity of his audience. So far from the Act of Elizabeth being unknown to magistrates and ‘high authorities in the law’ the Act was, as has been shown, the subject of consideration by the Berkshire justices in 1795 and of debate in the Commons in 1795–6 and 1800. It was considered by a Parliamentary Committee in 1803,³ and was quoted at length and discussed in the then current edition of Burn’s *Justice of the Peace* (1810, 21st edition), and

¹ Ibid., 337, 22 Mar. 1813.

² Parl. Deb. (6 Apr. 1813), 594.

³ 58 Commons’ Journals, 422, 18 May 1803.

previous editions, the text-book of lawyers and justices of the peace. If the Committee referred to by Lord Sidmouth was the Committee on apprenticeship laws which sat in 1813 (there was no other committee dealing with wages) reference was made to the Act of Elizabeth in the course of evidence. Moreover, such members as Sir Samuel Romilly, Mr. Whitbread, and Sir Robert Peel, who were in the Commons, may be assumed to have known the Act intimately.

The Bill became law on 15 April 1813,¹ in time to take away the jurisdiction of the justices under 5 Elizabeth at the Easter Sessions. The Acts repealed were 5 Elizabeth, Cap. 14, Section 15; 1 Jac. I, Cap. 6, Section 3, and the two Scots Acts of Jac. VI and Car. II. All orders made by justices under those Acts were declared to be 'void and of none effect'.

The Bolton weavers had prayed that if the Act of Elizabeth were repealed some other law might be enacted to secure and grant such wages to weavers as to 'enable them to live by their industry'.² This was ignored.

¹ 53 Geo. III, c. 40.

² 68 Commons' Journals, 229, 25 Feb. 1813. Edward Baines, Jr. writing *circa* 1835 (*History of Cotton Manufacture*), in accounting for the unrest in the cotton industry observes that weavers were in the early period of the industry in request and their wages rose to a rate exceeding that of any other class of workmen: common weavers of steady and industrious habits soon rose into manufacturers and many fortunes were made at the loom. This induced multitudes to learn the trade and it continued to attract workpeople after the demand was satisfied. An employment so easily learned and so handsomely remunerated became inevitably surcharged with labourers. Then came the reaction. . . . Large departments of hand-loom weaving were almost entirely given up to women and children and their wages went far to regulate all the rest. And he summarizes the reasons for unemployment and low pay for handloom weavers as being (a) easy nature of the employment, weaving calicoes being simple, understood in a few moments and completely learned in a few weeks . . . a child of 8 or 10 may practise it; (b) more agreeable as laying the operatives under less restraint than factory labour; being carried on in their own cottages their time is at their command; and (c) surplus of labour in

The attempt of the cotton operatives to revive the Act of 5 Elizabeth and the direct evidence of their petitions indicate that in so far as the Arbitration Acts of 1800 and 1804 were intended to secure to them better earnings than they would otherwise have obtained, they had failed of their purpose. Apart from this there is little direct information regarding the extent to which advantage had been taken of its provision or of the provisions of the arbitration clauses of the Combination Act. The arbitration provisions were extended to Scotland in 1803 and to Ireland in 1813, after petitions from the operatives which would seem to suggest that they were of some advantage. A select Committee of the House of Commons reporting in 1824 expressed the view 'that the practice of settling disputes by arbitration between masters and workmen had been attended with good effect; and it is desirable that the laws which direct and regulate arbitration may be consolidated, amended and made applicable to all trades'. The inference to be drawn is that arbitration as it was introduced at the beginning of the nineteenth century was successful only in the sense that it was found to some extent convenient and expeditious as a means of settling small individual disputes between a workman and his employer in cases where the contract had been left indefinite or was wrongly construed by one party or the other.¹ It played no part in disposing of those broader questions arising between employers and workmen for which in modern times arbitration is sometimes put forward as the solution. The reason of its failure in all but a very limited

the employment (pp. 491-3). Richard Guest in *Compendious History of Cotton Manufacture* (1823) and *British Cotton Manufacture* (1828) gives an interesting account of the industry, except when he is obsessed with the Arkwright controversy.

¹ The aggrieved operative had alternative remedies by bringing an action at law (the costs of which would probably have been prohibitive) or by taking proceedings before justices under the Act of 1747 (20 Geo. II, c. 19).

field is clear enough. It was not merely a matter of the precise words in which the statutes were drawn. It is true, as has been shown, that those opposed to interference had been alarmed at the apparent scope of the English Cotton Act, and had succeeded by changing a few words in narrowing the scope of subsequent measures. They could, however, have foregone that victory and have lost nothing. The fact was that, forbidden to combine and present a case in concert, the workmen could profit but little by any system of arbitration. The idea of an individual workman, offered some employment, demanding arbitration with respect to the wages to be paid, suggests a degree of independence on the part of the workman and dependence on the part of the employer which is rarely, if ever, found. The notion, which seems due to Pitt as much as to anybody, of giving arbitration as a set-off against the combination laws was like that of giving a man a bicycle to make up for the loss of his legs. There seems to be no ground, however, for questioning the good faith of Pitt or of those who wished to give the workers a square deal and saw in the principle of the Cotton Act a means of doing so. The more probable explanation is that they lacked personal contact with industrial conditions and did not realize sufficiently the atmosphere in which questions of work and wages became a matter of practical concern. In no branch of economic science have doctrinaire views been so often and so far removed from the truth as in that relating to wages.

The question remains whether within the limited scope of the arbitration provisions relief was in fact afforded to the operatives. To substitute for the cumbersome processes of the law an easy, cheap and expeditious means of settling differences arising on work done was good so far as it went. We have already shown that the number of arbitrations was considerable. It is doubtful, however, whether these arbitrations touched many cases other than those in which the

workmen and employers would, in any event, probably have reached agreement without great difficulty. There were many employers who were not out of sympathy with the workpeople and who would have been glad indeed if a general solution could have been found to the wages difficulty. It would be a misreading of the history of this time to imagine that workpeople and employers consisted of two solid bodies of persons antipathetic to each other. There were many on each side who appreciated the difficulties of the other.

The usefulness of the arbitration provisions in enabling the workpeople to get fair treatment from employers who were not otherwise disposed to accord it is more open to doubt. The petition from the Bolton workers ¹ stated that the law of 1800, even as amended, was being evaded, and that no one conviction of an employer before a justice had been confirmed at Quarter Sessions. It will indeed be clear to most people at the present time that without the protection of a Trade Union, a worker would hesitate before pressing matters to a conclusion against an employer upon whom possibly his future livelihood depended. Moreover, it was argued by the operatives, the justices of the peace were drawn from a class who were, as a rule, inclined to look at an issue more from the point of view of the employer than of the operative.

¹ 68 Commons' Journals 229, 25 Feb. 1813.

VI

REPEAL OF ANTI-COMBINATION AND ARBITRATION ACTS OF ENGLAND, SCOTLAND, AND IRELAND; NEW ARBITRATION ACT OF 1824; NEW ANTI-COMBINATION ACT OF 1825

It lies outside the scope of this book to trace in detail the agitation which led to the repeal of the laws against combinations. It is sufficient to note that the matter was debated on Mr. Peter Moore's Bill for the repeal of these laws in 1823,¹ and in 1824 the House of Commons Committee reported in favour of their repeal.² At the same time they recommended that the laws which directed and regulated arbitration might be consolidated, amended, and made applicable to all trades.

The Combination Acts and the Arbitration Acts were repealed by two separate measures.³ The new Arbitration Act repealed previous legislation⁴ and enacted a system of referring disputes primarily to referees appointed by a

¹ 78 Commons' Journals, 27, 28 May 1823, &c.; Parl. Deb. (27 May 1823) 546. Numerous petitions were presented in this session (1823) in favour of and against the repeal of the Combination Acts, 78 Commons' Journals, 1823. Moore published a pamphlet on the subject.

² The report of this Committee is contained in App. No. 22 of the Report of the Select Committee on Combination Laws, 1825 (437), iv. 499. The Committee of 1824 also reported upon other subjects, including artisans going abroad and the export of machinery.

³ (1824) 5 Geo. IV, c. 95 (which repealed some 34 anti-combination statutes); 5 Geo. IV, c. 96. See Appendix III. This legislation was piloted by Mr. Joseph Hume. Cf. 79 Commons' Journals, 408, et seq., 24 May 1824; Graham Wallas, *Life of Francis Place* (1918), pp. 197 et seq. Hume (1777-1855) spent his early life in India, and entering the House of Commons in 1812 became active in reform, advocated extension of representation to the Colonies during the debates on the Reform Bill and in 1834 moved the repeal of the Corn Laws.

⁴ Including 3 Geo. II of the Irish Parliament (in part); 39 & 40 Geo. III, c. 90; 39 & 40 Geo. III, c. 106; 41 Geo. III, c. 38; 43 Geo. III, c. 151; 44 Geo. III, c. 87; 53 Geo. III, c. 75.

justice of the peace or finally to the justice of the peace himself. Some of the disputes that might be referred to arbitration were specially described in the Act. These mainly, if not exclusively, referred to piece-work in textile manufacture. Disputes capable of being referred were defined by the general words: 'Disputes arising out of the particular trade or manufacture or contracts relative thereto which cannot otherwise be mutually adjusted and settled.' This was followed, however, by an important limitation that 'nothing . . . shall authorise any justice of the peace . . . to establish a rate of wages or price of labour or workmanship at which the workmen shall in future be paid, unless with the mutual consent of both master and workman'.¹

An award under the Act could not apparently establish a rate of wages or pay which would bind any one who was not a party to the proceedings. Evidence must be on oath, and elaborate provision was made with regard to the enforcement of the award by distress and, in default, imprisonment.

So far as the disputes covered by the Act were concerned, arbitration was compulsory. One clause (s. 13), however, provided that if the parties were agreed, arbitration might follow some procedure other than that laid down and might be concerned with matters (for example, the rate of wages to be paid for work to be undertaken) not otherwise comprehended by the Act, and that the award when given should be enforceable in the same way as an award under the compulsory provisions.

It may also be noted in passing that the Act provided that particulars of work be entered on a note or ticket (if both parties were agreed) to be given with every piece of work given out by a manufacturer to a workman to be done.

The Act was amended on three occasions, once in 1837²

¹ 5 Geo. IV, c. 96, s. 2; See Appendix III.

² 7 Will. IV, and 1 Vict., c. 63. See petition from manufacturers

and twice in 1845.¹ The first amendment merely extended the time within which a complaint could be made from six days to fourteen, and provided that the complaint might be made to a justice in the division in which the defendant resided, as it was sometimes impossible to find a justice who had jurisdiction in the division in which both parties resided. The second amendment related to the furnishing of particulars in the silk and hosiery industries, its general effect being that the furnishing of particulars was made obligatory and not dependent upon the agreement of the parties.

The year 1824 was one of great industrial prosperity, and the repeal of the Combination Acts is probably not unconnected with that fact, a time of trade activity being usually the occasion of legislation in favour of workpeople. The spring, which had been held back for so long, suddenly rebounded and produced everywhere an outbreak of strikes.

and manufacturers' agents in Kilmarnock praying for an alteration of the law in Scotland. 93 Commons' Journals, 416, 30 Mar. 1838.

¹ Under the Act of 1824, the particulars to be given to weavers who took work home were to be given by employers, if both parties agreed. This provision was found to work to the injustice of the operative. The journeyman silk weavers of Congleton and Ruglowton in Cheshire, Spitalfields, Norwich, Macclesfield, Leigh, Middleton, and townships and villages adjacent, petitioned the House of Lords complaining that the grievous system of abating adopted by some of the unprincipled masters caused three-fifths or more of the operatives to be compelled to submit to a reduction of from 5 to 50 per cent. in their rates and in some cases more; and they were compelled from seeking redress by appealing to the Act of Arbitration from a well-founded fear of losing their employment (77 Lords' Journals, p. 249, 16 May 1845; see also 100 Commons' Journals, pp. 464, 912, 19 May, 8 Aug. 1845). A Bill was introduced in the Lords by Lord Lilford to remedy this complaint in the silk industry and carried through Committee by Lord Shaftesbury and resulted in the Act of 1845 (8 & 9 Vict., c. 128). A similar Bill was passed in the same year dealing with the hosiery industry (8 & 9 Vict., c. 77). It would thus appear that the Act of 1824 (at least in part) was still operative in certain industries. See Sir Edward Fry, 'Conciliation and Arbitration in Trade Disputes', *Law Magazine and Review*, Nov. 1898.

The prevalence of industrial conflict became alarming, and was a disappointment to those industrial reformers who, with much perseverance, had secured the repeal of the Combination laws. Parliament came to the conclusion that the terms in which the laws were repealed went too far for a first step, and Mr. Huskisson, the President of the Board of Trade, moved for a select Committee to inquire into the extent, if any, to which the Act should be modified.¹ The Committee consisted, among others, of Huskisson, Hume, Peel, Brougham, Wallace, and Sturges Bourne. The Committee, after inquiry, reported that combinations had sprung up injurious to trade, and Wallace, Peel, and Huskisson were directed to prepare and bring in a Bill.² This was done, and the Bill became law on 6 July 1825.³

The new Act was less liberal in its terms than the first. The general effect of the changes was to make an organization promoting a strike a much more risky affair. The law of 1825 afforded a number of opportunities to the magistrates for putting the worst possible construction on what happened. While exempting combinations as to wages and hours of labour from its scope, it restored the common law doctrine by which all trade combinations, except for regulating wages and hours of labour, became again unlawful and conspiracies. It added two fresh offences 'molestation and obstruction' to 'threats, intimidation and violence' which had been specified by the repealed Act.

¹ Parl. Deb. (29 Mar. 1825), 1288; 80 Commons' Journals, 287, 29 Mar. 1825. A large number of petitions were presented for and against amendments. 80 Commons' Journals, 321 et seq.

² 80 Commons' Journals, 544, 16 June 1825.

³ 6 Geo. IV, c. 129.

VII

FAILURE OF ARBITRATION ACT OF 1824; REASONS; BEGINNING OF VOLUNTARY CONCILIATION AND ARBITRATION

To pass from the period before to the period after the repeal of the Combination Acts is like passing through a tunnel. On the one side the landscape is strange; on the other the country becomes familiar and we have a sense of getting near home. As, in politics, the Reform Act of 1832 opened a fresh chapter, the end of which we have not yet reached, so, as regards industrial relationships, the legislation of 1824 began the era in which we still live, the changes of the past 100 years being merely the inevitable changes of growth and development.

By 1856 the Arbitration Act of 1824, which may be regarded as the culmination of over twenty-five years' experience and experiment, had become a dead letter. Witness after witness before a House of Commons Committee in that year, including two solicitors interested in industrial matters, declared that they did not know of the existence of the Act until their attention was drawn to it by the Committee.¹ The only place in which it appears to have been invoked at all was in the Spitalfields silk area in London. The police magistrate for Worship Street, Mr. Harrill, stated that he was occasionally called upon to arbitrate in matters affecting frame knitters and others in the silk trade. Having searched the records of the Court he discovered that there were five such occasions in the previous

¹ It should be noted, however, that the Act was discussed at length in the then current editions of Manley Smith's *Law of Master and Servant* (1852); 2 Archibald's *Justice of the Peace* (1854) 2 edn. See also 5 Burn's *Justice*; Stone's *Justices' Manual*; Oke's *Magisterial Synopsis*, and other legal text-books.

year. Throughout the country as a whole the Act was as though it had never been.¹ The Committee enumerated the following as the principal causes of the failure of the Act:

- (1) That there existed great unwillingness to go before a magistrate as having some appearance of criminal proceeding.
- (2) That, the arbitrators being appointed as each case arose, it was unknown beforehand who they would be, and there was reluctance to refer a dispute to a decision of an unknown set of men.
- (3) That the workmen objected to magistrates in manufacturing districts, inasmuch as they were generally manufacturers or else in some way connected with manufacturers.²

These reasons seem conclusive especially when it is remembered that magistrates and many others of the middle classes were apprehensive of the attempts made by workmen to improve their position, and this nervousness resulted in many instances in a harsh and extreme application of the law.

The Combination Act of 1825 was given a grudging interpretation. Men who contributed to the maintenance of workmen who had left work in a body were liable to be prosecuted, this being construed as an overt act of inciting the men to leave their employer. They were convicted of illegal combination for writing to their employers stating

¹ This is in accordance with the evidence before the Committee and relates to the arbitration procedure under the Act. Where home-work was being carried on as in silk and hosiery, the amendments of 1837 and 1845 (which were perhaps in the nature of factory legislation) were still of use. But even in those trades the arbitration provisions of the Act had become obsolete. William Felkin, *History of Machine Wrought Hosiery and Lace Manufacture* (1867), p. 445.

² Report of Select Committee on Masters and Operatives (Equitable Councils of Conciliation), 1856 (343), xiii, p. 1.

that a strike would take place.¹ Workmen were, under the Act of 1823,² still liable to imprisonment on conviction for absence from work without leave or for any other 'misconduct or misdemeanour', and convictions were numerous.³ Two actual instances of the administration of the law may be given to illustrate the attitude of some of the Benches of Magistrates. A chainmaker who had engaged himself for an indefinite period at certain fixed prices subject to fourteen days' notice, gave the following notice: 'I hereby give 14 days' notice for an advance of wages', and having received no advance left the employment. He was convicted for absenting himself from his employment, the notice being held bad, and was sentenced to fourteen days' imprisonment with hard labour.⁴

The second case concerned one John Hendrie, a cabinet-maker, who was brought before a justice of the peace at his private house near Kelso, on 5 June 1838, at the instance of his employer, Mr. Mein, and was accused of repeatedly deserting his master's service without leave. He was convicted and sentenced to six days' imprisonment with hard

¹ *R. v. Bykerdike* (1832), 1 Moo. & Rob. 179. There was a considerable body of opinion that the law did not apply to Scotland (see Sheriff Tait, Sheriff Barclay, and J. Strachan: Report of Committee on Law as to contract of service between Master and Servant, 1865 (370, viii. 1)), which added to the grievance of convictions under the Act.

² 4 Geo. IV, c. 34.

³ A return to the House of Commons of a number of persons summarily convicted and committed to prison in England and Ireland for breach of contract in neglecting work or leaving service during the year 1854, was 3,215, and during 1855, 2,345 (See Return—Workmen (1856), 441). The first Report of the Royal Commission on the Master and Servant Act, 1867, &c. (1874, c. 1094), contains notes of evidence of cases heard before justices under the Act. Under the law as it then was, a workman was liable to be proceeded against for breach of contract of employment by criminal process while an employer by civil process only.

⁴ *Brookes v. Wood* (1860), 24 J.P. 293.

labour.¹ Few persons knew of the proceedings until after Hendrie had been lodged in Jedburgh Gaol, some ten miles away. Hendrie appears to have been a man of good character and a skilful mechanic,² and there was an outburst of public indignation and anger. Meetings were held and a petition was prepared and numerous signed for a repeal or modification of the law.³ Mr. Wallace put down a motion for its repeal but Parliament was prorogued before it was reached.⁴

The tribunals which were made the instruments to enforce such laws were not likely to find favour among people to whom a decision in arbitration proceedings might be most vital.

One witness before the Committee of 1860 also expressed the view that the failure of the statute was 'hastened through the increase of the population, the extension of commerce into new districts that were then waste, improvements in machinery, development of skill, the extension of arts and sciences, the creation of new branches of industry

¹ *Kelso Mail*, 7 June 1838.

² *Kelso Chronicle*, 8 June 1838.

³ 93 Commons' Journals, 760, 27 July 1838.

⁴ *Kelso Chronicle*, 6 July, 3, 7 Aug. 1838. Hendrie's hard usage had its compensations. According to the *Kelso Chronicle*, 15 June 1838, the mechanics and other workpeople considered the sentence a gross infringement of their rights and liberties; they looked upon him as a martyr and resolved to get up a demonstration in his favour. Accordingly a deputation of four proceeded in an open barouche to the gaol at Jedburgh to bring him in triumph to Kelso on the expiration of his sentence. About seven o'clock in the evening, when the barouche was expected, the Market Place became crowded with persons of all classes and shortly afterwards the carriage came in sight with Hendrie and the deputation, who were received with loud cheers. A procession was formed, headed by pipers and a large banner inscribed 'Repeal the Law'. The hero of the day was presented with an address and after parading the principal streets of the town, a party of upwards of 50 sat down at Mr. Stephenson's (an inn) to enjoy a social glass and to testify that they considered the character of the individual in question had not sustained any injury in their estimation by his incarceration.

and an extended system of division of labour in all our mechanical and industrial operations'.¹

It is difficult to see in these facts any reason why workpeople were disinclined to adopt what was intended to be an expeditious mode of settling disputes with their employers. The statement was probably intended to refer, however, to such changes as had come over the weaving branch of the cotton industry. In the early part of the century weaving was a domestic industry and was prolific in occasions of minor disputes. The terms in which the arbitration clauses of the various Acts were drawn reflect this fact and it has already been noted that, following the Cotton Arbitration Acts of 1800 to 1804, the number of cases referred to arbitration was considerable. By 1824, the weaving branch of the cotton industry was in an advanced stage of transformation, the power loom having been introduced. With the work done in the factory under supervision, difficulties occurring in the course of the work could be dealt with as they arose and the occasions of dispute when a piece of work was finished were much reduced.

In analysing the reasons for the ineffectiveness of the Act it must also be borne in mind that if an employee applied to a justice of the peace for the reference of a dispute to arbitration, against the wishes of the employer, he would run the risk of being dismissed from his employment. On the other hand, if the employer were willing that the matter at issue should be referred to a third party for a decision, there was probably no need to invoke the law.

Whatever may be the reasons, it is clear that the repeal of the Combination Acts began a new era; arbitration under the Act of 1824 was, after a short time, ignored or forgotten, and there came into being methods of adjusting questions

¹ Thomas Winters, Report of Select Committee on Masters and Operatives, 1860 (307), xxii, p. 443, App. No. 3, p. 103.

between employers and workmen which have a distinctly modern character. The law which had fettered the actions of workmen and had made joint action, either by themselves or their employers, impossible or difficult, having been repealed or relaxed, employers and workmen were able to meet and confer together on wages, hours, and kindred matters.¹ Evidence of the extent to which advantage was taken of this new freedom is scanty, but it is sufficient to show that the notion of settling disputes by peaceable means was widespread.

The following instances may be mentioned:

In 1833 in the border burgh of Hawick a list of prices was drawn up and agreed between employers and workpeople in the silk trade. It was apparently kept up to date, as it was still current in 1856.²

Mr. Hugh Mackenzie, giving evidence in 1834, referred to the successful operation of boards in the textile trade in Glasgow and Paisley, which had been elected, consisting of employers and workpeople in equal numbers. These boards at the beginning of each year mutually revised or readjusted prices for the ensuing year.³

In 1834 the lace trade in Nottingham was depressed, workmen not earning more than 8s. a week. They pressed upon Sir John Hobhouse,⁴ M.P. (their local member), a Bill 'for regulating wages by the decision of a board composed of selected masters and men and making the scale thus agreed upon binding on the trade upon its receiving the signature of a magistrate', but he declined to move in the matter.⁵

¹ See 5 Geo. IV, c. 95. Cf. Report of Select Committee on Combination Laws (Mr. Thomas Wallace, Chairman), 16 June 1825.

² Report of Select Committee on Equitable Councils, 1856 (343), xiii, p. 1.

³ Report of Select Committee on Handloom Weavers, 1834, pp. 48, 49.

⁴ Afterwards Lord Broughton (1786-1869). He held various Government offices.

⁵ William Felkin, *History of Machine Wrought Hosiery and Lace Manufacture* (1867), p. 344.

In the same year a Committee of Conciliation was appointed in the pottery trade (Staffordshire) to adjust disputes by way of conciliation and arbitration. The Committee dealt with a series of minor disputes but was eventually dissolved because, it was alleged, all the decisions went in favour of the workpeople, the employers losing their respect for a process by which they found themselves always on the losing side.¹ A second attempt was made in 1852. Under the scheme it was the practice to hire men under a written agreement for twelve months, one clause of the agreement binding the parties to refer any difference which might arise to a tribunal of six arbitrators, three from each side, such arbitrators to appoint an umpire. This tribunal worked well for some time,² but eventually a succession of awards was given adversely to the men and the tribunal gradually ceased.³ A third attempt was made in 1868, to which reference is made in a subsequent page.⁴ The pottery trade in Glasgow had a rule to refer all disputes to arbitration. According to their report in 1860, 'the rule on arbitration had been put in force and had been successful in 90 cases out of 100'.⁵

In 1839 the carpet manufacturers of York and Durham, twenty-six in number, formed an association and met once a year. Their workpeople were forbidden to combine, but

¹ Harold Owen, *Staffordshire Potter* (1901), p. 114. The Potteries have always been in the van of labour movements. In 1845, to relieve the labour market, the Union acquired a large tract of land in Wisconsin, U.S.A., for those unemployed, and established a district called Pottersville. The movement, however, did not achieve the success anticipated. J. C. Wedgwood, *Pottery and its History* (1913), p. 197; H. Owen, *Staffordshire Potter*, p. 113.

² See evidence before Select Committee on Equitable Councils, 1856, *supra*, per W. Maitland, p. 214: Report of Select Committee on Masters and Operatives (1860), *supra*, per E. Humphries.

³ H. Owen, *Staffordshire Potter*, *supra*. ⁴ See *post*, p. 83.

⁵ Tenth Report of Royal Commission on Trade Unions (1867-8), 3980, vi, per H. D. Hollins, p. 86: Report of Royal Commission on Labour, 1894 [c. 6795].

prior to each yearly meeting the employees at each factory were invited to elect a delegate. These delegates attended at the employers' meeting and sat in one room while the employers conferred in another. Each side elected a Chairman and through these Chairmen negotiations were carried on. The employers and workmen acted together to support men who struck against firms who were not in the association. This arrangement appears to have continued for a number of years.¹

In the same year (1839) the Order of Friendly Boilermakers introduced a rule for a settlement by arbitration of disputes between members and their officers.²

In 1849, arising out of a settlement of a strike, a Board was set up at Macclesfield for the silk trade. It was purely voluntary in its inception. It consisted of twelve manufacturers and twelve operatives. At their invitation, Mr. Samuel Higginbotham, a solicitor, became Chairman with a casting vote. During the first year of its existence it drew up a list of prices for the trade, but it was handicapped in its operations by the fact that it was purely local, and a manufacturer who found the prices as determined by the Board too high could apparently get his work done in Manchester or even outside the borough at an uncontrolled price. Mr. Higginbotham retired from the Chairmanship after about fifteen months, but the Board continued to deal with complaints and minor disputes until 1852. During its existence no strikes or lock-outs took place. So long a period of peace was regarded as unexampled and remarkable. The Board had a summary method of enforcing its decision. In addition to a rule binding the Board not to give support to any manufacturer in case of dispute with his workpeople unless the manufacturer paid the prices agreed upon from time to time by the Board, there was a rule: 'Upon any

¹ Ibid., per John Andrews.

² D. C. Cummings, *Hist. Survey of Boilermakers' Society* (1905).

direct case of breach of arrangements of this board being discovered, the same shall be visited upon the manufacturer or weaver by fine and exposure and upon a repetition double the fine in each case, the informer to receive half the fine.' According to the evidence in 1856, this rule had never been actually enforced.¹ The Board eventually broke up because one of the leading employers refused to abide by the rules, and no sooner had the Board ceased than strikes began.²

In 1850 a board of shipwrights was established in Sunderland. Iron shipbuilding was then in its infancy and the principal body of workers in the shipyards was the shipwrights.³ The Board consisted of employers and workers in equal numbers with an independent Chairman. It is interesting to note that the Board showed a preference for a medical man as Chairman, he having 'professional connection' with both parties. The chief business of the Board was to deal with differences arising in the yards between the employers and workmen or between one workman and another. It did not profess to deal with wages generally, though apparently it exerted some influence in the matter.⁴ It lasted for a few years, then collapsed after a series of decisions adverse to the men; but was re-established in 1883 or 1884.⁵

¹ Report of Select Committee on Equitable Councils, 1856, *supra*.

² H. Crompton, *Industrial Conciliation* (1876), p. 127. See further Sir Joseph Paxton in Report of Select Committee on Masters and Operatives, 1860, *supra*, at pp. 97, 98.

³ Report of Royal Commission on Labour, 1894 [c. 6894], per J. Laing.

⁴ Report of Select Committee on Equitable Councils, 1856, *supra*.

⁵ Report of Royal Commission on Labour, 1894, *supra*, per J. Laing: W. T. Doxford. The decisions of the new Board were followed throughout the north-east coast, including the districts of the Tyne and Tees. *Ibid.*, Questions 26,604 et seq.; See also 25, 712-25.

In 1852 Lord Cranworth (then a Vice-Chancellor, afterwards Lord Chancellor), along with Lord Ashburton, was invited to act as arbitrator in the claims on overtime and piece-work in the dispute in the engineering trade, which eventually developed into the 'document' controversy, but declined under a misapprehension of the points in issue.¹ It appears that Lord Shaftesbury and Mr. Gladstone were also approached.²

In 1853 a Board or Court of Arbitration was established in the printing trade. The Court consisted of three members on each side, representing employers and workers respectively, with a barrister as Chairman or Umpire. The Court broke up about 1858 as the result of a difference on the application of an award. The men, while accepting an award as a decision in an actual dispute, refused to accept it as binding in cases arising out of past contracts and involving similar questions. The employers, on the other hand, claimed that like a legal judgement it should apply to all similar cases.³

¹ George N. Barnes, *Jubilee Souvenir of Amalgamated Society of Engineers* (1901), p. 39; Report of Select Committee on Equitable Councils, 1856, *supra* (App.); *The Times*, 17 Jan. 1852; *Irving's Annals*, 1852.

² Annual Register, 1852, p. 70.

³ Report of Royal Commission on Labour, 1892-4 [c. 6795] xii, p. xxxi: Report of Committee on Equitable Councils, *supra*, p. 31. The matter afterwards came before the Courts. A Committee of employers and employees had in 1847 fixed rules or rates of pay. On a dispute as to the meaning of the rule of pay the Court of Arbitration, as stated in the text, in interpreting the rules, fixed the price of certain work. The plaintiff, a compositor, afterwards entered the employment of the defendant, a printer, with knowledge of the award; nothing, however, was said as to the terms of payment; but both parties understood that it was to be made according to the rules. The plaintiff was paid in accordance with the interpretation given by the court of arbitration. Disagreeing with this interpretation, he brought an action for 3s. 1d. for work done. The action was in the nature of a test case. The Court held that the decision of the Court of Arbitration was not at the time of the employment of the plaintiff

In the tailoring trade the principle of conciliation and arbitration was apparently long regarded with favour. The tailors in Glasgow about the middle of last century were bound to refer all disputes to arbitration.¹ Mr. R. Essery, the Secretary of one of the West End (London) Societies, was an enthusiast and delivered before the Committee of 1856 an erudite discourse on the practice of arbitration in ancient Greece and Rome, explaining to the surprised Committee that his knowledge was the result of his having applied himself to a study of the subject for many years.²

An indication of the extent to which mediation and arbitration were favoured by workpeople is also afforded by the activities of a body called the National Association of United Trades for the Protection of Industry. This body was formed in 1845 and continued in existence until some time in the 'sixties. In 1856 it had passed the period of its greatest influence, but at that time still numbered 5,000 to 6,000 workpeople in a great variety of trades. Among its objects were 'to settle by arbitration and mediation all disputes arising between members and their employers', and 'to promote the establishment of local boards of trade or councils of conciliation and arbitration to adjust disputes between employers and employed'.³

binding between the parties as an interpretation of the rule, he not being a party to that award, and there was nothing in the rules to make it binding between the parties; that the Court of Arbitration had not correctly interpreted the rule and that the plaintiff was entitled to recover the amount claimed. *Hill v. Levey* (1858), 3 H. & N. 7, 702. See also Report of Royal Commission on Trade Unions (1867-9). Evidence of George Levey.

¹ Report of Royal Commission on Labour, 1892 [c. 6795], xiii.

² Report of Select Committee on Equitable Councils, 1856, *supra*; Thomas Winters, Robert Essery, Secretary, Tailors' Trade Society.

³ Other objects were 'to secure each member as far as practicable, a fair compensation for industry, ingenuity and skill, or a fair day's wage for a fair day's work. . . to urge upon Parliament the expediency

The Association had a Central Committee and Local Committees consisting in each case of three persons. In the event of differences occurring at any establishment at which members were employed, the Local Committee and, if necessary, the Central Committee, visited, itself or by means of a deputation, the employer and endeavoured to arrive at a settlement. In 1848, 90 cases were brought before the Committee of the Association for settlement. Of these 74 were in respect of reduction in wages; 16 were caused by the employers' demand that the employee should leave the Society, and eight arose from violation of the Truck Acts. In 1854 the Association reported that it had settled disputes by 'arbitration' in the proportion of 13 cases to 14. In 1855, 'out of 35 cases 20 were settled by arbitration'. It appears from the evidence submitted to the Committee in 1856 that the term 'arbitration' was used by the Association in a special sense as applying to the mediation of its Central or Local Committees, but, however the decisions were arrived at, the workpeople appear to have respected them.¹

of establishing a Ministry of Labour, whose duty it would be to direct and control all enquiry affecting the social and industrial conditions of the people . . . to support or employ members thrown out of employment as a result of resisting reduction of wages and other acts injurious to their interests.' The members were apparently able to fix the amount of their own contribution, but according to the amount they paid, so the amount which they received varied in the event of their being stood off on account of a dispute which could not be adjusted. If they paid 1*d.* a week they received 6*s.*; if 1½*d.*, then 9*s.* The Association published a paper called 'Labour League'. See Report of Select Committee on Equitable Councils, 1856 (363), p. xiii. Evidence by Thomas Winters. See also *History of Trade Unionism*, by S. & B. Webb (1911), p. 168. Its importance in the history of industrial arbitration is that it was the first external body, not immediately concerned in the industry in which an industrial difference had arisen, to be called in voluntarily to settle it. Cf. Hugh Lees, Secretary for Association of Cotton Spinners of Scotland. Report of Select Committee on Equitable Councils, *supra*, p. 250.

¹ About the middle of last century there was a large proportion of workmen in favour of boards of arbitration composed of employers

In reviewing the period immediately following 1825 it must be borne in mind that, while on the one hand workmen sought to reap the advantage of their freedom to combine in Trade Unions, employers on the other hand were reluctant to give up their old authority. The idea that a bargain with an individual workman over his rate of wages was analogous to any other business transaction and was a matter between buyer and seller died hard and slowly. Many employers refused even to deal with deputations of

and workmen (See evidence before Select Committee on Equitable Councils, *supra*, per Thomas Winters, p. 13, J. C. Proudfoot, p. 239, Hugh Lees, p. 250, and others). In 1859, 30 trades societies petitioned Parliament in favour of councils of conciliation and arbitration, while 70 trades expressed a desire to have them (Report of Select Committee on Masters and Operatives, 1860 (307), xxii. 443, per T. Winters, pp. 26, 30). Many representative employers took the same view. Mr. M. D. Hollins, on behalf of the pottery trade, for example, urged that a permanent tribunal of arbitration would tend to lessen the frequency of disputes and would be the means of creating an amicable feeling between employers and workpeople and stopping strikes (Select Committee on Equitable Councils, *supra*, M. D. Hollins, p. 201). There was, however, an influential body of opinion against any legislative interference, consisting of such representative men as Sir George Cornwall Lewis, Mr. Henry Fawcett, and Mr. W. E. Forster. We have already seen that Sir John Hobhouse in 1834 declined to assist workmen in their desire for a statutory wages board. Mr. Fawcett did not see any use in legislation unless it was accompanied by certain sanctions, and there were many practical difficulties. Everything that could be done would be done without the legislation interfering at all (Select Committee on Masters and Operatives, 1860, *supra*). Mr. Forster said: 'If we treat the question solely as a question of bargaining we are likely to have a continuance of strikes or something tantamount to them. But I think we are engaged in the same labour and the relation of limited partnership is quite as much that which rests between us as the relation of buyer and seller of an article. We are all partners together and if one succeeds the other must first or last succeed: if one fails, still more certainly the other must first or last be without daily support.' Mr. Forster was against any system of general councils established by statute to settle industrial differences: he thought they would be productive of more evil than good. Select Committee on Equitable Councils, *supra*.

their own workpeople, and to most employers the intervention of a Trade Union was an insult and an affront. Many bitter and disastrous strikes were the result. In 1853 a strike at Preston, which affected the whole of Lancashire, was estimated to have cost over £2,400,000. The strike in the engineering trade in 1852 is historic. There was a constantly recurring number of minor strikes and lock-outs.

VIII

SELECT COMMITTEE OF 1856; COUNCILS OF CONCILIATION AND ARBITRATION; COURTS OF PUBLIC INQUIRY

It was no wonder that many people were considering whether means could not be devised to avoid such outbreaks, and it was in these circumstances that Mr. W. A. Mackinnon in the House of Commons moved on 19 February 1856 for the appointment of a Committee 'to enquire into the expediency of establishing equitable councils for the amicable adjustment of differences between masters and operatives'.¹ The motion was agreed to and a Committee was set up consisting of Mr. Mackinnon (Chairman), Mr. Lowe, Lord Goderich, Mr. Cobbett, Mr. Kinnaid, Lord John Manners, and others.²

The prevailing ideas of the form which the measures for avoiding and settling disputes might take were somewhat vague. They centred, however, about the notion that boards or councils might be established to which matters affecting employers and workmen might be referred. As to what the powers and constitution of the boards should be, there were wide differences.

Mr. Hugh Mackenzie, giving evidence in 1834 before the Committee on Handloom Weavers, which has already been noticed, urged the establishment of a board for the handloom industry. He referred to the failure of the old Spitalfields Act,³ which carried 'its own ruin in its constitution, its operation being local, with the result that the industry was encouraged to establish itself beyond its jurisdiction'. He asked for a board which should extend over the whole

¹ 111 Commons' Journals, 58, 19 Feb. 1856; Parl. Deb. (19 Feb. 1856), 982.

² 111 Commons' Journals, 74, 29 Feb. 1856.

³ See *ante*, p. 9.

nation, a board which should be under one superintending head which 'could be nothing short of His Majesty's Board of Trade in London', and that subordinate or local boards should be established throughout the country. These local boards should determine the 'lowest minimum of price', and in the event of the two parties differing the matter should be referred to His Majesty's Board of Trade in London who should act as arbitrator.

These proposals, it will be observed, are an interesting anticipation of the Trade Boards set up under the Act of 1909.

In contrast to the views of Mr. Mackenzie, most of the witnesses before the Committee of 1856 appeared to be in favour of local boards with power to deal with disputes in any trade in the area of their jurisdiction.¹ Such boards would consist of representatives of employers and workers in equal numbers presided over by an impartial person appointed by the Government. The representative members were to be elected or chosen in some way by the various trades. It was contemplated, for example, by Mr. W. Newton, of the Amalgamated Society of Engineers, that each trade might appoint a delegate and that the delegates should meet and elect the members of the Board or Court. He thought that to have one Board for each trade would be too complicated. As regards the president of the Court it was put to Mr. Newton that County Court Judges had been suggested. Mr. Newton had not considered this suggestion but stated that he had no objection to lawyers. In fact, he thought that they were most fitted to weigh evidence and by virtue of their education they were not likely to come to a result in favour of any particular class of society. None of the witnesses appeared to think that the selection of the right person to act as president or chairman would be difficult. There was virtual unanimity, however, that jus-

¹ Report of Select Committee on Equitable Councils, 1856 (343), xiii. 1.

tices of the peace should have no part or lot in the procedure. It was generally desired that industrial matters should be discussed as far outside the atmosphere of a police court as possible.

Though the consensus of opinion was in favour of local boards having a statutory authority and taking their place along with other bodies in the general organization of local government, other views did not remain entirely unexpressed. Those trades like the carpet trade of York and Durham, which had set up systems of conciliation or arbitration for themselves,¹ did not want their arrangements unnecessarily disturbed. Employers, too, who were satisfied with their existing relations with their workpeople were in some cases apprehensive that a standing body in the district to which appeal might be made would be a cause rather than a cure of industrial disputes.

The idea of having a board in each district furnished with certain statutory powers and dealing with industrial matters was supported, if indeed it was not actually suggested, by the apparent success in France and Belgium of the *Conseils de Prud'hommes*. These bodies, it may be briefly noted, were established in all important industrial centres in France in 1806. They were constituted on a representative basis with a president appointed by the Government. They exercised functions partly administrative and partly judicial. Several witnesses before the Committee spoke in favour of them, one, Mr. W. Felkin, a Nottingham manufacturer, having printed and distributed several thousand copies of the laws relating to the *Conseils* in the hope of creating a public opinion in favour of the setting up of similar bodies here. The Committee itself collected much information on the subject of the *Conseils* and were evidently inclined in their favour.²

¹ See *ante*, p. 56.

² The *Conseils* which deal with individual disputes between em-

If opinions differed regarding the constitution of the boards, they showed a still wider divergence regarding the powers with which they should be invested. There was much confusion of thought arising from failure to draw a distinction which a study of the old and forgotten Arbitration Acts would have made clear, a distinction between disputes respecting work which had been actually done and disputes respecting work which was to be or might be done in future. As regards disputes over such questions as whether the employer had made payment at the agreed or proper rate or had made unwarranted deductions or had required a better standard of workmanship than he was entitled to, there was no reason why a new body, given the necessary powers, should not listen to any aggrieved party and give an enforceable decision in the same way as a court of law, whose place in respect to this class of question the new body would indeed have taken.

The position as regards wages to be paid or conditions to be observed in future is widely different. Here the question presents itself whether it is practicable to enforce the finding of the arbitrating authority. If both disputants are willing to accept the decision of a third party no sanction is required. If one of them is unwilling then there is obvious difficulty in compelling observance, since, on the one hand, the worker may refuse to work, or, on the other, the employer may refuse to employ. The dilemma appears to be complete. There is an answer to it which will be suggested later, but it is not one which affects the important character of the distinction between the two classes of cases, past and future, with which an arbitration tribunal may be called upon to deal.

ployer and worker have had their powers extended by recent legislation: *International Labour Review*, 1926. Collective disputes in France are settled by Conciliation and Courts of Arbitration under the Act of 1892, which are optional. *Ibid*.

A further distinction, the neglect of which creates confusion, relates not to the authority which shall attach to an award or decision, that is, whether its observance shall be voluntary or compellable, but to the rights of parties in setting the machinery of arbitration in motion. Loose talk—which did not end with the proceedings before the Committee of 1856—about ‘compulsory’ or ‘voluntary’ arbitration often ignores this distinction. It is clear that appeal to the Court may be made a matter of right and in that sense the arbitration may be compulsory, but nevertheless the finding of the Court may be one which has no sanction other than that provided by the consciences of the parties or by public opinion. Conversely it is conceivable that while it may be required that the parties shall agree upon recourse to the tribunal, yet, the parties having agreed to submit to arbitration, they may be required under penalty to observe its findings.

On the whole it appears that the Committee succeeded in keeping these various issues clear in their own mind, since their recommendations, whatever their other merits, are free from the confusion that characterizes much of the evidence. It would have been better, however, had they explained their conclusions at greater length. They might then have forestalled some of the foolish comment on arbitration that was made in subsequent Parliamentary discussions.

The Committee expressed their opinion that the formation of courts of conciliation, more particularly in the large commercial and manufacturing and mining districts, would be beneficial.¹ They recommended that the existing law be amended so as to allow both employers and operatives, each for their own class or calling, to appoint referees having power to elect a chairman, unconnected with either side,

¹ Report of Select Committee on Equitable Councils, 1856 (343), xiii. 1.

who should have a casting vote. This tribunal was to be appointed for a certain period and not for any particular controversy. So far the tribunal was to be in every respect a voluntary one, dependent upon goodwill and agreement between the parties—in its inception, in its proceedings, and in its judgements.

The Committee, however, went further and recommended that where boards of arbitration such as those which they recommended and such as existed in the Potteries were set up, the Secretary of State should have power to license them to decide all questions relating to *existing contracts* and to enforce their decisions.

The Committee then considered whether in respect of future contracts the tribunals could be given any compulsory powers. They expressed their opinion that it would be impossible to give the boards they recommended 'or any other tribunals any power whatever of forcibly regulating the rate of wages'.

The Committee, however, recognized that it was possible and indeed might be advantageous for one body to act in two capacities. The trouble about the boards which had already been set up here and there on the initiative of groups of employers and workpeople was thought to be that they had no statutory backing. Without some official basis, it was argued, they lacked impressiveness and permanence,¹ and we have seen indeed how they tended to disappear as the result of some passing difficulty. At the same time, it did not fit in with current ideas to make statutory a body which exercised no statutory powers. The Secretary of State's licence would thus achieve more than its merely ostensible purpose. It would not only arm the board with powers which, but for the licence, it could not exercise, but

¹ This argument was repeated before the Select Committee on Masters and Operatives, 1860, *supra*, per E. Humphries, and in resolutions of Association of Chambers of Commerce in 1893.

it would provide a *cachet*. The Committee, therefore, had some justification in saying that although the regulation of the rate of wages must be outside the Board's compulsory powers, yet 'advantages might frequently arise even in disputes on that subject from the existence in the district of a board of arbitration chosen from among the masters and workmen in the trade in which such dispute might occur as, in the opinion of your Committee, both the parties would frequently be willing in that case voluntarily to refer the question to the decision of such a board'.

It may be noted that in considering their report, the Committee had before them a suggestion that as an alternative to arbitration machinery, it might be preferable to provide that disputes between employers and workpeople should be the subject of authoritative inquiry. This was the view held by Mr. W. E. Forster,¹ and two other employers (Mr. T. M. Gladstone and Mr. J. P. Wilson) who appeared before the Committee. They submitted that in the event of a strike occurring in any large trade or district, the Secretary of State should be authorized to appoint a fit person as a commissioner to inquire on the spot into the circumstances of the dispute; though it was not contemplated that the commissioner would have power to call for books or papers, it was thought that he would be able to make a full investigation into the circumstances of the quarrel, and that, being in a position of impartiality, his judgment upon the matters in issue might be accepted by both parties as a basis of settlement. If, however, either party should decline to abide by whatever decision he reached, he should make his report to the Secretary of State and it should forthwith be published. This, it was thought, would tend to put an end

¹ William Edward Forster (1818-86) was M.P. for Bradford (1861-86); mainly responsible for carrying the Elementary Education Act, 1870; Chief Secretary for Ireland (1880-2); an advocate of Imperial Federation.

to the quarrel by bringing public opinion to bear upon the matter. No mention of this scheme is made in the Committee's report,¹ and it must be assumed that it was considered by them to be either unnecessary or undesirable. It is however, in substance, the provision adopted seventy years later in the Industrial Courts Act, 1919, and applied with effect in a number of important disputes.

¹ Lord Goderich recommended the scheme in his draft report. Report, 1856 (XIII), p. xiv.

IX

LORD ST. LEONARDS' ACT

THE sequel to the report of the Committee was the introduction of a Bill by Mr. Mackinnon¹ in the Session of 1858. The Bill met with so much adverse criticism on its second reading that it was withdrawn.² At the very end of the Session, Mr. Mackinnon introduced another Bill³ for the purpose of getting it circulated amongst the interested parties. This was on 9 August 1858. The House was prorogued on the 13th.

In 1860 Mr. Mackinnon reintroduced his Bill in an amended form,⁴ claiming that large bodies of operatives throughout the country had declared in its favour. Again the Bill was not well received. Lord Robert Montague argued strongly in its favour, calling upon the authority of M. Chevalier, the Belgian economist, and John Stuart Mill in support of equitable councils of conciliation. The weight of opinion was, however, much the other way, and the observations of the critics of the Bill, even those who spoke for the Government, showed that they were made, not only in ignorance of the evidence which had been submitted to the Committee, but also in disregard of the Committee's recommendations. The Home Secretary (Sir George Cornwall Lewis) thought it unwise for the Government to interfere with industrial disputes unless successfully, stating that he himself had refused to interfere in the recent builders' strike because he felt he could not do any good. This

¹ William Alexander Mackinnon (1789-1870), F.R.S., active M.P. for forty years; author of *History of Civilisation* and other books.

² 113 Commons' Journals, 139, 173, 27 Apr., 13 May 1858. Parl. Deb. (27 Apr. 1858), 1814, (13 May 1858), 531.

³ 113 Commons' Journals, 359, 30 July 1858. Parl. Deb. (30 July 1858).

⁴ 115 Commons' Journals, 55, 8 Feb. 1860.

criticism obviously missed the cardinal point of the proposal, which was that all the Crown should do was to grant a licence to the Board of Conciliation and Arbitration. The Solicitor-General (Sir William Atherton) also thought that the proposals of the Bill would do more mischief than good. With complete indifference to the great weight of evidence submitted to the Committee, he stated that the existing machinery, that was to say, proceedings in the police court, for determining differences was not open to objection; why interfere?

Mr. Mackinnon, seeing that the general trend of the debate was against him, readily assented to the proposal of the Home Secretary that the question should be again remitted to a Select Committee. Lord John Manners protested, as well he might, that the matter had already been fully investigated.¹ The new Committee sat for eleven days, examined fourteen witnesses, and reported on the Bill with slight amendment.² The evidence submitted and the Committee's report were merely a confirmation of those of the previous Committee.

The Bill thereafter passed the Commons.³ In the House of Lords, Lord St. Leonards, a former Lord Chancellor, and the well-known real property lawyer, took charge of the Bill⁴ and argued that the Arbitration Act of 1824 was a dead letter, even those persons who had been most active in strikes being ignorant of the law which permitted arbitration in cases of dispute.⁵ Again, however, the criticism was based largely on views which were in flat contradiction to the evidence which had been taken by the Committees,

¹ Parl. Deb. (1 Mar. 1860), 2010; 115 Commons' Journals, 101, 1 Mar. 1860.

² Report of Select Committee on Masters and Operatives, 1860 (307), xxii. 443.

³ 115 Commons' Journals, 293, 12 June 1860.

⁴ 92 Lords' Journals, 498, 3 July 1860.

⁵ Parl. Deb. (3 July 1860), 1314.

Lord Ravensworth holding that a Court of Petty Sessions (the police court), was more likely to give an impartial decision than a Court of Conciliation. There was more point in his objection that the legislature was asked to 'constitute a multitude of small parliaments'. The boards of arbitration in Nottingham, the Potteries, and elsewhere, on the successful working of which the Committee of 1856 had arrived at their conclusion, had come into existence without any great formality. The members of such boards were 'representative' in a general sense. No elaborate machinery had been devised for their selection. This vagueness about the constitution of a board which was to receive statutory Government recognition and possibly statutory powers was apparently repugnant to those who drafted the Bill, which proceeded on the lines of providing with great precision and detail for the election of the boards and the qualifications of electors.

After a discussion in the Lords which was not on the whole favourable, the Bill was, on the suggestion of Lord Granville, referred to a Select Committee,¹ and for the third time the project became the subject of inquiry and report.

Various petitions were lodged in favour of and against the Bill. The chief industries that concerned themselves with the matter were the coal and iron-stone mining, and judging from their petitions they were about equally divided in their opinion.² It would have required a much greater volume of evidence in favour of the Bill, however, to have overcome the lukewarmness of the Lords' Committee which, on 13 July 1860, reported that they could not come to a satisfactory conclusion without giving to the important manufacturing and commercial interests an opportunity of being heard, and, having regard to the late period of the

¹ Parl. Deb. (3 July 1860); 92 Lords' Journals, 498, 3 July 1860 *ibid.*, 504, 5 July.

² See 92 Lords' Journals, 1860.

Session, consideration ought to be deferred to a future Session.¹ This report effectively shelved the matter for some years.²

It is, perhaps, only in human nature that, during a time of peace and quiet, people are contented to leave matters as they are and to take no thought for the morrow, when conflict and upheaval will again occur. As soon, however, as strikes and disturbances take place, public opinion again becomes concerned with the best means of averting them. Progress thus tends to be spasmodic. It was so in regard to the period now under review. In 1865, there was a big strike in Staffordshire, and the Lord Lieutenant of the County, Lord Lichfield, entered warmly into the matter with a view to effecting a settlement. He failed in his efforts, but the employers and workpeople who had been engaged in the strike expressed a desire for the establishment of some court to which recourse might be had for the purpose of settling industrial differences.³ The incident gave Lord St. Leonards⁴ the opportunity of again bringing forward his Bill with some hope that it would secure attention and approval.⁵

A short debate upon it took place in the House of Lords but nothing was done in Parliament.⁶ Outside, however, it was much discussed by operatives, and many meetings were held at which it was considered. A gathering of bodies representing a hundred thousand workpeople almost unanimously resolved to support it.⁷ Accordingly, in 1866, it was again introduced.⁸ Since the consideration of the Bill in

¹ 92 Lords' Journals, 567, 13 July 1860.

² A Bill was brought in in the Session of 1861 but no progress was made. 116 Commons' Journals, 304, 26 June 1861. Mr. Mackinnon and Lord St. Leonards were keeping in touch with parties outside.

³ Parl. Deb. (Lords) (8 May 1865), 1575, per Lord St. Leonards.

⁴ Mr. Mackinnon had retired from Parliament this year (1865).

⁵ 97 Lords' Journals, 217, 8 May 1865.

⁶ Parl. Deb. (Lords), 8 May 1865.

⁷ Parl. Deb. (Lords) (22 Mar. 1866), 717, per Lord St. Leonards.

⁸ 98 Lords' Journals, 162, 22 Mar. 1866.

1860, the attitude of employers appears to have changed. In 1860 the principal London builders at a large meeting were all in favour of the Bill, but in 1866, Lord St. Leonards had ruefully to admit that they were less enthusiastic.

The discussions which took place on the Bill showed that those interested in the matter were up against the old difficulty, namely, whether to provide for the regulation of wages to be paid in the future, and, if so, how. The Bill as brought forward in 1866 followed the cautious line, Lord St. Leonards stating that he 'had expressed his opinion to the effect that he had no intention of ever presenting a Bill which would give courts of conciliation absolute power over wages; and, at all events, not unless confined to a very limited period'. Lord Shaftesbury appears to have been prepared to carry the proposals further. He thought that disputes about wages would necessarily arise and unless something were done, there would be perpetual strikes and the 'ten thousand evils which usually accompany them'.¹ After a short discussion the Bill was again withdrawn.²

In the following Session Lord St. Leonards, who once having given his attention to a subject was not a man to let it drop through inaction, again introduced a Bill.³ This time the Bill contained a provision to enable the Councils, with the consent of both parties, to fix a rate of wages payable in the future that should be binding on employers and employed for a period of twelve months. Lord St. Leonards explained that both employers and workpeople who had an interest in the matter desired this provision and

¹ Parl. Deb. (Lords) (22 Mar. 1866), 717; (19 July 1866), 1060, 1061.

² 98 Lords' Journals, 596, 19 July 1866.

³ 99 Lords' Journals, 11, 7 Feb. 1867. There was a large number of petitions in favour of the Bill (about 48), but with the exception of one from the Paper Makers' Society of England and Wales they were from the building trade, and with the exception of two from the Liverpool Master Builders' Association they were from the operatives in that trade. 99 Lords' Journals, pp. 37, 43, 52, 214; 21, 25 Feb., 1 Mar., 9 May 1867.

he had, at their instigation, gone back on his previously expressed opinion; and had promised the delegates of a hundred thousand operatives that he would press for its inclusion in the Bill. The Duke of Argyll supported the Bill, but Lord Cranworth (a former Lord Chancellor) took exception to this clause and argued that if the parties were not bound to remain with each other for twelve months, the provision would be nugatory; on the other hand, if they were so bound, such a regulation might be attended with injurious consequences.¹ In Committee he moved the omission of the clause, his motion being carried by nine votes to one.² The Bill, with some minor amendments, passed the Commons and became law on 15 August 1867.³

As passed, the Act provided that persons interested might petition the Crown for a licence to establish a Council of Conciliation. If granted, the Council was to be elected by vote, the franchise being given as follows:

'Each person of 21 years of age or over, belonging to the trade and being an inhabitant householder or part occupier of any house or other property, who, being a master, has resided and carried on the trade in the district for six months; or, being a workman, has resided in the district for a like period and has worked at his trade and calling for seven years, shall be entitled to be registered as a voter for the election of the Council.'

The Council was to be not only on a trade, but also on a local basis, the area covered being the 'City, Borough, Town, Stewartry, Riding, Division, Barony, Liberty or other place',

¹ Parl. Deb. (21 Feb. 1867), 696.

² Ibid. (25 Feb. 1867), 930. 99 Lords' Journals, 43, 25 Feb. 1867.

³ Councils of Conciliation Act, 1867 (30 & 31 Vict., c. 105), see Appendix III. The Bill was first introduced by Mr. Mackinnon in 1858 and on three subsequent occasions and after his retirement from Parliament, three times by Lord St. Leonards. Three separate Select Committees inquired into the scheme, heard evidence, and reported to Parliament, and a committee of law lords reported favourably on its provisions.

provision being made for combining areas in the case of London.

The Council was to elect its own Chairman, who was to be a person unconnected with the trade; its period of office was to be one year.

The Council was to have all the powers of arbitrators and referees under the Act of 1824 (see *ante*, p. 46) in respect to the matters upon which they adjudicated. These powers, as will be remembered, included some that were of very formidable appearance, such as summonses, power of commitment, issue of warrants of distress, and so on, the Act setting out in a Schedule the forms to be followed.

The cases upon which the Council was to have power to adjudicate were those cases of dispute or difference submitted to them by the mutual consent of master and workman, or masters and workmen, but nothing in the Act was to 'authorise the said Council to establish a rate of wages or price of labour or workmanship at which workmen shall in future be paid'.

The Council was to consist, in addition to the Chairman, of not less than two or more than ten employers and workmen, and the Act provided that a Committee of the Council, to be denominated the 'Committee of Conciliation' should be appointed consisting of one master and one workman, who should sit at such times as should be appointed, and be renewed from time to time as occasion should require; and all cases or questions of disputes which should be submitted to the Council by both parties were, in the first instance, to be referred to the said Committee of Conciliation, who should endeavour to reconcile the parties in difference. If such conciliation were not effected, the matter in dispute was to be remitted to the Council to be disposed of as a contested matter in the regular course.

The narrative of events which led to the Act of 1867 has been given in considerable detail, as the Act is, with the

exception of the small measure of 1872, the last Act of the series beginning in 1800 which attempted to give a legal sanction to industrial arbitration awards. It attempts to give effect with precision to the recommendations of the Committees of 1856 and 1860, which were based on a careful survey of the field and reflected the good sense of several very able men who were included in their membership. Lord St. Leonards himself appears to have revised the drafting, and to have seen that the various loopholes were closed.

Notwithstanding this, the Act was entirely stillborn. Not only is there no record of anything being done under it, but also it appears that no one took the faintest interest in it. The Pottery industry, for instance, had given evidence before the 1856 Committee with good effect, and had been specially mentioned in the report as being an industry in which the arbitration arrangements might be taken as a model. On 26 August 1868, however, that is to say, in the year following the passing of Lord St. Leonards' Act, a meeting of operatives was held at Hanley, under the Chairmanship of Mr. John Ayshford Wise, an ex-M.P. (who sat on the Committee of 1856), to elect delegates upon a reconstituted board of arbitration. The powers, present and future, of the board were commented upon by the Chairman in his speech, and the hope expressed that Parliament would be encouraged to legislate on its behalf. No mention whatever was made of the Act of 1867, of which the speakers at the meeting (and there were several) might have been entirely ignorant.¹

Another instance of the cold reception of the Act may be given. In February 1867 a Commission was set up to inquire into the organization of trade unions and any

¹ This meeting is fully reported in the *Staffordshire Sentinel*, 29 Aug. 1868. The report of the election of delegates by the employers contains no reference to the Act. *Ibid.*, 15 Aug. 1868.

improvements to be made in the law with respect to relations between workmen and employers. The Commission addressed a number of questions on the subject of arbitration to a considerable number of persons and bodies. They received thirty-four replies but none of them refer to the new Act, or, indeed, show that the writers had any knowledge of it. The report of the Commission itself makes the barest mention of it.¹

In view of the almost unbroken silence which follows the passage of the Act of 1867 it is difficult to state with any confidence the reason of its failure. The completeness and thoroughness of the measure, representing the efforts of a great lawyer and draftsman, resulted in provisions of such elaboration that they may have appeared formidable to employers and workers who were plain men. The detailed provisions with respect to the election of the boards of conciliation and the completeness with which the system of enforcing the boards' findings had been worked out, might well have suggested to groups of employers and workers that so fine and impressive an organization was not for them. The thoroughness of the measure might have been an advantage if it had been the concern of some Government Department to explain it, invite parties to consider it, and generally to get something done under it. That, however, was not the case. The measure, having been passed, appeared on the Statute Book to be read and applied, or unread and forgotten, as might happen. It is, indeed, easy to see in the light of experience that where, under legislation respecting their relationships, the initiative is left to employers and workmen, it is of the essence of the arrangements that they should be simple in statement and that the

¹ Final Report of Royal Commission on Trade Unions, 2 vols., 1868-9 [c. 4123], xxxi. 235; (4123, I) xxxi. 363. The legal press, it may be noted, discusses the Act at some length. Cf. 32 J.P., 593; 39 Sol. Jo., 653, 40 Sol. Jo., 372, 447; *Law Times*, Sept. 1867, p. 310; *Law Jour.*, Aug. 1867, p. 395.

parties should feel with some confidence that they understand the machine which they are invited to use.

The Act had, however, a more tangible defect. It provided for the enforcement of awards, but these awards could not touch wages to be paid in the future, that is to say, could not be given in that class of case about which nine out of ten industrial disputes are concerned. The reasons for this limitation were substantial, if not unanswerable. But what about the Conciliation Committee which was an important part of the scheme? Was this Committee likewise precluded from exercising its good offices to bring about agreement between the contending parties in cases where the rate of wages to be paid in future was to be involved? It will be remembered that if the Committee was unsuccessful in its efforts the matter was to be remitted to the Council to be disposed of as a contested matter in the regular course. On the one hand, the Council could only dispose of it by giving an award, and the award was to be enforceable. On the other hand, it was forbidden to establish a rate of wages to be paid in future which *ex hypothesi* was to be the subject of the award. This was a hopeless dilemma, which can only be solved by concluding that the Committee could not in the exercise of its duties under the Act concern itself with future wages. In so far as it did so, it would not be acting as a statutory body at all, but merely as a number of private individuals, who might, if it came to the point, be restrained from spending any funds belonging to the Council or purporting in any way to act in its name.

The absence of contemporary comment makes it impossible to say whether this legal difficulty was apprehended by those who might have been disposed to give the Act a trial. It is clear, however, that the Act missed its aim and offered to employers and workpeople no temptation to be diverted from their efforts to set up machinery of their own devising.

X

VOLUNTARY CONCILIATION AND ARBITRATION BOARDS; ROYAL COMMISSION ON TRADE UNIONS; MUNDELLA'S ACT

CONCILIATION arrangements were, in fact, springing up spontaneously in many different places which, in the view of those who were responsible for their inception and working, were quite satisfactory. The Royal Commission of 1867-9 on Trade Unions, to which reference has already been made, obtained evidence with respect to a number of these arrangements. Principally to be noted were Boards at Nottingham, the Potteries, and in the building trade in midland towns. The Board for the hosiery trade at Nottingham was set up in 1860, as the result of the zeal and enthusiasm of Mr. A. J. Mundella. It originally consisted of nine, and later of seven employers and seven operatives. The manufacturers were elected at a public meeting of their own body, and the operatives elected at a meeting of the 'respective branches' (i.e., presumably, of the trade union or unions). On the lines followed by the St. Leonards' Act, the Board had a Committee of Inquiry, consisting of four members, which had the duty of inquiring into any cases referred to it by the secretaries and of using its influence in the settlement of disputes. If the Committee was unable amicably to adjust the business referred to it, the matter was remitted to the Board for settlement. The rules provided that the Chairman, who at the date when the evidence was given was Mr. Mundella himself, should have a casting vote. Mr. Mundella, however, stated that the provision with respect to the casting vote got them into trouble and for the previous four years he had acted on the principle of not voting at all. Apparently, therefore, matters were settled by agreement by the two sides or not at all.¹

¹ Report of Royal Commission on Trade Unions, *supra*; William

This likeness of the Board to the modern Whitley Councils is further illustrated by the following extract from the account of the working of the Board:

‘One of the most evident results of this interchange of thought and opinion is that the workman becomes better acquainted with the laws which govern trade and commerce and with the influence of foreign competition and the master learns how to appreciate the difficulties of the workman and to sympathize more with his trials and struggles to maintain and improve his position.’

The account stated that during the six years the Board had been in existence, no strike or lock-out had taken place, no personal attacks had been made, and ‘no inflammatory handbills circulated’. It continues,

‘Never in the history of the trade has there existed so much good feeling betwixt employers and employed as at the present moment; and, during the past two years, wherein labour has been scarce and agitation on the question of wages prevalent throughout England, the manufacturers in this branch of industry have been able to accept contracts without apprehension and execute them without delay.’¹

On wages questions alone the Board settled prices of nearly 5,000 different articles, made by piece-work, and paid for according to printed statement of prices.

In the Pottery industry the old system, to which reference has been made,² whereby an arbitration clause was inserted in the yearly contract of hiring, had been brought to an end, and in its stead a Board had been set up or was about to be set up consisting of ten employers and ten workmen. The Board was to be permanent and was to meet quarterly to discuss any subject that might arise. Again there was to be

Felkin: *History of Machine Wrought Hosiery and Lace Manufacture* (1867), pp. 485 et seq.

¹ Report of Royal Commission on Trade Unions, 1869, *supra*. Similar boards were established at Leicester and Derby.

² *Ante*, p. 56.

a Working Committee consisting of four members, before whom any question of dispute could be brought, before being referred to the whole Board. The Committee was to endeavour 'in a conciliatory kind of way' to bring the matter to an arrangement, and only in the event of failure was it to be referred to the Board. It was the intention of the Board to have a standing Umpire or Referee to be elected by the Board, to whom matters in dispute would, in the last resort, be referred, in the event of voting on the Board being equal. The operatives were to be 'elected by their own body', and Mr. Hollins, who gave evidence before the Commission, thought that they would no doubt come from the Union. It has already been seen that a meeting was held on 26 August 1868, at which the representatives were chosen.¹

The third instance of conciliation and arbitration which appears to have impressed the Commission was that which existed in the building trades in Wolverhampton, Birmingham, Coventry, the Potteries, Malvern, and Worcester, in regard to which Sir Rupert Kettle, a County Court Judge, gave evidence. These schemes provided for Joint Boards, over some of which Sir Rupert Kettle presided himself, and had for their aims not merely 'the settlement of disputes', but also the drawing up of working rules and conditions which were promulgated annually, enabling employers to settle the terms of their contracts for the ensuing season. Provision was made for posting these rules in the various workshops, and delivering copies to workmen employed, so that they became the basis of the contract of service between employer and workman.² The Commission which examined Sir Rupert was bothered—as were most people who, at that time, approached the subject of arbitration—with the question of enforcement. It had to be admitted that in the end,

¹ See *ante*, p. 79. See also Harold Owen, *Staffordshire Potter, ante*.

² Rupert Kettle, *Strikes and Arbitration* (1866).

either employer or worker could vary the terms of the contract at will, or, at least, after giving the necessary notice of termination of employment and re-engagement; but Sir Rupert was at pains to bring home to the Commission that in practice the rules were well observed as the result of no other than a moral sanction and the force of trade or public opinion.

The Commission had addressed a paper of questions to a considerable number of persons and these questions included several asking for opinions on whether courts of arbitration were desirable, how they should be constituted, whether their jurisdiction should be compulsory and should exclude the jurisdiction of the ordinary Courts of Justice, and so on. The replies showed considerable differences in detail, but on the whole were favourable to the establishment of arbitration machinery.

The point made by several witnesses before the 1856 Committee, that courts of arbitration needed official recognition or some legal status to ensure their permanency, does not appear in the evidence submitted to the Commission of 1867-9. It is possible that in the meantime the organization of workpeople had increased in strength to a point which made it unnecessary to bring the law to the aid of the arrangements made between them and the employers. In an interesting memorandum by the Earl of Lichfield, Thomas Hughes, and Frederick Harrison, appended to the Commission's report, it is stated:

'It appears to us that the fact most plainly visible throughout the evidence is the universal approval of a system of working rules agreed to between employers and employed, and still further of the existence of some recognised board of arbitration to give these rules consistency and to interpret their effect. . . . When the great advantage of the system of a code of rules and prices is further supported by a board of arbitration, it appears to us the nearest solution of the labour and employment question which has yet shown itself. These spontaneous boards of arbitra-

tion are now general enough to afford considerable experience, and their value appears to us inestimable. It seems, however, plain to us that these codes of rules and the boards of arbitration, are in their nature spontaneous, and can receive not the slightest direct aid from any legislative source, which the promoters themselves reject.'

For the first time it appears to be recognized by a responsible and official body that a system of arbitration applicable to the general problems of industry, and not merely to small individual disputes, must rest on the basis of organization on both sides. The note continues:

'It does, however, appear that the existence of associations of some kind is indispensable to the formation of either codes of rules or boards of arbitration; but in a great degree the unions lead up to these ends and merge their own separate action in them without ceasing to exist. A result of this kind would be, we are disposed to think, the most easy and the most natural issue of the question of unionism, and it is one in which the Legislature might indirectly co-operate. On the one hand, whatever tends to give a permanent, legal and public character to unionism tends, in our judgment, to the improvement of the existing unions, and to fit them to co-operate in sound mutual agreement with employers. On the other hand we think that some facilities might be given to the legal machinery required for the enforcement of agreements made *bona fide* under such Courts and to the awards of tribunals of arbitration regularly constituted to which there had been a *bona fide* appeal.'

The report of the Commission was less definite. The Commission contented themselves with saying that

'The question as to what is a fair rate of wages, in the varying circumstances of trade from time to time, is one of difficult adjustment between employers and large bodies of workmen. The strike is a very rude method to settling such a question and it were much to be wished that some method could be devised, mutually satisfactory to workmen and employers, for settling disputes on this and other questions, when they arise. It will be remembered that this subject has at several times, engaged

the attention of the Legislature (5 Geo. IV, c. 96, 30 and 31 Vict., c. 105). It does not appear to us that any system of compulsory arbitration is practicable since there are no admitted principles of decision on which the arbitrator may proceed; and it is scarcely possible to bind so fluctuating a body as the workmen to any decision of a permanent character.'

They pay recognition to the success of Mr. Mundella's Board in Nottingham in stating that 'it is of the essence of the system in the opinion of its promoters that it should be voluntary'.

The note signed by Lord Lichfield, Thomas Hughes, and Frederick Harrison was not without effect, and it appears, indeed, to have reflected better than the report of the Commission Mr. Mundella's own views, since, a few years later, Mr. Mundella himself promoted a Bill which was duly passed on 6 August 1872 as 'an Act to make further provision for arbitration between masters and workmen'.¹

The new Bill was intended to facilitate and encourage the system advocated by Sir Rupert Kettle, whereby codes of working rules were drawn up by representatives of employers and operatives and posted in the workshops. It attracted little notice. Unlike previous Bills of a similar nature, there was no petition in favour of or against it. The general principle was apparently accepted. Lord Kinnaird, who conducted the Bill through the Lords, was sure if their lordships passed the measure it would put an end to strikes²; but it does not do to be sure of anything.

The chief feature of the measure was that a form of agreement must be drawn up and printed, either by the employer or workman, which became binding on both

¹ The Arbitration (Masters and Workmen) Act, 1872 (35 & 36 Vict., c. 46: See Appendix III. The Bill was prepared and brought in by Mr. Mundella, Mr. W. H. Smith, Mr. Samuel Morley, Mr. Thomas Brassey, and Mr. Thomas Hughes; 127 Commons' Journals, 147, 19 Apr. 1872. It was thus well sponsored.

² Parl. Deb. (23 July 1872), 1605.

parties when the employer gave and the workman accepted a printed copy. The workman might, however, reject the agreement by giving notice within forty-eight hours. Otherwise both he and the employer were bound by it during the agreed term of employment. Any dispute which might arise during the continuance of the agreement was required to be heard by the Board, Council, or persons designated as arbitrators in the mode prescribed by the agreement, or at the discretion of the parties if no mode were so prescribed. The award of the arbitrators was enforceable by distress, and in default of distress, imprisonment. The compulsory features of the Act were derived from the Act of 1824, the agreement between the parties being deemed to be an agreement within the meaning of the thirteenth section of that Act which it will be remembered enabled parties, by agreement, to submit to arbitration any matter otherwise outside the scope of the Act, and to obtain an award which should be binding and enforceable.

The unique feature of the machinery of the Mundella Act was the mode of concluding an agreement between the parties. The Act seemed to contemplate the wholesale formation of standing agreements to refer disputes to arbitration; but in this respect as in others it was a failure. It appears to have had no effect whatever. Even Mr. Mundella could not account for its failure.¹

In 1875 the Trade Union Congress at Glasgow passed a resolution calling upon the Parliamentary Committee to take measures to establish self-supporting local boards or councils of conciliation and arbitration in the chief industrial centres of the United Kingdom,² but nothing was done.

¹ See *Industrial Association*, by A. J. Mundella and George Howell, in *Reign of Queen Victoria*, by T. Humphry Ward, 1887, vol. ii.

² Trade Union Congress Report, 1875, p. 22.

XI

DEVELOPMENT OF CONCILIATION AND ARBITRATION; BOARDS FORMED BY CHAMBERS OF COMMERCE AND TRADES COUNCILS

THOUGH legislation was sterile, the spontaneous efforts of employers and workers and their respective representatives in a number of trades had been yielding good results. In 1862 a board of arbitration was established by the employers and carpenters and joiners at Sheffield, which successfully regulated the relations between the parties.¹ Mr. George Odger, a trade union leader, introduced the subject of arbitration to a large representative meeting at Sheffield in 1866.² Mr. John Burnett, in his history of the Nine Hours' Strike, advocated industrial arbitration 'if Mr. Mundella, Mr. Kettle or other competent gentlemen would give a little attention to it'.³ Mr. Robert Applegarth, another trade union leader, was in favour of a board of arbitration in every town; the workers are ready; 'we shall in nine cases out of twelve arrive at a mutual settlement of our differences . . . and we shall have the time as we have the means and disposition to turn our attention to higher aims than squabbling about wages'.⁴ The arrangements in the hosiery trade, the pottery trade, and the building trades have already been noticed in connexion with the proceedings of the Commission of 1867-9. Besides these it is desirable to notice a number of other trades and industries in which systematic arrangements for conciliation and arbitration had been made. Principal among these are lace, iron and

¹ First Report of Royal Commission on Trade Unions, 1867 (3873), per Robert Applegarth.

² H. Crompton, *Industrial Conciliation*, p. 94.

³ *Ibid.*, p. 102.

⁴ A. W. Humphrey, *Robert Applegarth* (1913), quoting A.S.C.J. 8th Annual Report (1867).

steel, boots and shoes, coal and iron-stone mining, and ship-building.

In 1868 the Nottingham Lace Association was established by the joint consent of the employers and workpeople. Originally a standing referee was appointed annually, but according to later rules two referees were appointed when the Board was equally divided and they were required to appoint an assessor to whom the question had to be referred if they failed to agree.¹ For many years all disputes were amicably arranged. The lace and hosiery trades at Nottingham had been regarded as the most quarrelsome in Europe, but the establishment of the hosiery board in 1860 and the lace board in 1868 changed them into the best managed and most conciliatory.¹

The iron trade was started in the North of England at Middlesbrough about 1860. The first ten years saw rapid growth. Large numbers of operatives came from various parts of England and Ireland, some from ironworks in other places, some from other trades such as agriculture, mining, and quarrying, and in addition a large body of general labourers.² They were strangers to their employers and to each other, and there was a general lack of discipline. The history of the trade during this period was one of endless disputes, of deeply ingrained suspicion on the part of the workmen and of want of sympathy and understanding on the part of the employers. In 1866 the works were stopped for four months; the men refused a reduction of wages but had to yield. There were reductions again in 1867 and 1868. Early in 1869 prospects became brighter and the men claimed an advance. A conference was held in March of that year at Darlington, Mr. David Dale representing the employers and Mr. John Kane the workpeople. As a result a Joint Board was set up which has functioned ever since,

¹ Report of Royal Commission on Labour, 1892 [c. 6795], xii.

² Ibid., 1894. Mr. William Whitwell. Questions 14990-6.

gradually extending its area of jurisdiction until it comprised England, Wales, and Scotland.¹ Mr. John Hodge, of the Iron and Steel Trades Confederation, the Union concerned in this arrangement, has declared that the scheme has eliminated strikes and lock-outs in the industry during the last forty years.

In 1872 a Conciliation Board was formed in the Iron and Steel trade in South Staffordshire. It did not last many years, but in 1876 a new Board was formed called 'The South Staffordshire Mill and Forge Wages Board', the President of which was to be some one outside the trade who could act as arbitrator or umpire when required. Mr. Joseph Chamberlain was chosen President, and was several times called in to act as arbitrator. He remained President until he joined the Government in 1880. He strongly advocated the introduction of a sliding scale for the automatic regulation of wages.² The Board not only dealt with matters immediately within its jurisdiction, but exercised an influence on wages and industrial relations in the iron industry in North Staffordshire, Shropshire, Lancashire, South Yorkshire, and Derbyshire.³

¹ 'I should like to say that if you will search the pages of history you will not be able to find in those pages a parallel case where any system has been of so much advantage to the workmen, to the employers and to the trade of the district as arbitration has been to our workmen in the north of England. . . . I am speaking of arbitration—where some of the most complicated and most serious questions—questions where the bread of the workmen is affected—have been submitted to various gentlemen. We have fully argued the matter, and we have always had a desire to mete out justice and to have justice meted out to us and to benefit the trade of the district, and I say there is nothing in my opinion up to the present time which is equal to arbitration.' Report of Royal Commission on Labour, 1894 [c. 6795], iv. Mr. William Trow, Secretary to Association of Iron and Steel Workers. Questions 15182–3.

² Fifth Report of Royal Commission on Labour, 1894, *supra*, Evidence of Mr. B. Hingley, M.P.

³ *Ibid.* The name of the Board was afterwards changed to the Midlands Iron and Steel Wages Board. In 1886 it was reorganized

It may be noted that permanent joint machinery of this character which now exists throughout the Iron and Steel industry does not extend to the heavy steel trades. In these trades there is no definite board. Should any question arise it is discussed between Management and Labour, and if a settlement is not reached, a Neutral Committee, consisting of two employers and two workmen from other establishments, is appointed to deal with it. If this Committee also fails, the question is submitted to arbitration by an arbitrator jointly agreed to by the parties, or by a Court nominated by the Ministry of Labour. The decision of the Neutral Committee, the agreed Arbitrator, or the Court is accepted as binding.¹

In 1872 the Cleveland Blast Furnacemen and Iron Masters agreed to a sliding scale and a Joint Committee in connexion therewith.² In 1880 a similar sliding scale and Joint Committee were established in the Cumberland district.³ In both cases unsettled differences were referred to arbitration. In the latter year a board of arbitration and conciliation was also set up for the Wrought Nail trade at Birmingham, but owing to the refusal of some employers to join it, and the consequent underselling of the members of the Board, it was a failure and came to an end within a year.⁴

In the boot and shoe trade, a 'statement', that is a list of piece-work prices, was drawn up for the trade in London in 1872 by agreement with some fifteen firms and was extended in 1875 so as to cover a further twenty-five firms.⁵ Later the trade was to be remarkable for an arrangement under which a direct sanction was devised independently of legislation for the observance of agreements. During 1894 on a wider basis to include the whole iron-making district of which Birmingham is the centre. *Ibid.*, Evidence, Group A.

¹ Mr. Arthur Pugh: *Industrial Peace* (1927), p. 192.

² Report of Royal Commission on Labour, *supra*, Group A, vol. ii.

³ *Ibid.*

⁴ *Ibid.*

⁵ Report on Collective Agreements [Cd. 5366], 1910, pp. 233-4.

and 1895 there was friction between the national associations of employers and workers respectively. As a result of a stoppage in 1895 of six weeks' duration in which 46,000 operatives were involved, a conference was held at the Board of Trade and an agreement reached under which representative joint committees were set up to prepare piece-work statements for their respective localities.¹ If the committees should fail to agree they were to appoint an umpire. If they should be unable to agree on an umpire, the appointment was to be made by the President of the employers' national organization and the General Secretary of the workpeople's organization, and if they too should fail to agree, by Sir Henry James (afterwards Lord James of Hereford). Sir Henry was a trusted arbitrator who rendered unstinted service to the cause of peace in the Boot and Shoe industry. Under the settlement it was provided that the local Boards of Arbitration and Conciliation should be reconstructed and it was agreed that if any agreement or award or decision be broken by any manufacturer or by any body of workmen, and the National Federation of Employers or the National Union of Workpeople as the case might be, failed within ten days to induce members to comply with the agreement or award, then the Federation or the Union should 'be deemed to have broken the agreement, award or decision'. Then came the unique feature in a provision that each side should furnish a financial guarantee for the due carrying out of the undertaking, and in April 1895 a deposit of £1,000 was made by each side with trustees in accordance with the agreement.² The arrangement still continues and the industry has enjoyed a long spell of almost unbroken peace.

In the Coal and Iron-stone Mining industry it may be

¹ Second Annual Report of Labour Department of Board of Trade [c. 7900], 1895.

² Report on Collective Agreements, *supra*, pp. 231 & 232.

noted that in 1874 Mr. Chamberlain, whose good work in connexion with the Iron and Steel industry has already been noticed, acted as Arbitrator in a difference which had resulted in a strike in the Staffordshire coalfields. His award fixed a sliding scale which worked satisfactorily for some years. In 1872 a standing Joint Committee was appointed in Durham for the purpose of settling disputes which should arise. This Committee worked with satisfaction to both sides and in 1873 a similar Committee was appointed by the coal owners and miners in Northumberland.¹ Mr. Farrer Herschell, Q.C. (afterwards Lord Chancellor), acted as arbitrator in the Mining industry in Northumberland and recommended in 1874 the establishment of a permanent tribunal, because a 'uniform principle would then be applied and justice would more certainly be done to all parties than if the tribunal is different on each occasion and is unable to know completely the principles on which its predecessors proceeded'.² In 1873 a Joint Committee was established in the Cleveland Ironstone Mining industry and in 1875, following a strike which had lasted for seventeen weeks, a sliding scale and Joint Committee were included in the terms of settlement in South Wales. The scheme worked successfully for seventeen years.

The device of the sliding scale was introduced as a convenient and summary method of adjusting wages to the changing conditions of the market. The assumption underlying it is that the rise or fall of prices produces a rise or fall in profits, and permits, therefore, a consequent rise or fall in wages. This assumption is not always true, and may indeed be very far from the truth if the manufacturing costs

¹ These two Committees gave many hundreds of decisions. A volume of decisions (1873-86) was published and the decisions have been described as having created a system of customary law regulating the conditions of employment down to the minutest details. Von Schulze-Gaevernitz, *Social Peace* (1893), p. 174.

² H. Crompton, *Industrial Conciliation*, p. 26.

of the article produced include many items besides wages. It is, however, sufficiently well grounded to afford a working basis of adjustment as regards products which are uniform in character and in which a standard kind or quality, affording a means of comparison at different dates, can be selected. The output of mines and the standardized products of the Iron and Steel industry, such as pig-iron, plates, or bars, satisfy these conditions, and, as we have seen, a sliding scale in the Iron and Steel industry has worked and still works on the whole with satisfaction to all parties.

In coal mining, selling price was taken as the basis of wages adjustment for many years. The selling price was ascertained by skilled accountants who had the confidence of both sides. Sworn to secrecy, they examined the books of the firms concerned and announced merely the results of their investigation.¹ Later, and at present, the general method followed is the same, though the basis is no longer selling price but average profits, calculated on the results of trading of all the firms in a recognized district.

As regards Shipbuilding, mention may be made of the Board established in connexion with the Wear Shipbuilding industry about 1883 or 1884, the peculiar feature of which was that, in addition to the General Board, there were Departmental Committees representing the different branches of the industry. A dispute came first under consideration by the Departmental Committee concerned, and only in the event of settlement not being reached was the matter brought to the General Board. Then, if the Board also failed to agree, the matter was remitted to a Board of Referees, chosen from a list of prominent men in the district. The Board worked well and avoided many disputes and stop-pages, notwithstanding the numerous changes in rates of

¹ Von Schulze-Gaevernitz, *Social Peace*, pp. 174 et seq.; Steam Collieries Defence Association: Proceedings of Joint Committee, 1886 (not published).

wages which took place under the scheme. As the result of its influence the Wear ceased to be regarded as the 'cockpit' of the North.¹

In addition to these outstanding instances, the Boards in the West of Scotland Manufacturing Steel trade (1890), the Birmingham Brass trades (1891), and the Tailoring trade of Great Britain and Ireland (1891) should also be mentioned, though their results were less convincing.²

The list of instances in which voluntary effort succeeded in doing that which legislation had failed to do might be extended, but sufficient has been said to show the general movement that was taking place towards peace and mutual accommodation. Not only were many of the individual trade unions anxious to avoid force in the settlement of disputes, but the whole tendency of the trade union movement at this time was in favour of the establishment of joint boards of conciliation and arbitration, as is reflected in the resolution passed in 1888 by the Trade Union Congress. The Congress meeting that year at Bradford resolved in favour of 'the formation of joint boards, composed equally of employers and workpeople', being of opinion that they 'would bring about a better understanding between them and secure the settlement of vexed questions affecting the interests of both, and urged the workmen of the larger centres of industry to bring the matter before chambers of commerce and other bodies of employers in order to facilitate the formation of such boards'.³

¹ Report of Royal Commission on Labour, *supra*, 1894, Group A, vol. iii; S. B. Boulton, 'Labour Disputes', *Nineteenth Century*, June 1890.

² Cf. Report of Royal Commission on Labour, *supra*; W. A. Dalley, *Life Story of W. J. Davis* (1914).

³ Trade Union Congress Report, 1888, p. 43. A similar resolution was passed at Dundee in 1889. Report, 1889, p. 60. In 1887 a motion at the Congress at Swansea for compulsory arbitration was lost on a division. Report, 1887.

While the trades and industries themselves were, in many instances, devising their own machinery of conciliation and arbitration, an impetus to the movement came from outside through the activities of Chambers of Commerce, generally in association with Trades Councils. The first effective steps were taken by the London Chamber of Commerce, following on the great London Dock Strike of 1889. The Chamber appointed a Special Committee to prepare a scheme of conciliation and arbitration, which was subsequently submitted to and approved by meetings of working men, to which all the Trade Unions of London were invited to send representatives. The movement was noticed and approved by the Trade Union Congress at Dundee in the same year.

Under the scheme a Board composed of employers and employees in equal numbers, with an independent Chairman, was set up as a board of arbitration to which parties could have recourse. During the next two or three years the London example was followed at Bristol, Hull, Leeds, Manchester, Walsall, Wolverhampton, Bradford, Halifax, Leicester, Morley, Newport (Mon.), Derby, Dudley, Plymouth, and other places. Altogether there were nearly 300 boards established in different industrial centres within the next few years. In 1893 the Congress of Chambers of Commerce passed a resolution that properly constituted boards of labour conciliation and arbitration be formed in all important centres of industry and commerce throughout the Empire,¹ and the Association of Chambers of Commerce of the United Kingdom claimed that Government recognition should be bestowed on boards formed in connexion

¹ Report of Proceedings of Second Congress of Chambers of Commerce of the Empire held in London in 1892; *Chamber of Commerce Journal*, 14 July 1892. A similar resolution was passed at the Third Congress held in London in 1896, and at the Fifth Congress held at Montreal in 1903. See Reports of these proceedings.

with Chambers of Commerce and otherwise.¹ There were no rigid rules as to the composition of the boards. The London Board consisted of twelve members representing the workpeople's side, twelve representing the employers' side, one nominated by the Lord Mayor of the City of London or a member of the Corporation appointed by him, one by the Chairman of the London County Council or a member appointed by him, and two representatives of labour organizations.² In its general composition it was not unlike the National Wages Board for Railways set up in 1920, which will be hereafter noticed—a type of organization which promises to achieve popularity.

The expenses of the boards were borne in equal proportions by the Chambers of Commerce and the Trades Councils. Members of the boards gave their services gratuitously, and parties to the dispute were at liberty to 'contribute by freewill grants'. The boards did not interfere in disputes unless invited by the parties.

These boards set up by the Chambers of Commerce met with a fair amount of success at first. The London Board is still in existence, but it has not functioned since the War (1918). Between 1890 and 1911 it settled about fifty disputes, mostly by arbitration.³ Its importance declined after the Board of Trade began to take a more active part in the settlement of disputes. Most, if not all, of the others have wilted away. It seems to be the fate of many schemes of

¹ Report of Association of Chambers of Commerce of the United Kingdom, Mar. 1893, p. 92.

² Rules and Byelaws of the London Labour Conciliation and Arbitration Board (adopted at first meeting of Board on 12 Dec. 1890); London, 1917.

³ Report: London Chamber of Commerce, Oxford Court, London. It was assumed that any award of the London Board was enforceable in the same way as a commercial award, that is, under the Arbitration Act, 1889, but no occasion ever arose to test the legal effect of an award. The Arbitration Act, 1889, does not apply to awards under the Conciliation Act, 1896, or the Industrial Courts Act, 1919.

arbitration, after some initial success, to lose favour for reasons which it is difficult to discover or state. Often they owe their initial success to the enthusiasm of some one or more persons who, associated with the board in its early years, endeavour to get the best out of it. These individuals die, retire, or become absorbed in other interests and their places are not always taken by men of the same fervour. In securing the success of arbitration machinery resting on a voluntary basis, it seems essential to devise some means by which the scheme shall be supported by some authority of a permanent character, which will not allow it to fall into disuse through want of proclaiming its virtues and which will help it to withstand the successive waves of indifference and reaction which sweep over the general body of both employers and workpeople.

The voluntary boards of arbitration, whether set up by the trades themselves or by outside authorities, were also faced by another difficulty. When the parties went outside the trade for an arbitrator or umpire, it was not always easy to find a suitable man. The reasons given for the relative failure of arbitration during the last quarter of the nineteenth century appear, indeed, usually to centre round the competence or incompetence of the persons chosen as arbitrators. They were not, as a rule, practical men, but were chosen from what has been described as 'the educated and professional classes'. This did not mean that they were necessarily biased, but it rendered them liable to that suspicion on the part of the workpeople and this suspicion could only be overcome by their showing that they were at home in what may be called an industrial 'atmosphere'. It is not absolutely essential that an arbitrator should have a close technical acquaintance with the trade in which he is about to exercise his office. The parties appearing before him will not be impatient in making clear technical points and expressions and indeed, as a rule, they will be glad to do so.

Employers and workers have a common pride in the technicalities of their calling which differentiate them from the outside world. But it is necessary that the arbitrator should have that background of general industrial knowledge which will enable him to fit technical minutiae into their right place and perceive the difference between points of detail and points of principle. It was the deficiency of arbitrators in this respect that led to a distrust of them,—a distrust that found expression in such statements as ‘the risk of a strike is less than the risk of an arbitration’;¹ it was ‘not prudent to entrust the destinies of a great trade to the opinion of any single individual who necessarily could not know anything of the details and intricacies of the trade’;² and ‘parties in a trade should meet and agree; if they cannot agree, fight it out’.³ There seemed to be no easy way of telling from a person’s antecedents whether he would be competent to appreciate the points of an industrial dispute or not. Successful arbitrators might be men of experience as manufacturers such as Mr. Chamberlain and Mr. Mundella, or they might be lawyers such as Lord Herschell, Lord James of Hereford or Sir Rupert Kettle, or ex-Trade Union leaders such as Mr. John Burnett or Alderman T. Smith, all of whom did excellent work. It is true that there was a certain presumption in favour of persons with legal training, but it was not more than a presumption. One distinguished counsel, who afterwards became a judge, so completely failed, that a witness at a subsequent inquiry (voicing the views of many people) declared with reference to the case decided by this arbitrator that ‘that one settlement did more harm to the arbitration question than any other thing that I know of’.⁴ Another so failed to apprehend the

¹ Royal Commission on Labour, *supra*. Transport by Land, p. 227.

² *Ibid.*, Textile and Clothing, p. 271, per J. Rawlinson.

³ *Ibid.*, per Amalgamated Society of Operative Cotton Spinners.

⁴ *Ibid.*, 1892, Mining, p. 61.

technical expressions and technical points at issue that the parties quietly ignored his award and effected a settlement in another way.

The solution of the difficulty seemed to lie in the setting up of a permanent court of arbitration or in the compilation of a list of persons who had been found to have the necessary qualifications, personal and other, for a task of which the technique is as difficult as it is incommunicable. This is one of the steps in the right direction which, as we shall see, was taken under the Conciliation Act of 1896.

XII

ROYAL COMMISSION ON LABOUR; CONCILIATION ACT; *AD HOC* BOARDS; INDUSTRIAL COUNCIL

THE Royal Commission on Labour which, appointed in 1891, issued its final report in May 1894,¹ was set up in consequence of the revival of interest in labour matters, brought about by a period of friction and dispute. In 1889 occurred the London Dock Strike, which was estimated to have cost £2,000,000, and in the same year a strike of the employees of the South Metropolitan Gas Company which cost that concern about £75,000. Altogether, during 1889 there were 1,145 strikes, more than half of which were disputes over wages.² In 1890 there were 1,028 strikes³ including a railway strike in Scotland, and later in 1893 there was a coal strike of sixteen weeks settled through the mediation of Lord Rosebery.

People's minds were again turned to the question of the measures which might be taken to prevent such outbreaks. The suggested remedies of the time are to be seen in the evidence submitted to the Commission, and also in the proposals which were made in and out of Parliament by public men. These proposals are mainly a repetition of the suggestions made to the House of Commons Committee of 1856, on the basis of which, as we have seen, legislation of an entirely ineffective kind was passed. Among the measures advocated were—boards of arbitration backed by the prestige of the State, and so composed as to have the

¹ Fifth and Final Report of Royal Commission on Labour, 1894 [c. 7421].

² Report of Labour Correspondent to Board of Trade for 1889, 1890 [c. 6176]. Of these strikes 714 were settled by conciliation and 48 by arbitration.

³ *Ibid.*, for 1890; 1891 [c. 6476]. Of these strikes more than one half were settled by conciliation and 44 by arbitration, generally first arranged by conciliation.

powerful sanction of public opinion behind them;¹ the division of the country into districts and the setting up over each district of boards of arbitration;² a consultative committee of an equal number of Labour members of Parliament and Employer members of Parliament who when called upon would investigate any dispute existing, pending or probable, and endeavour to arrange a mutual and peaceful solution of the difficulty or to arbitrate in case of need, if desired to do so;³ the appointment of two judges to settle all industrial disputes;⁴ the appointment of conciliation boards by town councils and county councils over their respective areas for particular districts or particular trades;⁵ the establishment of a board of arbitration 'so influential, so authoritative, so dignified, that no body of employers or workmen would dare to refuse to submit their case to it'.⁶ Government Bills were introduced in 1892, 1893, 1894, and 1895 by Mr. Mundella and Mr. Bryce respectively, as Presidents of the Board of Trade, but failed to pass for lack of time. Bills were also introduced by Sir John Lubbock, Sir Albert Rollitt, and others, on behalf of the London Chamber of Commerce, and supported by the Association of Chambers of Commerce of the United Kingdom.⁷

¹ Lord Randolph Churchill, *The Times*, 23 Feb. 1891.

² Mr. A. C. Morton, Parl. Deb. (27 Feb. 1891), 1890.

³ Mr. William Mather, M.P. See George Howell, *Conflicts of Capital and Labour* (1890), p. 452.

⁴ Sir William Allan, Parl. Deb. (5 Mar. 1895), 408.

⁵ Mr. Bryce's Bill, 1895. Sir John Gorst in his dissenting note to the Final Report of the Commission on Labour, *supra*, p. 148, recommended that every county council should create one or more local boards of industry, the costs to be paid out of the county rate, for the settlement of disputes. He also recommended the establishment of a Ministry of Industry.

⁶ Mr. Chamberlain, Parl. Deb. (5 Mar. 1895), 406.

⁷ See, e.g., Reports of the Association for 1894, 1895, and 1896. In 1895 a deputation of representatives of Chambers of Commerce and 45 Trade Unions urged the Government, through the President of the

The Royal Commission had as its terms of reference 'to enquire into the questions affecting relations between employers and employed, the conditions of employer and employed, and the conditions of labour which have been raised during the recent trade disputes in the United Kingdom, and to report whether legislation can, with advantage, be directed to the remedy of any of the evils that may be disclosed, and if so, in what manner'.

Any one, at the time when the Commission was appointed, who had looked into the history of the matter and was acquainted with the evidence and findings of the Committees of 1856 and 1860 and the Commission of 1867 might reasonably have feared that the Commission could do nothing but go over old ground. The nature of the evidence submitted to the Commission justified such apprehension since the witnesses, as in former inquiries, appear to have fallen into two classes: those with a trustful belief in arbitration enforced by the State; and those who, having asked how an award could be enforced on a recalcitrant employer and a disaffected body of workers, thought that the whole case for arbitration had been disposed of.

The exhaustiveness of the inquiry made by the Commission,¹ due largely to the Secretaries, Mr. Geoffrey Drage and Mr. John Burnett, left nothing to be desired, and the voluminous evidence affords a mine of information not only on working-class conditions but also on the opinions prevailing at the time.

The fact was, however, that changes had occurred since 1856 which made the time ripe for a further close examination of the subjects of arbitration and conciliation; and lessons were to be learnt from the failure of previous formal

Board of Trade, to pass the Bill promoted by the London Chamber of Commerce.

¹ Cmd. [1894] 1894. The report, minutes of evidence, &c. are contained in 67 publications.

attempts by the Government to improve industrial relations. It is worth while to consider what these changes were.

First and foremost was the changed attitude of employers and the public generally towards trade unions. Opinions still differed on certain aspects of trade unionism, and many employers were still hostile to the unions. That attitude was, however, becoming old-fashioned, and by most people, whether employers or not, it was recognized that trade unions had come to stay, and would form an important feature in the industrial life of the country. There was a growing recognition of the fact that legislation having been tried and found wanting, the only hope of making arbitration a success was in the existence of authoritative and responsible organizations of workpeople. As faith in a legal sanction diminished, so more was expected from the moral sanction. The Commission in their report point out that

‘where the great bulk of workmen and employers in a trade are enrolled in their respective associations, and act loyally, no individual workman or section of workmen can withstand such a combination to enforce the expressed will of the trade. . . . The effectiveness of this moral sanction to agreements and awards diminishes as the organisation on each side becomes less perfect. . . . The general conclusion seems to be that the moral sanction or force which at present is alone available to secure respect to the arrangements between bodies of employers and workmen throughout the industry and to the awards of arbitration, can only, as far as present experience goes, be relied upon with anything like certainty, in those trades which are very well organised, so as to comprise practically all the workers in a trade, or important district of it, and which have a strong and efficient form of internal government.’

The second important fact before the Commission was that independently of legislation the numbers of boards of conciliation and arbitration had continued to increase. In 1894, 64 boards were believed by the Labour Department

of the Board of Trade to be in existence.¹ Of these, 10 had not been called upon to act during the year. The remaining 54 boards had had 1,733 cases referred to them. Of these, 368 were withdrawn for one reason or another, 1,142 were settled by the boards themselves, and 223 were referred to arbitrators, or were settled by the independent chairmen of the boards acting as arbitrators. Such experience made it clear that industries were able to work out their own salvation when they had a will to do so.

It was also obvious that legislation of an elaborate kind, such as the Act of 1867, served no good purpose, and that while there was a great body of feeling in favour of Parliament doing something, it was apparently beyond the capacity of even so great a lawyer and draftsman as Lord St. Leonards to translate that demand into legislative form.

The ideas respecting compulsion had also become clearer. Compulsion is a weapon as dangerous to those who use it as to those against whom it is used. When a party is brought by main force to submit to arbitration, and the award is imposed on him against his will, the award is ineffective unless, indeed, it is in the nature of the judgement of a court respecting a past transaction.

Experience had shown that where disputes occurred or were apprehended, much advantage had often accrued from the intervention of some third party. Such intervention had been a matter of chance.² It was too important, however, to be left to chance and it seemed desirable to assign to some person or authority the duty or right of intervening. Who should this third party be if not a Govern-

¹ Second Annual Report of Labour Department, Board of Trade [c. 7901], 1895, p. 80.

² See Report to Board of Trade by Commissioner for Labour (H. Llewellyn Smith) of Proceedings under Conciliation Act, 1896 [1897, c. 8533]; cf. also First Report of Royal Commission on Trade Unions (1867-68), *supra*, Mr. Rupert Kettle, *Minutes of Evidence*, pp. 25 et seq.

ment Department which had continuity and could be assumed to be impartial?

It had also become manifest, as was pointed out in the last chapter, that, in the event of arbitration being required, it should be possible and easy for the parties to obtain the services of a capable arbitrator.

Experience, therefore, pointed to the conclusion that heroic remedies were not required, but that improvement should be sought by removing the obstacles and the sources of delay and friction which impeded the path of those who were inclined to ensue peace. The chairman of the Commission, the Duke of Devonshire, and certain other members of the Commission including Mr. David Dale, Mr. Michael Hicks Beach, Mr. Courtney, and Sir Frederick Pollock, were inclined themselves to favour a more definite step forward and proposed that the law relating to trade unions should be so amended as to enable the unions to enter into collective binding agreements; with the consequence that, in any case of a breach of contract, the unions would be liable to be sued for damages payable out of their collective funds. Having made the suggestion, however, the signatories of this part of the Report admit that 'the evidence does not show that public opinion is as yet ripe for the changes in legal status of trade associations which we have suggested, but we have thought it to be desirable to indicate what may, as it appears to us, ultimately prove to be the most natural and reasonable solution of some, at least, of the difficulties which have been brought to our notice'.

The Conciliation Act, 1896,¹ which followed the labours of the Commission, appears on first sight to be *ridiculus mus*. It provided for the registration of boards, established either

¹ 59 & 60 Vict., c. 30. See Appendix III. This Act repealed the Arbitration Act, 1824, Councils of Conciliation Act, 1867, and the Arbitration (Masters and Workmen) Act, 1872. The Act of 1824 had not been made use of for a great many years, and the Acts of 1867 and 1872, as previously stated, had never been made use of.

before or after the passing of the Act, but it does not provide for anything of moment to happen as the result of the registration. In fact it turned out, as might have been expected, that there was no particular virtue in providing for the registration of a body unless, as a result, that body was enabled to do something which it could not do without registration, or to acquire certain powers which it would not otherwise have had. It was no doubt hoped that registration would give a board of conciliation or arbitration a certain status and dignity,¹ but the attempt was too feeble, and it is not surprising that only nineteen boards registered themselves, and that the provisions with respect to registration very shortly became obsolete.

The Act also provided that the Board of Trade might, if they thought fit, exercise all or any of the following powers:

- ‘(a) inquire into the causes and circumstances of the difference;
- ‘(b) take such steps as to the Board may seem expedient for the purpose of enabling the parties to the difference to meet together, by themselves or their representatives, under the presidency of a chairman mutually agreed upon or nominated by the Board of Trade or by some other person or body, with a view to the amicable settlement of the difference;
- ‘(c) on the application of employers or workmen interested, and after taking into consideration the existence and adequacy of means available for conciliation in the district or trade and the circumstances of the case, appoint a person or persons to act as conciliator or as a board of conciliation;
- ‘(d) on the application of both parties to the difference, appoint an arbitrator.’²

Apart from giving direct statutory authority for incurring the small expenditure necessary, the Act does not seem to

¹ See Lord Dudley, Secretary to Board of Trade, *Parl. Deb.* (27 July 1896), 1428.

² Sir Hubert Llewellyn Smith suggests in his *Board of Trade* (1928), pp. 140, 141, that the railway conciliation procedure of the Board of Trade afforded the model for the Conciliation Act of 1896.

have given the Board power to do anything which it could not do and was not in fact doing before. It was all to the good, however, that the right or the duty of the Board to intervene in disputes should be established in a way that all men could see. Certainly the Act was understood and became much quoted. Henceforward a particular Government Department had a definite relationship to industrial affairs and armed with incontrovertible statutory powers it developed a sense of duty in doing what was possible to prevent and to heal industrial disputes. The Labour Department of the Board of Trade became active and well known, but it must not be thought that it came into existence as the result of the Conciliation Act. So far back as 2 March 1886, Mr. Bradlaugh moved in the House of Commons that immediate steps be taken to ensure the full and accurate collection and publication of labour statistics.¹ He said that all trade unions were against strikes, their desire being to solve labour disputes by reasonable means and by arbitration, but arbitration and conciliation had not always been attended with the results desired, because there were no reliable statistics to which both employers and employees could appeal. Mr. Burt seconded. Mr. Mundella, who was President of the Board of Trade, supported the motion which was accepted on behalf of the Government.² Mr. Mundella accordingly organized within the Board of Trade a 'Bureau of Labour Statistics', and appointed to assist in the work of collecting and preparing labour statistics and in obtaining information as to the employment of labour Mr. John Burnett, who was Secretary of the Amalgamated Society of Engineers.

A few years later, in 1893, these activities of the Board of Trade were reorganized in a separate department known as the Labour Department. The head of this Department, known as the Commissioner for Labour, was Mr. (afterwards

¹ Parl. Deb. (2 Mar. 1886), 1768.

² Ibid., 1787.

Sir) H. Llewellyn Smith, and the staff consisted of a chief labour correspondent, Mr. Burnett, and three additional labour correspondents, including one lady, Miss Clara Collett.¹ Local correspondents were appointed in a number of provincial towns, to supply the Department with information respecting important events affecting labour, and supplementing, when necessary, the inquiries of the central office. The main branches of work were the publication of a *Labour Gazette*—which has continued uninterruptedly up till the present time—and the conduct of special inquiries into matters of industrial interest.² Intervention in trade disputes was not included nominally among the activities of the Department, but it was an easy step from the collection and publication of information to the proffering of advice and assistance. In the debate on the Conciliation Bill of 1896, Mr. Mundella referred to the fact that the Labour Department had intervened in disputes in a 'delicate' way,³ and in fact we find in the second Annual Report of the Labour Department for 1894-5⁴ a reference to four cases settled through the intervention of the Board of Trade. In one of these cases, that of the sanitary pressers (a section of the pottery workers) at Hanley, Mr. Mundella himself had acted as arbitrator. The other three cases were the Durham Coal trade, with Lord Davey as arbitrator, the Boot and Shoe trade, with Sir Courtney Boyle as conciliator, and the Carpenters and Engineers of Leicester, with Sir William Markby as mediator.

As already mentioned, the Conciliation Act gave the Board of Trade a more definite standing where trade

¹ The work of collecting information having become more departmentalized, labour correspondents were discontinued about 1909.

² Memorandum on the Progress of the Work of the Labour Department of the Board of Trade [194] 1893; see Annual Report of Lab. Dept. of Board of Trade, 1894, c. 7565.

³ Parl. Deb. (30 June 1896), 425.

⁴ 1895 [c. 7900].

disputes were concerned, and its intervention became more frequent, and, presumably, less 'delicate'.

The number of cases settled by arbitration under the new Act were:

1897-8	5
1898-9	5
1899-1900	8
1900-1	15
1901-2	17
1902-3	12
1903-4	14
1904-5	6
1905-6	20
1906-7	22
1907-8	30
1908-9	44
1910 (18 months)	41
1911	45
1912	38
1913	44 ¹

These were all cases settled by arbitration under the new Act, and did not take account of the important work which was done by way of conciliation by officers of the Department.

One noteworthy feature of this time was that terminology became more precise. The Royal Commission of 1894 itself defined the terms in current use. 'Arbitration' was defined as 'the settlement by one or more presumably impartial persons of an issue on which the parties have failed to agree'; 'Conciliation' as 'the coming together of the parties for the discussion of questions with a view to amicable settlement'. 'Mediation' meant 'the exercise of good offices by some

¹ See Reports to Board of Trade of Commissioner for Labour of Proceedings under Conciliation Act, 1896 [c. 8533], 1897, and subsequent years.

outside agency with a view to avert an impending rupture between the parties, or, if the rupture has taken place, to bring them together again as soon as possible, without itself acting as arbitrator or making an award, though it might sometimes make, and even publish, recommendations as to the course which should be followed'. A distinction between the expressions 'difference' and 'dispute' was also drawn in the official publications of the Board of Trade, the expression 'dispute' being confined to those cases in which the difference between the parties resulted in a stoppage of work.

In the early years under the Conciliation Act, 1896, the Government and parties were fortunate in obtaining the services as arbitrators of men of sound sense and good judgement, and there was less disposition to rely upon exalted rank and high-sounding titles. Sir William Markby, Sir Edward Fry, Sir David Dale, Sir Henry James (afterwards Lord James of Hereford), Sir Horatio Lloyd, and Mr. J. V. Austin (county court judges), and Dr. Spence Watson were of the type of men that were called in.

The awards of such men were loyally accepted. It was felt, however, that the practice of throwing full and undivided responsibility upon one person had its drawbacks. The single arbitrator relied entirely upon the arguments and statements put forward by the parties appearing before him. If the case was highly technical he might have the help of assessors; but these were only for consultation on the facts and in no way shared responsibility for the award. It was felt that a safer method was to be found in a reversion to the old system under which the matter in dispute was determined by a tribunal of three persons; one representing the point of view of the employers; another representing the point of view of the workpeople; and a third having no connexion with either employers or workers. The advantage of this form of tribunal is that while it is incumbent upon

each member of the tribunal to take, as far as he is able to do so, an impartial view of the matter in issue, it is helpful to the Chairman to be able to talk over the matter in private with two persons who are able to assess at their right importance the various considerations urged by the parties; and who know something of the industrial and psychological background of the arguments brought forward.

In 1908, when Mr. Winston Churchill was at the Board of Trade, the panel of arbitrators was reconstructed in accordance with this view, and it henceforth consisted of a panel of chairmen, and panels of persons capable of representing the points of view of the employers and employees respectively. Henceforward arbitration might be by a single arbitrator, as before, or by a Court consisting of three or five members, together, if necessary, with assessors appointed to give the Court information on technical matters.¹ The first Court appointed under these arrangements dealt with 'quantities' statements of 'clickers' in the Boot and Shoe trade of Northampton, and consisted of Sir A. E. Bateman, K.C.M.G., Chairman, Sir Albert Spicer, Bart., M.P., representing the employers, and Mr. (afterwards Sir) D. J. Shackleton, M.P., representing the workpeople.² The new Court was, however, never much resorted to. The number of cases dealt with by it between 1908 and the outbreak of the War in 1914 was twenty.³ But its importance lay in constituting a court in which the several interests affected by the decision were directly represented, and it familiarized the industrial public to a court constituted in this way—a plan which was resorted to in the reconstituted Committee on Production

¹ Seventh Report of Lab. Dept. of Board of Trade (1907-9). 21 Feb. 1910.

² Ibid.

³ Seventh to twelfth Reports of Board of Trade of Proceedings under the Conciliation Act, 1896 (1910-19).

and other industrial arbitration tribunals during the War, and subsequently in the Industrial Court.

People interested in these matters were still conscious, however, of one deficiency. The persons called upon to arbitrate were as a rule busily engaged in other vocations; and arbitration was a mere interruption of their ordinary interests. There was no provision by which the arbitrators were kept in touch with one another, and no facilities by which they could formulate and adopt common criteria. An arbitration was a mere episode, related to no enduring principle and concerned with no considerations other than those of the moment. It was felt that above and beyond the arguments of the parties, the arbitrator must, or should, have at the back of his mind, however dimly formulated, some standard or principle to which the particular case must be related; and that it would be an advantage if some unified outlook could be developed among all those who were concerned with industrial affairs.

The Royal Commission of 1894 had considered the advisability of recommending the creation of a 'higher council of labour' which would enable a common view to be formed and expressed regarding labour matters. The Commission reported, however, that 'regard being had to the number, magnitude and complexity of industries in this country, we think that it would be difficult by any system of nomination or election to compose a body of employers, workmen and others which would give general satisfaction as a central council, thoroughly representative of all the interests concerned'.¹ Notwithstanding these findings the idea of an industrial council was revived; and in 1911, a year marked by considerable industrial disturbances, the Prime Minister, Mr. Asquith, and the President of the Board of Trade, Mr. Sidney Buxton, had numerous conferences and consulta-

¹ Fifth and Final Report of Royal Commission on Labour, Part I, p. 103.

tions with leading employers and workers with a view to strengthening the official machinery for dealing with labour questions. As a consequence the Government resolved to establish an Industrial Council. The purpose of the Council was set out in a memorandum issued by the Board of Trade in October 1911, in which it was stated that the Council was formed 'for the purpose of considering and of enquiring into matters referred to them affecting trade disputes and especially of taking suitable action in regard to any dispute referred to them affecting the principal trades of the country, or likely to cause disagreement involving the ancillary trades, or which the parties, before or after the breaking out of the dispute, are themselves unable to settle'.¹

The Council consisted of thirteen representatives of employers, thirteen representatives of workers, with Sir George (now Lord) Askwith as Chairman, and Mr. (now Sir) H. J. Wilson as Registrar.

The Council decided to hold periodic meetings in February, June, and November of each year, and to hold such other meetings as might be necessary. Several meetings were held in connexion with the national strike of coal miners in 1912, but nothing came of them.² In June 1912, the Government referred two questions to the Council: (1) What is the best method of securing the due fulfilment of industrial agreements? and (2) how far, and in what manner,

¹ Ninth Report of Proceedings under the Conciliation Act, 1896, 29 Mar. 1912. The first meeting was held on 26 Oct. 1911, and was addressed by the President of the Board of Trade, which address appears in full in appendix to Ninth Report, *supra*. Sir Charles Macara was one of the moving spirits in setting up the Industrial Council and had a firm belief in its capacity to settle industrial differences, but complains that it never had a fair chance. See his book, *Getting the World to Work* (1922). The essence of the scheme was that the control of industry should remain in the hands of men directly associated with industry. *Ibid.*, p. 103.

² Board of Trade (Department of Labour) Statistics, 1912. [Cd. 7089]; Annual Register, 1912 (35), (69).

should industrial agreements which are made between representative bodies of employers and workmen be enforced throughout the particular trade or district? ¹ The Council held thirty-one meetings and heard ninety-two witnesses from the principal trades and reported on 24 July 1913.²

The Report surveyed the whole field, but on the subject of the fulfilment of industrial agreements (including observance of awards) it added little to the findings of the 1894 Commission. The Council were against compulsory arbitration, expressed a view against any stoppage of work pending inquiry where the interpretation of an industrial agreement was in dispute, and pointed out that efficient organization on the part of both employers and workpeople secured the better observance of agreements. The Council considered the question of attaching a monetary penalty to the fulfilment of agreements, but decided that it was better to rely on moral obligation. If, however, penalties were to form part of the agreement they should be enforceable against associations or unions and not against individuals. Financial or other assistance ought not to be given to persons acting in breach of an industrial agreement. The Council were against the general adoption of a system of monetary guarantees in the form of a deposit of money such as had been adopted in the Boot and Shoe Trade (*vide supra*).

The Council admit that diversity of opinion existed on the subject. They express their own view, however, as follows:

‘If the fund is intended to be one out of which a penalty is payable equivalent to the amount of damage suffered, it is clear that, in order to provide for a case involving a large number of persons, the sum of money which it would be necessary to deposit would be such that many of the smaller organisations would be unable to set aside so large a proportion of their funds, or to obtain money for such a purpose. If, on the other hand, the penalty

¹ Tenth Report of Proceedings under Conciliation Act, 1896. 28 Nov. 1913.

² [Cd. 6952], 1913.

to be paid is merely in the nature of a fine, it does not appear that the adoption of the principle adds much to the restraining influence which is already exercised by the moral obligation to observe agreements.'

It may not unreasonably be suggested that the Council in the latter part of their comment overlook, or attach insufficient importance to, the fact that forfeiture of a sum of money in consequence of a breach of an award or agreement may be useful as a deterrent for the reason that it implies and involves an authoritative decision under which the fault of the one party or the other is publicly established. It has, after all, been found convenient and expedient to reinforce the moral obligation to observe, say, sobriety and decency of behaviour by attaching to it a risk that its disregard will be marked by the infliction of a fine, the amount of which may be small, but the payment of which is, to most people, a not unwholesome humiliation.

On the question of the extension of industrial agreements to those who were not parties to them, the Council recommended that when an industrial agreement had been reached the Board of Trade should hold an inquiry to decide whether it should be made obligatory on persons not members of an association which was a party to it, and if it decided in the affirmative, the agreement should be extended subject to the condition that there should be no stoppage of work or alteration of the conditions of employment until after the dispute had been investigated by some agreed tribunal, and a pronouncement had been made upon it.

The Council included arbitration among its functions, but its principal purpose appears to have been to ventilate the rights and wrongs of any dispute of major importance. The representative members were all actively engaged as officials of employers' and workmen's associations. It was, in any case, too large to act as a judicial tribunal; and although it was agreed at its first meeting that members should treat

matters 'as though they were acting in a judicial capacity and not as advocates',¹ it was rather a large demand to make on their powers of detachment, engaged as they otherwise were as protagonists on the side of employers or of employees, and selected as they were because of that fact. Whatever hopes centred upon the new body appear to have been disappointed. Its inherent defects for the purpose of conciliation and arbitration soon became manifest, and, save for the valuable report on industrial agreements referred to above, it never achieved any result of importance. The members were appointed for the period of one year. The appointments were renewed once and on their expiration there was no further renewal, so that the Council ceased. The experience seems to have confirmed the wisdom of the findings of the Commission of 1894 referred to above, regarding the difficulty of composing a body of employers and workmen and others which would give general satisfaction as a central council.

The number of conciliation and arbitration boards gradually increased. It has already been mentioned that in 1894, 64 boards were in existence. In 1905 the number had increased to 162,² and in 1913 to 325.³ Of this last-mentioned number, 310 were concerned with particular trades and only 15 were on a general or district basis.

Perhaps in consequence of the inquiry by the Royal Commission considerable progress was made in the settlement of differences and disputes by conciliation and arbitration apart from the Conciliation Act. For example, in 1894 there were 1,138 differences settled by conciliation and 254 by arbitration; ⁴ in 1895, the first year after the publication

¹ Tenth Report of Proceedings under Conciliation Act, 1896. 28 Nov. 1913.

² Fifth Report, *Ibid.* (1903-5), 335, 10 Aug. 1905.

³ Eleventh Report, *Ibid.* (1913), 89, 12 Feb. 1914.

⁴ Second Annual Report of Lab. Dept. of Board of Trade [c. 7901], 1895.

of the report of the Commission, there were 823 differences settled by conciliation and 181 by arbitration;¹ in 1896 there were 638 settled by conciliation and 225 by arbitration;² in 1897 there were 623 settled by conciliation and 186 by arbitration;³ and so on. These were cases reported to the Board of Trade and there were doubtless many cases of conciliation and arbitration of which no record has been kept. The agencies of settlement were individuals, permanent boards, and in cases of differences between groups of workpeople, trades councils, and federations of trade unions. The rules of a number of these conciliation and arbitration boards provided that in the event of the failure of the parties to effect a settlement of a dispute by discussion among themselves, application should be made to the Board of Trade (now the Ministry of Labour) for the appointment of an umpire, arbitrator, or conciliator.⁴ Many agreements between employers and workpeople contained a clause to the same effect.

The general principles of conciliation and arbitration were thus taking root, and though this did not mean that there was anything like peace in industry, it was nevertheless true that a public conscience was developing which held it to be incumbent on contending parties to exhaust the resources of conciliation and arbitration before appealing to force. The three years preceding the outbreak of war in 1914 were, in fact, one of the most disturbed periods in industry since

¹ Third Annual Report of Lab. Dept. [c. 8230], 1896.

² Fourth Annual Report of Lab. Dept. [c. 8642], 1897.

³ Report by Chief Labour Correspondent [c. 9012], 1898. All these figures of differences settled by conciliation and arbitration should be taken as approximate. Many settlements were probably not reported to the Board of Trade, and included in conciliation are settlements reached by negotiation and mediation.

⁴ In 1918, for example, such a clause existed in 194 of these instruments. Twelfth Report, *Ibid.*, p. 62. The Ministry of Labour took over these duties of the Board of Trade on its establishment in 1917 (6 & 7 Geo. V, c. 68).

the introduction of machinery ; but, notwithstanding this fact, and the immense amount of injury which was caused to trade, the country generally had at last arrived at the view that strikes and lock-outs could be avoided. This belief in the efficacy of arbitration made possible the remarkable system of arbitration adopted, or at any rate willingly concurred in, by employers and employees during the War. In this preliminary and essential task of creating public opinion favourable to arbitration and conciliation, credit is due to the quiet and devoted work of the officials of the Labour Department of the Board of Trade under the leadership of Sir George (now Lord) Askwith,¹ Chief Industrial Commissioner.

¹ Sir George Askwith was appointed Chief Industrial Commissioner in 1911 (see *Labour Gazette*, Oct. 1911), and held office till 1919, when the Chief Industrial Commissioner's Department was merged in the Industrial Relations Department of the Ministry of Labour.

XIII

OUTBREAK OF WAR IN 1914; CHANGED ATTITUDE TOWARDS ARBITRATION; ESTABLISHMENT OF COMMITTEE ON PRODUCTION; EMPLOYMENT OF WOMEN

THE three years immediately preceding the War were years of great industrial prosperity and unrest. Many strikes occurred and many were narrowly averted by the indefatigable efforts of Sir George Askwith and his able and versatile assistants. So great was the unrest that the Association of Chambers of Commerce advocated the establishment of local tribunals for the speedy settlement of disputes.¹

The period of unrest continued right up to the outbreak of war, notwithstanding that during the first six months of 1914 it was clear that the trade boom had passed, and that employment was on the decline. At the commencement of the War (4 August 1914) there were about one hundred strikes known to the Board of Trade to be in progress.²

Immediately on the declaration of war, great anxiety was felt regarding the effect of hostilities on employment. It appeared that nothing could save many industries from hopeless collapse, and the Government sent several investigators to inquire into the circumstances of a number of trades, with a view to devising some means of ameliorating the disaster which seemed inevitable upon the closing of many markets. The Local Government Board urged local authorities to expedite public works; local committees were formed to prevent unemployment and large sums were collected; the director of army contracts drew up a memorandum as to minimizing unemployment during the war; the

¹ See Reports of Association of Chambers of Commerce, Sept. 1913, Mar. 1914.

² Twelfth Report of Proceedings under Conciliation Act, 1896, &c. 1914-18 [185], 1919.

executives of the Engineering Employers' Federation and the Amalgamated Society of Engineers discussed the anticipated unemployment; and in some instances wages were reduced. There were few people during the first week or two of hostilities who foresaw that in the course of a few months the real difficulty to be faced would be not shortage of work but shortage of Labour.

There was a desire current through all sections of the community to call a truce to minor and domestic disputes in face of the enemy, and this general will to industrial peace led to an early settlement, either by arbitration or conciliation or by direct agreement between the parties, of the majority of disputes existing at the outbreak of war.

At a joint meeting of the Parliamentary Committee of the Trade Union Congress, the Management Committee of the General Federation of Trade Unions, and the Executive Committee of the Labour Party, which was held on 25 August 1914, it was resolved:

'that an immediate effort be made to terminate all existing trade disputes, whether strikes or lock-outs and whenever difficulties arise, during the War period, a serious attempt should be made by all concerned to reach an amicable settlement before resorting to a strike or lock-out.'¹

At the end of August the number of strikes had been reduced to about thirty.¹ The national call to join the colours, answered by surprisingly large numbers of men of all classes,² led to a depletion of the labour force in most industries, and the increasing demands for the production of war material, covering in its wide sense an enormous variety of products, so accentuated the labour shortage that unemployment soon disappeared. It was found that this

¹ Twelfth Report, *supra*.

² By Oct. 1914 the engineering trades for example had lost 12·2 per cent. of their pre-war male workers; by Feb. 1915, 16·4; by July of the same year, 19·5.

shortage, especially of skilled men, seriously affected the supply of munitions, and that it was necessary to take systematic measures to economize and use to their best advantage the labour forces of the country.

A Conference—known as the ‘Shell Conference’—was held on 21 December 1914, to consider the position, when instructions were given to the Board of Trade to co-operate with the War Office and Admiralty.¹ The Board of Trade recommended, among other things, that arrangements should be made with the engineering trade unions whereby Labour might be more economically and productively used. It was accordingly proposed that:

- (a) Disputes should be settled by means of some agreed form without stoppage of work by strike or lock-out.
- (b) Such trade union rules and practices as tended to restrict output should be temporarily suspended for the duration of the War.¹

The proposals were supported by the War Office and the Admiralty, and on 4 February 1915 the Prime Minister, Mr. Asquith, appointed a Committee consisting of Sir George Askwith, representing the Board of Trade; Sir Francis Hopwood, representing the Admiralty, and Sir George Gibb, representing the War Office, with Mr. H. J. Wilson as Secretary, ‘to enquire and report forthwith, after consultation with the representatives of employers and workmen, as to the best steps to be taken to ensure that the productive powers of the employees in the engineering and shipbuilding establishments working for Government purposes, shall be made fully available, so as to meet the needs of the nation in the present emergency’.

Having regard to its terms of reference and its original purpose, the Committee was, appropriately enough, called ‘the Committee on Production in Engineering and Ship-

¹ Twelfth Report, *supra*.

building Establishments'. The Committee held meetings with employers' associations and the trade unions,¹ and issued a series of reports dealing with such matters as time-keeping, production of shells and fuses, avoidance of stoppages of work, demarcation of work, and the proper utilization of semi- and non-skilled labour.² Like many other English institutions, the Committee retained its form and title after its original purpose had been lost sight of, and it had developed into something different from what had at first been foreseen. Probably no one at the time realized that the Committee on Production was to become an arbitration tribunal dealing with differences between employers and workers to an extent far beyond what had ever been known before in this or any other country.

In the early part of 1915 labour unrest began to manifest itself. In January 1915 only ten disputes were known to the Labour Department. In February there were forty-seven fresh disputes, and in March seventy-four fresh disputes.³ On 20 February 1915 the Committee on Production reported:

We have considered the question of disputes between employers and their workpeople which impair, or are likely to impair, the productive power of establishments engaged on Government work, and we are strongly of opinion that during the present crisis employers and workmen should under no circumstances allow their differences to result in a stoppage of work.

Whatever may be the rights of the parties at normal times and whatever may be the methods considered necessary for the maintenance and enforcement of those rights, we think there can be no justification whatever for a resort to strikes or lock-outs under present conditions, when the resulting cessation of work would prevent the production of ships, guns, equipment, stores or other commodities required by the Government for the purposes of War.

¹ Awards of Committee on Production, Mar. 1915-May 1917, p. 2.

² Twelfth Report, *supra*, App. 22: Lord Askwith, *Industrial Problems and Disputes*, 1920, pp. 366 et seq.

³ Twelfth Report, *supra*.

We therefore submit for the consideration of his Majesty's Government the desirability of the immediate publication of the following recommendation to Government contractors and sub-contractors and to trade unions, and to request their adhesion to this recommendation, viz:

'Avoidance of Stoppages of Work for Government Purposes.

With a view to preventing loss of production caused by disputes between employers and workpeople, no stoppage of work by strike or lock-out should take place on work for Government purposes. In the event of differences arising which fail to be settled by the parties directly concerned, or by their representatives or under any existing agreements, the matters shall be referred to an impartial tribunal nominated by His Majesty's Government for immediate investigation and report to the Government with a view to a settlement.'¹

This recommendation was adopted by the Government, and on the following day (21 February) the terms of reference of the Committee were extended to enable them to accept and deal with any differences referred to them.² It soon became manifest that many minor disputes were likely to arise when local hearings would be preferable, and single arbitrators would in most cases be more suitable and convenient than a larger body such as the Committee on Production. It was also desirable to make use of the scheme of *ad hoc* boards or courts of arbitration which had been first set up in 1908. It was accordingly provided in an agreement between the Government and upwards of thirty trade unions known as the 'Treasury Agreement' (19 March 1915) that the unions' representatives would recommend to their respective members that stoppages of work on munitions should not take place during the War and that failing settlement by other procedure, differences should be referred to one of three tribunals, namely—
The Committee on Production, or

¹ Twelfth Report, *supra*.

² Committee on Production Awards (1915-17), p. 2.

a single arbitrator to be agreed upon by the parties or in default of agreement appointed by the Board of Trade, or a Court of Arbitration on which Labour and Employers should be equally represented with a Chairman appointed by the Board of Trade.

This agreement afterwards received legislative effect in the Munitions of War Act,¹ passed on 2 July 1915.

The Act dealt with differences as to rate of wages, hours of work, and conditions of employment respecting the 'manufacture or repair of arms, munitions, ships, vehicles, aircraft, or any other articles required for use in war; or of the metals, machines or tools required for that manufacture or repair'. Though the Act was thus limited to 'munitions' work,² power was taken to extend it by Proclamation to any other work of any description and it was, in fact, so extended to the coal miners in South Wales, to card and blowing room operatives in the cotton industry, and to dockers in London, Liverpool, and Glasgow.

The Act provided that either party to a difference might report the matter to the Board of Trade. The Board of Trade was then required to consider the difference so reported and to take any steps which seemed to them expedient to promote a settlement. In any case in which the Board thought fit, they might refer the difference for settlement by arbitration by one of the three tribunals already referred to. The award issued by the tribunal was to be binding both on employers and employed, and any contravention of it was to be an offence under the Act, punishable by a fine not exceeding £5 for each day during which the contravention continued; and if the person guilty was the employer, for each man in respect of whom the contravention took place.

¹ 5 & 6 Geo. V, c. 54, Sched. 1.

² The list of items included in 'Munitions' work was extended by the Munitions of War Amendment Act, 1916, s. 9.

It was further provided by the Act that no employer should declare a lock-out, and no worker should take part in a strike, unless the difference had been reported to the Board of Trade, and the Board had not, within twenty-one days of the date of the report, referred the matter for settlement under the Act. Failure to comply with this provision was also punishable by heavy fines.

It will thus be seen that the Act made short work of all the dilemmas and difficulties which had been advanced against compulsory arbitration. Compulsion there was in full measure, under penalties which, on paper at least, were severe and deterrent. So definite a break from tradition and the practice of nearly a hundred years was possible only under war conditions. As regards employers, the Government was able not only to exercise powerful financial pressure through the prices and conditions attached to the contracts which it placed, but the Minister of Munitions had power, under the Munitions of War Act, 1915, to 'control' any establishment in which munitions work, as defined by the Act, was carried on. It is unnecessary to describe in detail the incidents of 'control'. It is sufficient to note that while the employer was left in charge of his establishment, his profits were limited, and he was bound under penalty to comply with any regulations which the Minister might make 'with respect to the general ordering of the work of the establishment'. There was also the common law power of commandeering goods or premises for the purpose of carrying on the War. In the event of an employer proving recalcitrant, therefore, the Government was armed with ample powers.

So far as workers were concerned the sanctions directly provided by the Act were reinforced by the provisions of Section 7 to the effect that a person should not give employment to a workman who had, within the previous six weeks, left any employment to which the Act applied, unless such

workman held a certificate from his last employer that he had left work with the consent of the employer, or alternatively held a certificate from a munitions tribunal¹ to the effect that the employer had unreasonably withheld his consent. Under risk of six weeks' unemployment a worker was thus bound to his employer. In the background too (after 1916) was the liability to military service of a person not specially exempted. The Military Service Tribunals were not slow to 'call up' any man of military age who was not usefully employed. Above all there was the single-minded purpose of the country as a whole to subordinate everything to the prosecution of the War, and a public impatience with any dispute over matters which, in comparison with the great national task, seemed unimportant.

There was nevertheless a reminder in the trouble with the South Wales miners of the fact that penal provisions are difficult of enforcement against thousands of persons simultaneously. The miners throughout the South Wales coal-field were on the point of strike,² and many people held their breath to see what the Government would do. The occasion was an anxious one, and sensible men were profoundly thankful when, at the moment when it appeared that force must be used, the trouble yielded to discussion and adjustment.

It should be noted that the Munitions Act of 1915, while introducing compulsory arbitration, nevertheless reflects an unwillingness to compel parties to submit their differences to arbitration if there is a reasonable alternative. It provided that if a difference was reported to the Board of Trade and, in the opinion of the Board, suitable means for settlement already existed in pursuance of any agreement between the employer and the persons employed, the matter might be referred for settlement in accordance with those means.

¹ This was a court of summary jurisdiction set up under the Munitions of War Acts.

² *The Times*, 25 Nov., 4 Dec. 1916.

This meant, in fact, that where satisfactory conciliation machinery existed in a trade, it might be set in motion before recourse was had to arbitration. This alternative method was not, however, used to any great extent. Arbitration was more expeditious, and as the awards on the whole gave satisfaction it was preferred by both employers and workers under the conditions of urgency prevailing at the time.

Mention has been made of the fact that although the first shock of war reduced trade disputes almost to vanishing point, there was evidence in 1915 of a good deal of labour unrest. There was at the time and throughout the War a willingness, the sincerity of which could not be doubted, on the part of organized Labour to make any reasonable sacrifice in order to facilitate the prosecution of the War. Money became plentiful, however; new and considerable fortunes were rapidly acquired, and a good deal of ostentatious spending took place. This inevitably gave rise to charges of profiteering, and a contention on the part of many people that if they surrendered on patriotic grounds claims which they would otherwise have asserted, it should be required that employers should not individually gain by their doing so.¹ Hence it was that in the 1915 Act power was taken to 'control' establishments and limit their profits. This provision did not altogether get rid of the difficulty, and it continued to be easy for any body of aggrieved workers to allege profiteering, if not on the part of manufacturers, then on the part of merchants and shopkeepers. No general cure could be found for the trouble, especially as it became apparent that the tendency to charge as much as circumstances permitted was not confined to any one section of the com-

¹ See debate on second reading of Munitions Bill, 1915; Parl. Deb. (28 June 1915), 1512. This contention was also common knowledge among all who during these times were in touch with working-class opinion.

munity. The tendency itself and resentment at its manifestation in other people were, however, the underlying causes of a great deal of the industrial trouble which the Committee on Production and other arbitration tribunals were called upon to allay.

The day after the Committee on Production had issued their report on Avoidance of Stoppages of Work, that is to say on 21 February 1915, their terms of reference were, as we have seen, enlarged so as to enable them to accept and deal with any cases arising under their recommendations. In the interval between this date and the passage of the first Munitions of War Act, 2 July 1915, arbitration was voluntary, but nevertheless a considerable number of cases were referred to the Committee. The Committee were apparently averse from making too violent a break with the past, and their first decision on an industrial difference referred to them is described as a 'report', the idea being apparently that the decision was really a report to the Government with a view to providing the grounds of a settlement, and was not primarily an award as between parties.¹ The later practice was for the Committee to describe their decisions as 'findings'.

When the Ministry of Munitions was set up under the Munitions of War Act in 1915, the original functions of the Committee on Production, namely to 'advise the Government as to the best steps to be taken to ensure that the productive power of the engineering and shipbuilding trades should be made fully available to meet the needs of the Nation', was merged in the new Department. The Committee itself became one of the three specified statutory tribunals to which differences might be referred, and henceforward its function was solely that of arbitration. Its

¹ See Report on Wages in Shipbuilding Trade, 1 Mar. 1915. Committee on Production Awards, Mar. 1915-May 1917, p. 11. See also *ante*, p. 125.

name remained, giving rise to innocent pleasantries on the part of those who desired to know what the Committee produced.

In August 1915 Sir Francis Hopwood's duties at the Admiralty precluded him from attending regularly the meetings of the Committee and Sir David Harrel was appointed a member: subsequently Lord Balfour of Burleigh was made an additional member. In May 1917 the constitution of the Committee was fundamentally altered by the Prime Minister (Mr. Lloyd George) by the introduction of representatives of employers and workpeople as members of the Committee.¹ Labour people had been complaining of the awards of the Committee, and attributed the alleged defects to the fact that the Committee was not representative. The enlargement of the Committee was a statesmanlike step, and brought its constitution into line with the arbitration courts established on the tripartite plan devised in 1908.

All the Munitions of War Acts, that is to say those passed in 1915, 1916, and 1917, dealt in some way or other with the regulation of wages. As we have seen, the 1915 Act provided for the reference to arbitration of the differences between employers and workpeople by the Board of Trade, and specified the tribunals which were to act. The Act of 1916 dealt *inter alia* with the rates of wages of women and of semi-skilled and unskilled men.

The introduction of female labour to work hitherto performed solely by men was one of the most remarkable features of the War period. It was inevitable that the process should be attended by much difficulty and dispute. The crux of the matter was how to provide that women who were employed on men's work should not be paid at rates of wages so low as to imperil the chances of men regaining

¹ A list of the names of the members of the Committee, as enlarged, appears in Appendix I.

that which they had temporarily surrendered. It was true that provision was made¹ for an undertaking by every employer in a 'controlled' establishment to restore pre-war practices when the national emergency had passed, but it was desirable to underwrite such promises which, as events turned out, were of such a nature that with the greatest goodwill they could not reasonably be kept.² To safeguard the position as regards women, it was therefore provided in Section 6 of the Munitions of War Act, 1916,³ that where female workers were employed on or in connexion with munitions work in an establishment to which the Act was applied by order the Minister of Munitions should have power to give directions as to the rates of wages, the hours of labour, and the conditions of employment of such workers. Where the matter dealt with by the order was of a kind also dealt with by the Factory and Workshops Acts, the direction was to be subject to the concurrence of the Home Secretary. The directions given were to be binding on the employers, and contraventions were to be punished in like manner as if the directions were an award made under the Act of 1915.

Further, the Minister of Munitions was given power by Section 8 to constitute a special arbitration tribunal to deal with differences relating to matters respecting employment of women on which it would be competent for him to give directions.

The difficulties and problems of female labour were paralleled by those of semi-skilled and unskilled men. The 'dilution' of the staffs of engineering and other establishments, whether by women or by men who had not been

¹ Munitions of War Act, 1915, s. 4 (4).

² The Restoration of Pre-War Practices Act, 1919 (9 & 10 Geo. V, c. 42) makes provision for restoration after the War of certain trade practices. As to the restoration of pre-war practices in the Engineering Industry, see *Thirty Years of Industrial Conciliation* (1927), p. 47.

³ 5 & 6 Geo. V, c. 99.

through the normal course of apprenticeship, was a threat to the vested interests of the skilled workers. The safeguard devised in respect of women was, therefore, repeated in respect of semi-skilled and unskilled men employed in 'controlled' establishments on work of a class which before the War was customarily undertaken by skilled labour. The Minister was also given power to set up a special arbitration tribunal for semi-skilled and unskilled men.

In accordance with these provisions special arbitration tribunals were, in fact, set up, that for women including, as required by the terms of the Act, certain women members. It may well be questioned whether the establishment of these additional arbitration tribunals was necessary. There seemed to be very little case for them so far as semi-skilled and unskilled men were concerned. The Committee on Production (in nine cases out of ten) took semi-skilled and unskilled workers in their stride. The tribunal dealt with very few cases and in due course was allowed to lapse.¹ As regards women, the Committee on Production decided a large number of cases in which women were concerned; in any event, any doubts as to its competence to deal with this aspect of the wages question could have been set at rest by the inclusion of suitable women members. The explanation probably is that the decision to set up the special arbitration tribunals was taken in consequence of some compromise between conflicting interests and was merely an outcome of the craze common during the War for setting up committees on the slightest excuse.

¹ Twelfth Report of Proceedings under Conciliation Act, 1896, &c. (185) 1919, vol. i, p. 51.

XIV

COMMITTEE ON PRODUCTION AND SKILLED WORKERS ON TIME-RATES

A THIRD Munitions of War Act was passed in 1917,¹ and this Act contained a provision whereby an award as to the rate of wages payable to persons engaged on or in connexion with munitions of war, or as to hours of work, or as to terms or conditions of employment of persons so engaged, might, by order of the Minister of Munitions, be made binding on all or any employers and persons who were not originally bound. In so extending the scope of the award, the Minister of Munitions had power to adapt or modify the requirements of the award to meet the circumstances of the case. The Act also gave the Minister an independent power to give directions as to the remuneration of munitions work in so far as it was paid at time-rates.

This latter power had direct reference to the difficulties which gave rise to the well remembered '12½ per cent. bonus' controversy. The War had seen an unprecedented extension, so far as this country was concerned, of specialization of processes and mass production. Rapidity of output was of the first importance; and it was expedient in the highest degree not to omit any inducement to the workers to work hard and steadily. Much of the work on shells and such like was done by means of automatic or semi-automatic machinery and was, in consequence, quickly learnt by women and unskilled men brought into the factories. Work was usually paid at piece-rates; and, with increased mechanical facilities, these piece-rates proved to be very much on the generous side. Skilled men still had their place, and were indeed badly needed in the factories, for the purpose of maintenance of machinery and other tasks that did not

¹ 7 & 8 Geo. V, c. 45.

lend themselves to be performed on the piece-work system. In consequence it transpired that in many cases the earnings of relatively unskilled workers were in excess of those of skilled men. Discontent not unnaturally followed. Commissioners appointed to inquire into industrial unrest in 1917, and reporting in June of that year, called attention to this grievance. The Minister, who as we have seen took power in the Act passed on 21 August to deal with time-rates, appointed a Committee to devise a means of remedying the troubles which had occurred respecting the relative earnings of time- and piece-workers. The Committee consisted of representatives of the Engineering Employers' Federation, the Amalgamated Society of Engineers, the Ministry of Munitions, the Ministry of Labour¹ and the Labour Department of the Admiralty, with an independent Chairman. The Committee were unable to reach a unanimous report. Dissent was recorded by the representatives of the Employers' Federation and the Ministry of Labour. The other members recommended the inclusion of a limited class of skilled engineers for an advance in wages varying from 10 to 15 per cent., by way of bonus on earnings. The dissenting members, while recognizing the necessity of removing the grievance of the skilled workers, were against the proposed method on the ground that it was likely to create further grievances.

The difficulty was, in the opinion of some people, susceptible of accommodation in other directions, and it was manifest that by the end of September the situation had considerably eased.² The Minister of Munitions, with the approval of the Government, apparently took a different view, since, on 13 October 1917, he issued an order conced-

¹ The Ministry of Labour had been set up in January 1917, by the New Ministries and Secretaries Act, 1916 (6 & 7 Geo. V, c. 68).

² *Glasgow Herald*, 16 Jan. 1918; *Parl. Deb.* (16 Jan. 1918) 315; (18 Feb. 1918), 543 et seqq.; (26 Feb. 1918), 1311 et seq.

ing a bonus of 12½ per cent. on earnings to fully-qualified skilled engineers and moulders of twenty-one years of age and over, employed on or in connexion with munitions work and paid at plain time-rates.¹ As had been foreseen by those opposed to this method of dealing with the matter, a fierce agitation ensued for the extension of the bonus in all directions. Immense discontent was created and in many influential circles views were expressed that the bonus should be withdrawn.² In face of the agitation, it was impracticable to restrict the advance to the original class of skilled men, and on 11 December further orders were issued giving a like bonus to other grades of time-workers employed in engineering and foundry³ and in shipbuilding and ship repairing shops.⁴ Descent down the slippery slope was now accelerated, and by January 1918 the bonus had been secured by time-workers on munitions work in engineering shops, boiler shops, foundries, shipbuilding and ship repairing shops, iron and steel trades, electricity generating stations, electrical contracting trades, nut and bolt trades, brass foundries and brass works, bridge building and constructional engineering, hollow-ware trade, spring making works, hot stamping works, tube works, and wagon building works. The bonus was originally intended for the skilled time-worker, but it had to be extended to all male time-workers of twenty-one years of age and over, whether skilled, semi-skilled, or unskilled, and whether employed on munitions or on non-munitions work. Eventually it, or its equivalent, was extended to women workers and civil servants.

The wheel then turned a full circle, and by January 1918 the unrest had spread to piece-workers. It was argued on

¹ Statutory Rules and Orders, 1917, No. 1061.

² Cf. e.g. *Glasgow Herald*, 10 Nov. 1917; Lord Askwith, *Industrial Problems* (1920), p. 435.

³ Statutory Rules and Orders, 1917, No. 1031.

⁴ *Ibid.*, No. 1308.

their behalf that in certain occupations, where the piece-prices had been fixed with less than the usual war-time generosity, the grant of 12½ per cent. to the time-workers had brought the earnings of such workers very close to the earnings of the piece-worker and consequently left the latter with no sufficient inducement to work by piece instead of by time.

In the shipyards and foundries the discontent among piece-workers was alarming. At this point the Committee on Production, acting on their intimate knowledge of affairs, and on their own initiative, reported to the War Cabinet the advisability of authorizing an advance of 7½ per cent. to piece-workers, which they considered approximately equal to the time-work bonus of 12½ per cent. The Ministry of Munitions protested against this proposal, the departmental view of the Ministry being *inter alia* that such an advance would lead to another agitation for an improvement in time-rates. The War Cabinet, however, acted upon the advice of the Committee on Production and 7½ per cent. was granted to piece-workers on January 1918. On this being done, the agitation and discontent quickly passed away.

There were few persons who, after the event, ventured to justify the 12½ per cent. bonus, and it became a byword for the folly of ill-considered interference with wages. Not only did it cost the country an enormous sum of money (leading to increased prices and so to demands for further increases in wages) but it defeated its purpose by giving rise to a much greater amount of unrest and agitation than it allayed. It is not claiming too much to say that had the original demand been referred to the Committee on Production for arbitration in the ordinary way, a solution would have been found much less mischievous and costly in its results.

The Act of 1917 authorized the Minister to set up still another special arbitration tribunal to settle any differences that might arise respecting any matter on which he had

given directions in the exercise of his power to regulate time-rates. Fortunately, after an abortive attempt to set up a brand new committee, a line was drawn at a further multiplication of tribunals and the Minister appointed the members of the Committee on Production as a special Arbitration Tribunal. The Committee heard sixty-four cases, most of them connected with or arising out of the 12½ per cent. orders.

XV

COMMITTEE ON PRODUCTION AND COST OF LIVING; NATIONAL WAGES AGREEMENT; WORK OF COM- MITTEE

THE second important general fact which influenced the awards of the Committee on Production was the increase in the cost of living. It had been anticipated by all those who looked ahead, that if the War were prolonged, there would be a war-time scarcity of food, and prices would be bound to rise. The increase in prices proved, however, to be more considerable than could be accounted for on the ground of scarcity alone, and for its true explanation we must look to the currency policy of the Government and the steady depreciation of money resulting from the large issues of currency notes. By the middle of 1915 prices of articles noted by the Board of Trade in compiling their cost of living statistics had risen by 24 per cent., and by the end of 1915 by 38 per cent. This increase brought about a general request on the part of workpeople for wages adjustments, and by the autumn of 1915, the time-workers in most trades had secured a weekly advance of 4s. and the piece-workers 10 per cent. on their piece-prices. Seeing how an advance on the ground of increase in the cost of living spread from one trade to another until it comprised all, the Government took alarm. By some confusion of thought the rise in prices was considered to be the consequence of the rise in wages and not the cause. A more sensible view was that if wages were increased to keep pace with the cost of living, there would be no means of ensuring that economy in the use of food-stuffs, which the circumstances of the time and the risks and difficulties of overseas trade enjoined. Whatever view inspired them, the fact was that the Government towards

the end of 1915 took an ill-advised step by communicating to the Committee on Production and persons acting as single arbitrators their opinions that for the time being wages advances should be limited to those following automatically from existing agreements and to the adjustment of local conditions where such adjustments were proved to be necessary.

The terms of the Government's communication were:

'His Majesty's Government have given earnest attention to the financial position of the country, to the great and increasing demands which will still be made upon its resources to meet the needs of the war, and to the imperative need for economy in all forms of expenditure and consumption, both public and private. They have also had regard to the general advances of wages that have already been made since the beginning of the war, and to the measures already taken to tax or limit the profits of undertakings. His Majesty's Government have come to the conclusion that in view of the present emergency any further advances of wages (other than advances following automatically from existing agreements) should be strictly confined to the adjustment of local conditions where such adjustments are proved to be necessary.'

The Government's communication put industrial arbitrators, including the Committee on Production, in a difficulty. Industrial differences on munitions work were required to be referred to an impartial tribunal. As an arbitration tribunal it was the duty, for example, of the Committee to maintain a scrupulous impartiality. Ought the Committee, therefore, to have regard to directions given by some other authority, however august? The Committee made no express pronouncement, but it appears from Award No. 142 (4 January 1916) that it had apparently had 'regard' to the memorandum among other 'circumstances' in respect of a claim for an advance by the foundry workers of Cardiff and Barry districts and had found the claim not established. In seven other awards between 4 January and 15 February,

the Committee gave a similar finding and rejected the claims.¹ We must infer, therefore, that the Committee either accepted the Government hint or direction, or else, by an independent process of reasoning, had arrived at the same conclusion. The latter is not merely a charitable but is a reasonable view, since there was at the time a good deal of sympathy with the Government's memorandum inculcating as it did the precepts of economy. The incident was unfortunate: it might have been disastrous had it not been that the Committee's awards generally gave satisfaction to the workpeople.

It was subsequently explained by the Prime Minister (Mr. Asquith) that the direction to the Committee on Production was arrived at after very full consideration of all the circumstances both by the financial committee of the Cabinet and by the Government as a whole, and that the pronouncement was not intended to preclude the putting forward of claims for advances of wages that might properly be made or the full consideration of such claims and of all the circumstances surrounding the question generally by the arbitration tribunals which had been set up for the purpose.² The intention as thus expressed was afterwards acted upon by the Committee.

In 1916 the increase in the cost of living had become so steady and continuous that it was clear to everybody that wages would require to be adjusted from time to time mainly on the ground of cost of living. It seemed wasteful and inconvenient that the applications for readjustment should be sporadic; and towards the end of the year, conversations initiated in the Chief Industrial Commissioner's Department with the engineering employers and the trade unions concerned resulted in an agreement between the engineering employers and the unions that the Committee on Production should, in the months of February, June, and October,

¹ See Committee on Production Awards, 1915-17.

² Parl. Deb. (20 Jan. 1916), 626.

after hearing parties, consider what general alteration in wages, if any, was warranted by the abnormal conditions then existing and due to the war. The award of the Committee was to be deemed an award under the Munitions of War Acts, and was to be of national application to all federated firms in the branches of the trade concerned. The agreement was signed on behalf of the Engineering Employers' Federation and fifty unions having members employed in engineering shops and foundries,¹ and was known as the National Wages Agreement.

The agreement provided further that parties should not be prejudiced in bringing forward for special consideration the case of any district in which it was claimed that the rates of wages were unduly low or that the total amount of the War advance was not adequate.

The agreement in the engineering trade was followed by similar agreements in a very large number of other trades and industries including shipbuilding, chemicals, explosives, building and heating, and domestic engineers. In a third class of trades, for example Scottish iron and steel trades, dock labourers, carters, clay industry, and railway shopmen, and the London County Council, the principle of the four-monthly hearings by the Committee without the other clauses of the Agreement was adopted.

Three times a year, therefore, the Committee met and heard parties on the question of general wages adjustment. The main hearing was that concerned with the engineering trade and shipbuilding trade. The arguments at the periodic hearings centred almost wholly around the cost of living.

So far as advances in wages were general, that is to say, were operative in respect of all adult employees in industry, the Committee on Production was always careful to denomi-

¹ A copy of the Agreement appears in the schedule to the general engineering awards of the Committee on Production. See e.g. Award No. 689 (Awards, 1915-17).

nate them 'war wages' or 'war advances' and to attach to them a phrase which was intended to make clear that the advance was given because of exceptional conditions and that its retention could not be claimed as a right when those conditions had disappeared. The advances were at first described as being advances 'to be regarded as war wages and recognised as due to and dependent on the existence of the abnormal conditions now prevailing in consequence of the War'. After March 1917, a slightly amended form was adopted, which was intended to remind the workpeople that an advance was not intended to meet in full measure the increase in the cost of living. The formula used was: 'The amounts hereby awarded are to be regarded as war advances, intended to assist in meeting the increased cost in living and are to be recognised as due to and dependent on the existence of the abnormal conditions now prevailing in consequence of the War.' The awards under the National Wages Agreement, being deemed to be awards within the Munitions Acts, were applied to the non-federated firms in the engineering and foundry trades.

Side by side with these general awards, which in effect regulated wages for the great majority of workpeople throughout the country, awards continued to be issued dealing with a great variety of intricate points affecting particular groups of workers and even particular firms. The Committee, indeed, may almost be said to have fulfilled two distinct functions: first, that of a wage-regulating authority, determining wages in the light of general social and economic conditions; and second, that of an arbitration tribunal dealing with actual differences arising between employers and workpeople or between one workman and another.

So far as the first function was concerned, it was sometimes doubtful whether in claims by munition workers the parties appearing before the Committee were in difference at all. In so far as the employers opposed any advance in

wages, they did so either from habit or from a regard to general public considerations and the finances of the State. Most contracts, whether with the Government or with private authorities or individuals, contained a clause amply protecting an employer in the event of an increase in wages enjoined by a statutory authority such as the Committee on Production, so that financially it was sometimes a matter of no great concern to the employer whether the Committee awarded an increase in the rate of wages or not. This made the task of the Committee to do what was right and proper all the more difficult.

So far as the second function was concerned, the Committee dealt with a large number of cases relating to piece-work and other systems of payment by results, hours of work, overtime, holiday payments, week-end work, and other conditions of employment; they also prepared codes of working rules for certain trades. Their most troublesome duty, however, was concerned with those peculiar problems in regard to small sections of workpeople engaged on intricate processes in particular trades. The members had to show a readiness of grasp which enabled them to apprehend at once the difficulty before them. A wide knowledge of industrial conditions and so far as the representatives of employers and employed on the Committee were concerned an intimate and expert knowledge of industry were also required. It was legitimate to expect, and the expectation was realized, that the Committee would give an intelligent consideration to the most involved and detailed problems.

The total number of awards issued by the Committee on Production between March 1915 (when it began to act as an arbitration tribunal) and November 1918 (when it ceased) was 3,746; by single arbitrators, *ad hoc* courts of arbitration, and conciliation conferences, 3,664; by the special arbitration tribunal (of which the members of the Committee on Arbitration were members, see *ante*, p. 138), 64; by the

women's tribunal (see *ante*, p. 132), 346: total 7,820 awards. These awards were almost universally accepted by the opposing sides.¹

A considerable number of the disputes referred to the Committee (about one-fourth) were not cases arising under the Munitions Acts, but were voluntarily referred to the Committee by agreement between the parties. A considerable number were in like manner referred to single arbitrators. Compulsory industrial arbitration and voluntary industrial arbitration were thus working side by side, and the experience gained during the War of submitting differences for settlement to a body of men, familiar with the details of the workshop and workshop conditions, justified what many had advocated during the nineteenth century of setting up tribunals of industrial arbitration consisting of practical men representing Management and Labour, assisted by men of broad vision detached from industry.

The disputes referred to the Committee on Production for settlement included disputes arising in all the principal trades and industries in the country. These trades and industries are enumerated in Appendix II, *post*. A note on the general adjustments of wage rates under the awards of the Committee appears in the same Appendix.

The head-quarters of the Committee were at Old Palace Yard, London, where hearings generally took place. About one-fifth of the total number of differences heard by the Committee arose in Scotland, and in order to avoid bringing to London the parties concerned therein, and their witnesses, it was the practice during the later period of the War to hear the majority of the Scottish cases in Glasgow; this made it necessary for a division of the Committee to go to Scotland as a general rule every other week. Local hearings also took

¹ Twelfth Report of Proceedings under the Conciliation Act, 1896, and Report on Arbitration under Munitions of War Acts (185). 1919, vol. i, p. 61.

place at such places as Newcastle, Bradford, Sheffield, Manchester, Liverpool, and Cardiff.

The Committee on Production thus determined, apart from decisions on working conditions, contractual relations, codes of working rules, &c., the rates of wages, more particularly war wages, in a large number of trades of the first importance and magnitude. Their decisions became decisions of general application and extended far beyond the particular trades for which they were first given. They were watched and followed not only by many other trades, but also by the Ministry of Munitions in dealing with the very large number of wages questions that arose in the 'controlled' munitions establishments as well as in many trades with which the Ministry was closely concerned. The Committee thus exercised a very real influence on the wages level in industry generally.¹

¹ Cf. Mem. on Proceedings of Committee on Production, May 1917-Apr. 1918, Cmd. 9126. Ibid., May 1917, Nov. 1918, Cmd. 70. The Awards of the Committee have been published in seven volumes.

XVI

INTERIM COURT OF ARBITRATION

THAT the end of the War would have a most disturbing effect on rates of wages was a view held almost universally. The Ministry of Reconstruction, one of the war-time departments, had accordingly appointed a Committee, of which Sir John Simon was Chairman, to advise what effect the termination of the war would have on the awards of the Arbitration Tribunals. Following the deliberations of the Committee,¹ a Bill was prepared and was passed into law on 21 November 1918, as the Wages (Temporary Regulation) Act, 1918.² The Act, which was for a limited period of six months (afterwards extended to twelve months)³ was passed with the concurrence of the employers' associations and the trade unions.

Its real purpose was to afford a breathing-space in which employers and workers could accommodate themselves to post-war conditions. To enable them to do so, it was necessary that the *status quo* should be maintained so that the difficult task of re-adapting industry should not be undertaken in an embittered atmosphere of wage reductions.

The Act set up a new court called the 'Interim Court of Arbitration'. This Court took the place of the Committee on Production, and except that certain additional members were appointed its personnel was the same as that of the Committee on Production.⁴ The Act required employers to pay, during the period of the operation of the Act, wages not less than what were called 'prescribed' rates. The prescribed rates were in effect the standard rates existing at the

¹ Twelfth Report of Proceedings under the Conciliation Act, 1896, &c., p. 23, *supra*.

² 8 & 9 Geo. V, c. 61.

³ 9 & 10 Geo. V, c. 18.

⁴ A list of the members of this Court appears in Appendix I, *post*.

date of the Armistice, 11 November 1918; and, where there was dispute as to what such a rate actually was, the Interim Court of Arbitration had power to determine it. The Act also provided that rates might be substituted for the prescribed rates either by award of the Interim Court or by agreement between the parties approved by the Minister of Labour.

The clauses of the Munitions Acts which prohibited strikes and lock-outs were repealed, as also were those relating to compulsory arbitration, except where the difference between the parties was as to:

- (1) whether the workman was a workman of a class to which the prescribed rate of wages was applicable;
- (2) what was the prescribed rate of wages;
- (3) whether any rate should be substituted for the prescribed rate; and
- (4) what was the substituted rate of wages.

Arbitration on any of these four points was compulsory, and the award of the Interim Court of Arbitration could, in cases under the Munitions Acts, be enforced by proceedings before the Munitions Tribunals which were still kept in existence. This Court issued 932 awards.¹

The Act thus provided a half-way stage between the full and rigorous system of compulsory arbitration which had grown up during the War, and the entirely voluntary system which had prevailed before and was to be reintroduced when circumstances permitted.

It was the general intention that during the period of the Wages (Temporary Regulation) Act, employers and workers should set their house in order. The questions confronting them were numerous and difficult. The War had brought many changes in industry. A system of standardization and

¹ The awards of the Interim Court have been published in two volumes.

mass production had been forced into full and luxurious growth in the space of a few years, when, but for the War, it might have been spread over a generation. The opportunities for the employment of 'semi-skilled' men had been enormously increased, and women were employed on much work, suitable or unsuitable, which had previously been performed by men. The breaking down of trade union restrictions with a view to accelerating production had been accompanied, as we have seen, by promises that the relaxation should be only for the duration of the War, and that pre-war practices would be restored. It was easier to make these promises than to fulfil them.¹ In many respects the very structure of industry had undergone a change, and it was virtually impossible to undo what had been done. In these circumstances there was urgent need for enlightened and friendly collaboration between employers and workers. With a view to facilitating this, a National Industrial Conference was convened by the Government in February 1919, out of which several committees were set up to consider various aspects of the post-war problem.² On the whole the spirit of the parties was excellent. The joint efforts called for by the War had led to a sense of community of interest which is the pre-requisite of industrial peace. The necessity under which the Government and employers found themselves during the War of dealing with the workers in large masses had given a status and an importance to the trade unions which they had never possessed before, and it may be said, indeed, that the War swept away, except in one or two unimportant and forgotten backwaters, the century-old prejudices with which associations of workpeople had been regarded.

¹ The Restoration of Pre-War Practices Act, 1919 (9 & 10 Geo. V, c. 42), gave legislative effect to the redemption of these promises.

² 1919 (Cmd. 139), xxiv. 1; 1919 (Cmd. 501), xxiv. 21.

XVII

WHITLEY COMMITTEE; JOINT INDUSTRIAL COUNCILS

THE improvement of the relationship between employers and workers was well illustrated by the enthusiasm with which the idea of what came to be called 'Whitleyism' was adopted. In 1917 the Government appointed a Committee under the Chairmanship of Mr. J. H. Whitley, afterwards Speaker of the House of Commons, '(1) to make and consider suggestions for securing a permanent improvement in the relations between employers and workmen, (2) to recommend means for securing that industrial conditions affecting the relations between employers and workmen shall be systematically reviewed by those concerned, with a view to improving conditions in the future'.

The Committee, unlike most of those that had previously inquired into labour matters, heard comparatively few witnesses. Most of the members had the essential facts within their own knowledge, and the report¹ of the Committee was brief and unpretentious. It was nevertheless epoch-making.

The Committee started from the assumption that all parties in industry desired peace, and that when this desire was frustrated it was due mainly to want of knowledge and understanding. What was necessary was that between the employers and those immediately concerned with management, on the one hand, and the workpeople, on the other, there should be regular intercourse and a state of mutual confidence. There was nothing novel in the idea. We have already seen that the Board set up for the Hosiery Trade in Nottingham in 1860, under Mr. Mundella, had discovered the value of regular meetings for the discussion by employers and workpeople of matters of common interest. The Boards

¹ 1918 (Cmd. 9081), vii. 757.

of Conciliation and Arbitration which had sprung up in considerable numbers in the last half of the nineteenth century had, however, not perpetuated this particular feature of the Mundella Board. They had become remedial rather than preventive in their function. As a rule they were called together only to dispose of differences respecting wages and conditions of employment when the matter had become more or less acute. Many of them met only at rare intervals; so much so, that the Board of Trade, to judge from their reports, seemed to be in doubt whether some of the boards were actually in existence or not. The Conciliation Boards were also as a rule on a local basis, whereas it was a feature of the new joint industrial councils that they were coextensive with the industry.

There is nothing to suggest that the Whitley Committee was aware of the Nottingham precedent. A movement in favour of what afterwards became known as a Joint Industrial Council had been started in the building trades prior to the issue of the Whitley report.¹ Apart from this the idea of a joint council that would form a permanent and continuous nexus between the employers and workpeople was generally regarded as novel. The Committee, too, worked out a complete scheme of industrial organization which consisted of four stages. In the individual firm, a shop committee composed of representatives of the various classes of employees was to be the medium of communication and consultation with the employer. District councils were similarly to provide the means of discussion between groups of employers and workpeople in districts in which, as a matter of tradition or sentiment, a local organization was required. For the industry as a whole there was to be a joint industrial council, an assembly of selected representative employers and workpeople. The joint industrial coun-

¹ The Industrial Council or the Building Industry (Garton Foundation) (1918).

cil and the district committees were to be formed on the principle of equal representation, and it was understood that employers and workpeople were to be represented through their respective organizations, that is to say trade unions on the one hand and employers' organizations on the other. There were to be no outsiders; and the Chairman had no casting vote; so that, if a deadlock should occur, there were no means of relieving it from the inside. As a capping stone of the edifice, therefore, the Committee recommended the establishment of an appellate tribunal, to which differences unsolvable by the Joint Industrial Councils themselves could be referred.

It was in the mind of the Committee that the Joint Industrial Councils and subordinate bodies forming part of the scheme should have a wide range of interest. It would spoil the conception if they were to confine themselves to narrow issues of wages and hours. They were to consider measures for the regularization of production and employment; the collection of statistics and trade information; the improvement of health conditions obtaining in industry. Such matters were suggested not only because their consideration would in itself prove profitable, but also because they would show how wide a range of interests was common to employers and workers alike. Violent passions over these matters were not likely to be aroused, and the tone and temper to which their consideration would conduce would be helpful when serious disputes arose.

The Joint Industrial Councils may be regarded as an attempt to solve a difficulty not always consciously felt but nevertheless always present, which, since the middle of the last century, had confronted those persons interested in devising measures to secure industrial peace. It will be remembered that the Mackinnon Committee of 1856 had appreciated the point that, while full play should be given to the voluntary principle, it would be an advantage if the

bodies set up on the initiative of the parties were given a legal or quasi-legal status. It was this idea which led to the provision in the Act of 1867 that boards of conciliation and arbitration should be licensed by the Home Secretary. It also lay behind the provision for registering the boards with the Board of Trade under the Conciliation Act of 1896. The trouble had always been, however, that to invest the boards with compulsory powers meant a rigidity, formalism, and elaboration which had resulted in the Act of 1867 becoming a dead letter. On the other hand, a mere blessing by the Government unaccompanied by any consequential change in the powers and duties of the board was insufficient.

The Joint Industrial Councils are not the creation of statute. The conditions to which they must conform are consequently elastic and capable of being adjusted to circumstances. The Government, however, by administrative act gave the bodies an importance which the boards of conciliation never enjoyed. In the first place, the Government applied money and staff to help in the promotion of Joint Industrial Councils in all industries that had a desire for them. It also announced that where a Joint Industrial Council was established it would be regarded by the Government as the authoritative body to speak on matters concerning the industry as a whole and would be recognized as the body which the Government would consult if in need of advice. Finally, the Councils were invited to make it a practice, of which they have availed themselves, to have attached to them a Ministry of Labour official to act as liaison officer between the Council and the Department.

The Joint Industrial Councils at present number fifty-four, covering approximately 2,500,000 workers.¹ They

¹ This includes those under Interim Industrial Reconstruction Committees, which were bodies formed in partially organized trades on lines similar to those of Joint Industrial Councils. The total number of workers is about 17 millions.

vary considerably in activity; but there are no sufficient grounds for supposing that they are the mere outcome of momentary enthusiasm and will not form a permanent feature of industrial life. They have on the whole been successful in dealing with difficulties which have arisen in their respective industries and which might otherwise have led to dispute. It remains to be seen whether they will consistently act as intended by the authors of the scheme in referring to arbitration matters on which they fail to reach agreement.

XVIII

TRADE BOARDS; AGRICULTURAL WAGES BOARD;
NATIONAL WAGES BOARD FOR RAILWAYS; TRAM-
WAY TRIBUNAL; MINERS' JOINT DISTRICT BOARDS

THE account which has been given of the idea of industrial arbitration, both in theory and practice, during the nineteenth century shows that however diverse were the suggestions and experiments with respect to the exact constitution and powers of the tribunals it was a common and unquestioned feature of them all that the tribunals should begin to function, and indeed should only be apprised of the matters in issue, when the parties themselves had failed to come to an agreement. The practice of the Board of Trade under the Conciliation Act drew a sharp distinction between the duty of the conciliator and that of the arbitrator. The arbitration tribunal was to be apprised of the matters in issue only when the parties, with or without the assistance of the conciliator, failed to reach agreement. The official policy appears to have been not to encourage a person who had been endeavouring to bring the parties to agreement to act subsequently as arbitrator if his endeavours failed. Neither was the arbitrator to make an attempt to bring about an agreement. This theory of the separation of powers still continues, and though it must sometimes happen that a conciliator is invited by the exhausted parties to give his own view of what the solution of the difficulty should be, the orthodox practice is for the conciliator to keep his own counsel on the merits of the dispute, and if he fails to bring the two parties into agreement to suggest arbitration by some other person.

The sharp line between the duty, first, of bringing parties into agreement, and, second, of giving a decision when

agreement is impossible, has been broken down, however, in the operation of two important types of industrial tribunals, namely Trade Boards and (to a lesser extent) the Wages Boards of the type of the National Wages Board for the railways.

The name *Trade Boards*, as now used, refers to the Boards set up under the Trade Boards Acts of 1909¹ and 1918.² The name is not original, since the boards of conciliation and arbitration which were set up in considerable numbers towards the end of last century are referred to as 'Trade Boards' in the early publications of the Labour Department of the Board of Trade. The statutory Trade Boards are, however, of a character quite different from that of the boards of conciliation and arbitration. The Trade Boards Act of 1909 was passed as the result of a long period of public concern about 'sweating'. A select committee of the House of Lords, under the Chairmanship of Lord Dunraven, was set up in 1888 to consider the evil of sweating,³ and a select committee on home work in 1908 recommended the setting up of machinery for regulating 'sweated' home workers in certain trades.⁴ The expression 'sweating' had no very precise meaning, but was used, as a rule, to refer to the employment, especially of females, under unconscionable conditions. So far as hours of labour were concerned, the elaborate code of factory legislation gave on paper the remedy that was required. The problem was mainly one of administration and enforcement. The Public Health Acts also provided a remedy for insanitary conditions in workshops. The only remaining condition of employment calling for regulation was the payment of abnormally low rates of wages. Many people, among whom may be specially

¹ 9 Edw. VII, c. 22.

² 8 & 9 Geo. V, c. 32.

³ The Committee made four reports, the fourth being issued in 1889 (331), xiv.

⁴ 1907 (298), vi. 55; 1908 (246), viii. 1.

mentioned Sir Charles Dilke and Mr. J. W. Hills, interested themselves in an agitation to eliminate sweating in the sense of the payment of inadequate rates of wages.¹ At length, in 1909, when Mr. Winston Churchill was President of the Board of Trade, that Department promoted a Trade Boards Bill which duly passed into law.

A detailed account of the Act and of what has been done under it lies outside the scope of this book. The leading features of the new legislation require, however, some notice. The Act provided for the setting up of Boards in a number of trades specified in the Act, in any branches of which the payment of low wages was notorious. Boards composed of representatives of employers and workers with a certain number of impartial persons (known as 'appointed members') unconnected with trade could be set up by the Board of Trade, either on a national or a local basis. After discussion with the interests chiefly concerned, the Board of Trade decided to set up each Trade Board on a national basis, and, with few exceptions, this policy has been adhered to as regards the numerous Boards which have been set up by them, under the original Act and the amending Act of 1918.

The recruitment of the Boards is a matter of interest, in view of the problem which we have seen confronted those who endeavoured to legislate on the basis of the report of the select committees of 1856 and 1860. The Boards were to be invested with very considerable powers, and the question was whether the representative members should be elected or chosen in some other way. The provisions of Lord St. Leonards' Act of 1867 show how extremely difficult

¹ Cf. B. L. Hutchins and A. Harrison (Mrs. F. H. Spencer), *Hist. of Labour Legislation* (1926). Impetus was given to the movement for State interference by an exhibition of 'sweated' goods in London in 1907 promoted by the *Daily News* (London) and the formation of an Anti-Sweating League.

it is to devise a franchise on the basis of membership of or connexion with a trade.

As a matter of fact, however, the first Trade Board that was set up for certain sections of the Chain-Making Trade was an elected body. Election was feasible as the trade was small and on the whole sharply defined. Provision could be made for all workers to assemble in a hall of moderate size and choose their representatives. The method of election was found not to be wholly satisfactory, however, even under these favourable conditions, and was later abandoned. For this and other Trade Board trades now, a method is adopted which is a frank and open compromise, the Ministry of Labour (which has taken over these functions from the Board of Trade)¹ selecting representatives after considering nominations put forward either by individuals or by associations.

Whatever can be said against this method considered in the abstract, in fact it has worked extraordinarily well, and the appointments made by the Board of Trade or Ministry of Labour have been subject to practically no criticism. In nearly every case it is clear, at the time when the appointments are to be made, who have, and who have not, the backing of the general body of employers or workers as the case may be, and the Minister, who has the responsibility of making the appointments, has no interest in acting otherwise than in accordance with the general consensus of trade opinion.

Reference is made to the Trade Boards, however, mainly on account of the interest which attaches to their procedure. The Boards are charged with the duty of fixing minimum rates of wages for their respective trades, subject to certain powers of veto or suspension by the Minister of Labour. The rates fixed do not purport to be standard or average rates: they are the rates below which an employer must not

¹ See New Ministries and Secretaries Act, 1916 (6 & 7 Geo. V, c. 68).

pay if he is to keep right with the law, save in exceptional circumstances where a worker suffers from some infirmity or physical injury and the Trade Board issues a special permit. The Boards, however, can, and do in most cases, fix minimum rates for various processes, and the ordinary Trade Board schedule of rates or 'Determination', as it is called, may be an elaborate affair. It happens, therefore, that although the rates fixed are minimum rates and are often exceeded in practice, they nevertheless provide the key to the general wage level prevailing in the trade and are a matter of great interest, not merely to the lowest stratum of workers, who will receive the minimum and no more, but to all workers whose rates will be indirectly affected by the minima.

The Trade Boards may, if they choose, fix their rates on a weekly basis and, in doing so, may declare the number of hours per week upon which the rates are calculated. This declaration, though it does not preclude an employee working more or less than the number of hours stated, does in fact practically influence the number of hours (within the limits determined by the Factory Acts) which most workers are required to work.

It thus happens that so far as rates of wages and, to a less extent, hours are concerned, the Trade Boards' field of activity is much the same as that of a Joint Industrial Council. The procedure is to outward seeming also similar, since it has become the wholesome tradition that if the representative members can be brought to agreement between themselves on the matters under discussion, the agreement is in substance adopted as the conclusion of the Board and, in the manner prescribed by the Act, given legal effect.

To bring the two sides into agreement is, indeed, the primary aim of the independent chairman and his two colleagues, the appointed members who have no direct

interest in the trade. In this respect the appointed members act as 'conciliators', their efforts being directed to smoothing differences and suggesting lines of compromise. In important matters, the differences between representative members are differences upon which, as a rule, they are equally divided, the employers' representatives taking one view and the workers' representatives another. If, therefore, after exhaustive discussion the matter is one on which the views of the representative members cannot be reconciled, a deadlock ensues which can be relieved only by the votes of the appointed members who have to turn the scale in favour of the one side or the other. In so far as the appointed members themselves decide the issue between the parties they do so after hearing all that is to be said on both sides and endeavouring by the methods of conciliation to narrow the points of difference to the smallest possible dimensions. There are now thirty-nine statutory trade boards covering approximately about $1\frac{1}{4}$ millions of workpeople.¹

The trade-board methods and machinery were copied by the *Agricultural Wages Board*, set up under the Corn Production Act, 1917.² The wages provisions of that Act were designed to give agricultural labourers much the same kind of protection as industrial workers were enjoying under the Munitions of War Acts. No award of the Committee on Production or any other tribunal which functioned under the Munitions of War Acts touched agricultural labourers, who were, however, like other workers, affected by rising prices. It is of interest to note that the Act provided that, pending the fixing of minimum rates by the Agricultural Wages Board, a minimum weekly wage of 25s. should be paid to agricultural labourers.³ This seems to be the only

¹ Report of Ministry of Labour, 1928 (Cmd. 3333).

² 7 & 8 Geo. V, c. 46, ss. 4, 5. In 1920 a wages committee was established for Wales: Agriculture Act, 1920 (10 & 11 Geo. V, c. 76), s. 6.

³ This was done on the recommendation of the Commissioners on

occasion since the statutes in force prior to the reign of Elizabeth, in which Parliament has itself directly, and not by delegation to some other authority, fixed a rate of wages of general application.

The Agricultural Wages Board did not work with the same success and absence of friction as the Trade Boards, and there was agitation, especially on the part of employers, against its awards or determinations. This resulted in the repeal of the Act in 1921, by an Act which provided for the setting up of still another type of wage fixing authority.¹ Provision was made for voluntary joint conciliation committees of employers and employees and these committees were given power to agree, if they could, on rates of wages and submit them to the Minister of Agriculture for confirmation. When the rates were so confirmed they became an implied term of the contract of service.

The last-mentioned scheme was a failure. In 1924 there were some 63 Conciliation Committees but only 13 had agreements and of these agreements only 11 had been confirmed.² The failure was not surprising, as voluntary collective bargaining in agriculture was, except in a few districts, a new conception and, like most new things, regarded with suspicion by the agricultural mind. The failure of the scheme led to the introduction of an Agricultural Wages Bill by Mr. Buxton, which became law as the Agricultural Wages (Regulation) Act, 1924.³ This measure reverted to an authority of the trade board type but gave greater power to the local committees set up under

Industrial Unrest (South Western District) in 1917-18 (Cmd. 8667), xv. 57. See also summary of Reports by G. N. Barnes, M.P., 1917-18 (Cmd. 8696), xv. 149.

¹ Corn Production Acts (Repeal) Act, 1921 (11 & 12 Geo. V, c. 48), s. 4.

² Minister of Agriculture (Mr. N. Buxton), Parl. Deb. (2 June, 1924), 919.

³ 14 & 15 Geo. V, c. 37.

the Act than had been possessed by the old district committees set up by the former Agricultural Wages Board. Under the Act, Wages Committees must be established by the Ministry of Agriculture for each county. In addition there is a Wages Board for the whole of England and Wales. The Wages Committees and the Board are constituted on the same lines as the trade boards, that is to say, with equal numbers of members representing employers and work-people and three impartial persons, one of whom is Chairman. It is the duty of the Committee in the first instance to fix minimum rates for the workers in its area. When it has done so, it notifies the Agricultural Wages Board, which has the power of referring the matter back to the Committee for reconsideration. Otherwise the rate is ratified and becomes payable under penalty. If a Committee fails to fix a minimum rate of wages the Board may act in its place.

The Act is of interest as laying down one of the few principles which are discoverable in English law for determining rates of wages. It provides that, 'In fixing minimum rates the Committee shall, so far as practicable, secure for able-bodied men such wages as, in the opinion of the Committee, are adequate to promote efficiency, and to enable a man in an ordinary case to maintain himself and his family in accordance with such standard of comfort as may be reasonable in relation to the nature of his occupation.'

There are about 649,000 regular employees and about 124,000 casual employees in England and Wales who come under the operation of the Act.¹

The Act does not apply to Scotland. There a stronger organization of workers exists and the trade union thought that it could obtain better terms for its members by direct negotiations with the employers than it would obtain under the operation of the Act. In Scotland vacancies are usually

¹ Cf. Min. of Agric., Agric. Statistics for 1928.

filled as the result of inquiries or by advertisement in local newspapers. Most of the new engagements which take place each term are made by private bargaining, the basis of agreement being on the lines advised by the organizations of employers and workers. Hiring fairs are recognized all over the country. Married men are generally engaged for the year; single men in some districts prefer the half-yearly term.¹

The rates fixed by the trade boards and the Agricultural Wages Board are minimum rates, payable under penalty, and little as it has been realized, the boards have reintroduced something which is, in essential respects, compulsory arbitration—compulsory in the full sense that not only is the board under an obligation to function but also that its decisions are enforceable under penalty. The investing of the boards with compulsory powers has, however, been concurred in by Labour leaders and others who hold strong views against compulsory arbitration. The apparent inconsistency is accounted for by the current impression that trade boards are still occupied with the problem of ‘sweating’ and that the rates which they fix have no relation to the standard rates which it is the aim of trade unions to establish. It is true that a trade brought under the Trade Boards Act is, and indeed must be, characterized by at least a bad patch, or some branch or section in which the rates of wages paid are, by common consent, unduly low. The boards, however, are not confined in their operations to these bad sections, and although their early efforts are directed to them, they afterwards aim at a general improvement throughout the trade. Certainly, so far as large groups of workers are concerned, the tendency is for the minimum rate to approximate to that at which the great bulk of the workers are paid. Moreover, as already pointed out, the rate for the average worker, which is represented by the

¹ *Journal of Ministry of Agriculture*, Oct. 1922, p. 657.

standard rate, must necessarily have some relationship to the minimum so that changes in the one are accompanied by changes in the other also.

The Trade Boards and the Agricultural Wages Board exercise compulsory powers. This is not the case with the *National Wages Board for Railways*. This Board owes its conception to Mr. J. H. Thomas, the Parliamentary Secretary of the National Union of Railwaymen, a former Secretary of State for the Dominions and Colonies, and now Lord Privy Seal. The desirability of putting the railway system of the country upon a more ordered and logical basis after the War was generally recognized; and, as part of the reorganization to which legislative effect was given in the Railway Act, 1921, an attempt was made to deal with the industrial, as well as the commercial and administrative, aspects of the problem. The suggestion was first made that the rank and file of the employees should be represented on the Boards of Directors. On full consideration of this proposal, it was found not to be satisfactory,¹ and as an alternative, a complete and logical method for the full consideration of labour questions as they arose was worked out.² Local, departmental, and sectional railway Councils were set up to deal as far as they could with matters which had merely a local or sectional importance. As a co-ordinating body to which questions of more general interest, or differences beyond the power of the local councils to settle, were to be referred, a Central Wages Board was established. The Local Councils and the Central Board consist of persons in equal numbers representing employees and the railway management respectively. The composition of these bodies being what it is, it necessarily follows that

¹ Sir Eric Geddes, Minister of Transport, Parl. Deb. (26 May 1921); Mr. William Graham and Mr. Arthur Henderson, Ibid. (30 May 1921); Mr. C. T. Cramp quoted, Ibid.; also Railway Clerks' Union in *Railway Clerks' Journal*, Ibid.

² Railways Act, 1921 (11 & 12 Geo. V, c. 55), ss. 62 et seq.

differences can be disposed of only to the extent that one side convinces the other and agreement is reached. In this respect they are like the Joint Industrial Councils.

It was wisely foreseen by those who devised this organization that some means must be provided by which, in the event of the employee and the management sides of the Boards being divided, the good offices of some third party might be called upon to find a way out of the difficulty.

If the recommendations of the Whitley Committee had been followed, the matters upon which the Central Wages Board failed to agree would have been referred to arbitration by some standing arbitration tribunal. This method did not, however, commend itself to the parties, and instead another national board was set up. This board, known as the National Wages Board for Railways, is a body to which matters are referred from the Central Wages Board. Unlike the Central Wages Board, however, it consists, not merely of representative members (six from railways and six from the unions), but also of five persons from outside. This outside element consists of four persons nominally representing 'railway users'. One is nominated by the Chambers of Commerce, one by the Federation of British Industries, one by the Trade Union Congress, and one by the Co-operative Societies. The fifth person is an independent Chairman nominated by the Government.

The National Wages Board first met in May 1920, prior to its receiving direct statutory recognition. It met at a critical time, and handled a number of intricate and important claims with remarkable success, which encouraged the idea of establishing a statutory body.¹

As regards procedure, the National Wages Board is in some respects not unlike the trade boards. The representative members of the respective sides tend to stand together.

¹ See Conclusions of National Wages Board for Railways, 3 June 1920. A list of members of the first Board appears in Appendix I.

The mere fact that the difference has not been capable of settlement by the Central Wages Board sufficiently accounts for this. The members representing 'railway users' play the part of friends of both sides. They become acquainted with the nature of the difference with fresh and open minds and are able to tell the representative members, either in open Board or privately, just how their case strikes them, and what they think are its weaknesses. Here, however, the analogy to the trade boards ceases. It but rarely happens that a Trade Board calls for any evidence from outside its own body. The National Wages Board, however, habitually requests parties to appear before it; they are heard, and evidence taken in public. The knowledge of the matters in issue possessed by the representative members of the Board is probably complete before business starts, but the practice of calling evidence is useful in several respects. In the first place it helps to bring home to the minds of all the members of the Board that they are sitting in a judicial capacity. Secondly, it enables those who have a previous knowledge of the matter to refresh their minds on the various points and compels them to give a patient hearing to the systematic and balanced presentation of the case. Lastly, it enables the independent members who have no previous knowledge to learn in a convenient manner all the essential facts. They are not compelled to pick up the threads from a sophisticated discussion between the representative members, or, alternatively, to be placed obviously in the position of a tribunal within the Board itself, to be addressed formally and with arguments by each of the two sides.

Though the Board is, as stated, now the creation of statute, its awards or findings have no legally binding force. So far they have been regarded in fact, if not in form, as recommendations to the parties; and, on the issue of the Board's decision, it is the practice of the parties, through their respective organizations, to resolve upon their accep-

tance or otherwise. If the findings of the Board are unanimous, the acceptance by the parties follows usually as a matter of course, since some of the most highly placed officials of the Railway Companies sit on the employers' side of the Board and some of the most important leaders of the workpeople on the employees' side. Experience has shown that up till now an excellent spirit of accommodation has prevailed on the Board and that both sides, possibly after suggestion or some pressure by the non-railway members, are willing to make reasonable adjustments in order to achieve unanimity; and that the findings of the Board have in practice been treated with the same respect as arbitration awards.

The National Wages Board has worked very successfully and, since its establishment in 1920, has issued over 100 decisions.¹ The scheme under the Act is confined to employees (of whom there are about 460,000) on the traffic side of the railway industry in England, Scotland and Wales.²

This type of Board was followed in 1924, when a tribunal was set up by agreement between the Tramway Authorities throughout the country and the trade unions concerned, called the *Tribunal for the Tramway Industry*. It deals with questions of which the Joint Industrial Council for the industry has been unable to dispose, and acts as the arbitral body which, as we have seen, the Whitley Committee recommends should be the final authority. It consists of fifteen members: five representatives of employers and

¹ May 1929. The decisions are published, and copies may be had from the Secretary to the Board, 5 Old Palace Yard, Westminster.

² A scheme of conciliation and arbitration has been adopted by the Railway Companies and the unions concerned for the 'shop' or manufacturing and repairing side of the railway industry and for railway electricity generating stations and sub-stations. It provides for a series of shop committees, works committees, and departmental line committees and a National Council, and for a final reference to the Industrial Court (as to which see Chap. XIX *post*) in the event of arbitration being agreed upon.

employees respectively, two persons from outside the industry nominated by the employers and employees respectively, and a Chairman chosen by the parties.¹ In 1924, after a prolonged hearing, the tribunal issued an elaborate and carefully thought-out decision and report² classifying the various tramways authorities in England, Wales, Scotland, and Northern Ireland into certain groups as affecting motor men, conductors, car cleaners, and depot and shop staffs, so as to attach to each an indication of the relative level of wages which its economic circumstances would enable it to sustain: it also adjusted the rates of wages, regulated night work and settled kindred matters. The decision affected upwards of 50,000 employees and upwards of 140 tramway authorities. The matters involved in this decision had been the subject of controversy for many years and had previously been the subject of inquiry by other committees without success.

The *Miners' Joint District Boards* are different from any of the preceding boards. In January 1912 the miners approved by ballot of a strike in favour of a minimum wage and gave notice to stop work. It was contended on their behalf that when the miner had to work in an 'abnormal place' he received an inadequate wage; the employers, on the other hand, explained that the minimum wage rule held good for all persons employed at the mines, except hewers who were on piece-work, and that when the latter worked in abnormal places they received a customary additional allowance.³ The miners went on strike. The Industrial Council (see *ante*, p. 115) studied the question without result. After a series of negotiations between the parties and between them and the Government which failed, Mr. Asquith, the Prime

¹ A list of members of the Tribunal appears in Appendix I.

² Cf. Decision and Report of the Tribunal for Tramway Industry, 1 Nov. 1924.

³ Board of Trade (Depart. of Labour) Statistics, 1912 (Cmd. 7089), pp. xxi et seq. Annual Register (1912), p. 6.

Minister, introduced the Coal Mines (Minimum Wage) Bill in the Commons on 19 March 1912,¹ and the Bill became law on 29 March.² Its object is to provide a minimum wage in the case of workmen employed underground in coal mines (including mines of stratified ironstone) and applies to piece-workers, datallers, and other time-workers. The Act sets up district boards in each of the twenty-two districts specified in the Schedule to the Act. Such boards consist of representatives of the employers and the miners with an independent Chairman appointed by agreement between the persons representing the employers and miners on the board, or, in default of agreement, by the Board of Trade. It is the duty of the boards to determine the minimum rates of wages for the various classes of underground workpeople,³ and to settle district rules laying down conditions with respect to the exclusion of aged and infirm workmen from the right to wages at minimum rates, the regularity and efficiency of the work to be performed by the workmen, and the time for which a workman should be paid in the event of any interruption of work due to emergency. The Act was passed for a period of three years and has since been continued from year to year by the Expiring Laws Continuance Act.

An employer neglecting to pay the statutory minimum wage may be sued for the amount, in the same way as he may be sued for neglect to pay ordinary wages. There is no penalty for such neglect as in the case of wages decreed by trade boards and the Agricultural Wages Board.

¹ Parl. Deb. (19 Mar. 1912), 1723.

² Coal Mines (Minimum Wage) Act, 1912 (2 Geo. V, c. 21).

³ It was proposed in the Commons, following a resolution of the Miners' Federation, that a minimum of 5s. a day for underground adult workers on fixed wages and not less than 2s. a day for boys be inserted in the Act as the minimum rates, but was rejected by a large majority. Parl. Deb. (22 Mar. 1912), 2307; Board of Trade (Dept. of Lab.) Statistics, 1912 (Cmd. 7089), p. xxxi.

The Act of 1912 has worked smoothly. During recent years little has been done under it, as the rates of pay under the various Agreements have generally been higher than those fixed by the boards under the Act.

These joint district boards looked at one time as if they might be suspended. Under Part II of the Mining Industry Act, 1920, power was given to the Board of Trade to issue regulations for the guidance of certain district committees and area boards. Under these regulations these bodies were to determine any question and exercise any power which the joint boards might determine and exercise, if Part II of the Act did not prove 'abortive'. Part II, however, proved abortive.

The expenses of Trade Boards, the Agricultural Wages Board, and the Miners' Joint District Boards are borne by the State, while the expenses of the National Wages Board for Railways and the Tribunal for Tramways are borne by the parties.

XIX

THE INDUSTRIAL COURT

BEFORE the Wages (Temporary Regulation) Act had run its second term the Government had prepared legislation designed to give effect to the recommendation of the Whitley Committee under which a standing arbitration tribunal would be available for the settlement of all industrial differences which could not be disposed of by agreement on the joint industrial councils. Before the Bill was introduced its provisions were the subject of private discussion with the employers and the more important trade unions. All parties were agreed that the setting up of an arbitration tribunal which would be the lineal descendant of the Committee on Production and the Interim Court of Arbitration would be a good thing. The Government, however, thought it worth while to test feeling on the question of giving some mild measure of compulsion to the Court's findings.¹ The proposals in this respect were well thought out, and were designed to bring considerable benefits to both organized employers and organized workpeople. The employers were on the whole favourable, but the workpeople were not to be convinced of the ultimate advantage to them of the proposals. Their attitude is explicable on several grounds. First, there is reason to doubt whether the full import of the provisions was understood. Probably more important, however, was the reaction manifested in many directions at that time from the restrictions and restraints which had become associated with the War. Everywhere there was a desire to revert to pre-war liberty and it became the fashion to condemn off-hand anything which suggested a continuance of the régime of compulsion. It must also be

¹ See Debate in Commons on Industrial Courts Bill. Parl. Deb. (6 Nov. 1919).

taken into account that, at the time, the trade unions were at their maximum strength. For various reasons their membership had increased considerably; the regularity of employment of their members had resulted in full coffers; booming trade had placed them in a favourable position for bargaining with employers. Confidence in their own strength was, therefore, natural, and they were disinclined to believe that they could not do best for themselves without any legislative aid. Be that as it may, it was obviously inexpedient at the time to press the proposals against any reluctance on the part of the unions to accept them; and the Industrial Courts Bill, as introduced by Sir Robert Horne, Minister of Labour, was in its 'permanent provisions' as free from any element of compulsion as the Conciliation Act of 1896.

The Bill was a composite measure.¹ It made temporary provision for disposing of the outstanding work of the Interim Court of Arbitration. It also, in effect, re-enacted the substance of the Conciliation Act of 1896 by making provision for the reference by the Minister of Labour to *ad hoc* arbitrators of industrial differences. It gave long-delayed statutory effect to the suggestion, which we have seen was made by Mr. W. E. Forster and others in 1856,² and was again made by the Trade Union Congress in 1888,³ and by Sir George Askwith in 1912,⁴ that the Government should have power to set up Courts of Inquiry to investigate the facts of an industrial dispute and report on them, with a view to general enlightenment and the formation of a public opinion. Its outstanding provision, however, was the setting up of a permanent Court of Arbitration. There was

¹ Industrial Courts Act, 1919 (9 & 10 Geo. V, c. 69). See Appendix III.

² *Ante*, p. 70.

³ Report, Trade Union Congress, 1888.

⁴ Report on Industrial Disputes Investigation Act of Canada [Cmd. 6603], 1912. This was the result of inquiry in Canada by Sir George Askwith and Mr. Haig Mitchell.

nothing in the Act to give the Industrial Court, as the new tribunal was called, an authority superior to that of other arbitration tribunals; but it was the view of the Government that all industrial differences referred to arbitration should, in the absence of special circumstances, go to the Industrial Court. The Minister of Labour, in the discussion on the Bill, strongly emphasized the superiority of a continuing body over one called into existence merely for the purpose of considering a difference and then being dissolved. He said:

‘You want indeed a body of people who are able to take a comprehensive view of the Labour question, and in particular who are able to take a comprehensive view of the wages question. Every set of wages in every trade is related in some degree to every other set of wages in every other trade. You cannot dissociate what is decided in one case from what may be asked in another case. Therefore, it would be futile to have a court *ad hoc* for each case that might come up, because then you would get a series of dissociated judgments, which would have no relation to each other and which would tend to cause confusion where you hoped for harmony.’¹

The constitution of the Court followed the model of the Committee on Production and the Interim Court of Arbitration, except that at the head of the Court was a President. It was contemplated that the Court would sit in divisions, and in addition to the President provision is made for the appointment of Chairmen. The precise relationship between the President and Chairmen is not defined, nor has it apparently ever been authoritatively considered. The matter has been allowed to settle itself by allowing the greater dignity of his office to bring about a habit of consultation with the President, such as is necessary to secure some reasonable co-ordination between the various divisions of the Court.

The Court includes persons representing employers and

¹ Parl. Deb. (10 Nov. 1919), 127.

persons representing workmen, the President and the Chairmen being, of course, persons of independent standing. In addition, there are women members, the Act making no mention whether they are to represent employers or workers, or are to be independent. It was apparently thought in 1919 (though the contention would not go unchallenged now) that a 'woman's' point of view was something separate and distinct which required special representation.

Mr. J. R. Clynes has concisely described the general qualifications of members of the Court: They 'should be persons of experience, of known impartiality; judicially minded and capable of estimating evidence and reaching a reasonable decision according to the revealed facts of the case'.¹

The members of the Court are appointed by the Minister of Labour. The President is a whole-time officer. The representative members fall into two classes. Some give their full time to the service of the Court. The other members and the Chairmen are selected by the President to serve on cases as occasion may arise. When the Court is busy, it is often necessary that it should sit in more than one division, and occasion arises, therefore, for drawing upon the part-time members. The existence of part-time members is, to some extent, inconsistent with the main purpose of the Court which is to provide an expert and continuing tribunal consisting of persons able to devote their whole time and attention to the problems of arbitration, and untrammelled by other interests. In practice, however, some means must be found to relieve congestion of work and to avoid delay, and any method other than that which has been adopted is difficult to devise.

The appointment of whole-time persons 'representing employers' and 'representing workmen' was (apart from

¹ Parl. Deb. (6 Nov. 1919), 1724; See also *Daily Herald: The Arbitrator* (1928), ii. 167. For personnel of Court, see App. I.

the Committee on Production and the Interim Court of Arbitration) a new idea. It is one which is not without its latent difficulties. It is one thing to appoint a person who is capable of representing workmen or representing employers, as the case may be, at the time of his appointment; it is a different matter to ensure that these essential qualifications shall continue. On the one hand, it is undesirable that a permanent member of an arbitration tribunal shall be too active with outside interests: on the other hand, there is the serious risk that after a time his contacts with those whom he purports to 'represent' will become feeble and casual; and that he will either duplicate the function of the 'independent' member or will be moved by considerations which are out-of-date and no longer of importance. The problem is stated simply as one that should be recognized; no solution is offered—if, indeed, one is possible. All that can at present be expected is that the persons concerned should be conscious of the essential difficulty of their task and should be ready to use every opportunity of keeping themselves informed of the points of view, the trend of opinion, and the movements current in the industrial world, particularly among employers and workmen as the case may be.

The procedure of the Court is the subject of certain rules made under the Act. These do little more than furnish a skeleton procedure within which the Court has wide discretion. They vest in the President the decision whether any matter referred to a Court should be heard and determined by a single member of the Court or by several members, and also whether assessors should be called in to assist in the consideration of any particular case. They also provide that if any question arises as to the interpretation of any award, the Minister of Labour, or any party to the award, may apply to the Court for a decision on such question, and the Court, after hearing parties (or without such hearing if the

consent of the parties is obtained) shall give a decision which shall be final 'in the same manner as the decision in an original award'. It is also laid down that persons may appear by counsel or solicitor with the permission of the Court. This permission, it may be noted, has so far invariably been granted. In other respects the Court may regulate their own procedure as they think fit.¹

The Industrial Courts Act reflects the general view that arbitration should be a last resort in the peaceable settlement of industrial differences, and that the resources of conciliation should first be exhausted. The Act provides that 'if there are existing in any trade or industry any arrangements for settlement by conciliation or arbitration of disputes in such trade or industry, made in pursuance of an agreement between organizations of employers and organizations of workmen, the Minister of Labour shall not, unless with the consent of both parties to the dispute, and unless there has been failure to obtain a settlement', refer the matter to arbitration.² Since the consent of the parties is, in any event, necessary to the reference of a case to arbitration, it is probable that on analysis this provision is superfluous. It does, however, serve to remind both the Minister and the parties that the first duty of those concerned in a difference is to settle the matter if possible for themselves.

The Act also gives the Minister power to refer to the Industrial Court for advice 'any matter relating to, or arising out of a trade dispute or trade disputes, in general, or trade disputes of any class or any other matter which, in his opinion, ought to be so referred'. It seems clear that this clause reflected the idea that there would be advantage

¹ For the practice and procedure of the Court, see Mackenzie's *Industrial Court: Practice and Procedure* (1923).

² The total number of workpeople covered by voluntary conciliation procedure (including those under Joint Industrial Councils) was, at the end of 1922, 8½ millions.

in having an independent body with experience in industrial matters to which on occasion the Government could turn for advice. The value of the provision depends upon two considerations: the personal qualifications of the members of the Court, and the possession by the Court of information and experience not possessed by any other authority. References have been made to the Court under this provision on a few occasions.

The Court is not limited in respect of the kind of 'trade disputes' with which it may deal, except to the extent that the Act as a whole does not apply to persons in the naval, military, or air services of the Crown. Otherwise, the Act applies to those employed by or under the Crown in the same manner as though they were employed by or under a private person. It is not confined to persons engaged on manual labour but includes persons engaged on 'clerical work or otherwise' or under a contract personally to execute any work.

Since the Court was first established it has indeed been given a very important class of new duties affecting the Government service. During the War period a special arbitration board was set up to deal with disputed points in the Civil Service. The Board ceased to function soon after the War.¹ In 1925 it was agreed between the Treasury and several Associations of Civil Servants that reference should be made to the Industrial Court of differences affecting Civil Servants which the Whitley organization in the Civil Service was unable to settle.

¹ The Civil Service Arbitration Board, established as the result of a resolution of the Cabinet, held its first meeting on 12 Feb. 1917. Its terms of reference were 'to deal by way of conciliation or arbitration with questions arising with regard to claims for increased remuneration . . . made by classes of employees of Government Departments . . .'. The Board regarded conciliation as an important part of its functions. Under the Board's auspices 91 agreements were made and in addition the Board issued 131 awards. The Board practically ceased to function in June 1922.

The agreement did not include all Civil Servants, but only those whose annual salary is £700 or less (exclusive of any cost of living bonus), though claims in respect of other classes of Civil Servants may be referred to the Court by consent of both parties. Subject to the limitation as regards scale of salary, reference to the Court is open to Government Departments on the one hand and to recognized Associations of Civil Servants which are within the scope of the National Whitley Council and of the Departmental Whitley Councils on the other. The matters which may be taken to the Court are claims affecting 'emoluments (that is to say pay and allowances in the nature of pay, bonus, overtime rates, subsistence rates, travelling and lodging allowances) weekly hours of work and annual leave'. Cases of individuals are excluded. A 'class of Civil Servant' means any well-defined category of Civil Servants, who, for the purpose of a particular claim, occupy the same position or have a common interest in the claim. The agreement to refer Civil Service cases to the Industrial Court was followed by an extension of the part-time membership of the Court.

The intention to use the Industrial Court as the ultimate authority to pronounce upon wages is illustrated in a small way by the British Sugar (Subsidy) Act, 1925,¹ which provides that in any case where a subsidy is paid to an employer manufacturing sugar or molasses, the workpeople shall be paid a fair wage. If there is a Joint Industrial Council, the employees are to be paid the rate determined by that council; if there is no such rate, they are to be paid according to the 'fair wages clause',² and any dispute as to what the wages should be under the clause is to be referred by the Minister of Labour to the Industrial Court.

¹ 15 & 16 Geo. V, c. 12.

² The 'fair wages clause' is based upon a resolution of the House of Commons passed on 10 Mar. 1909, to the effect that all Government contractors and sub-contractors must pay rates of wages and observe

In certain trades and industries agreements have been reached through the respective organizations of employers and workpeople to settle their differences by arbitration in the event of negotiations by conciliation failing; such as, civil engineering, drugs and fine chemicals, flour milling, clothing, woollen and worsted, dyeing, bleaching, and finishing in England and Scotland, machine calico printing, heating and domestic engineering, furnishing, upholstery, Manchester packing and making-up, quarrying, tinplate, iron ore and blast furnaces, lead, process engraving, electricity supply, silk, and wall-paper.

The proceedings before the Industrial Court are voluntary and are privileged.¹ The decisions are not enforceable under the Arbitration Act of 1889, as that Act does not apply to any reference to the Court or to any reference under the Conciliation Act or Industrial Courts Act.² Nor is there any penal provision enforceable against any person refusing to observe the terms of a decision. Where, however, a decision is accepted or acted upon it forms a term or condition of the contract of employment. It is significant to note that there are only two or three instances out of some 1,400 decisions (since the Court was established) where a decision has been rejected.

The Industrial Court wisely decided to follow the example of the Committee on Production and the Interim Court of Arbitration by publishing its decisions from time to time in volume form.³ Ten volumes have been published con-

hours of labour not less favourable than those commonly adopted by employers generally, having regard to the nature of the work and the district in which it is performed. 164 Commons' Journals, 51.; Parl. Deb. (10 Mar. 1909), 415.

¹ Cf. *Slack v. Barr* (1918), 82 J.P. 91.

² Conciliation Act, 1896, s. 3; Industrial Courts Act, 1919, s. 3.

³ These decisions are published by the Stationery Office and are on sale. The number of cases (including the above 1,400) settled with the assistance of the Ministry of Labour during the same period was

taining a record of some 1,400 cases. It has been said that no student of economics or industrial history can afford to neglect the study of these volumes.¹ Certainly the facts disclosed are of great interest as throwing light on industrial questions, the amazing complexity of modern industry, and the diversity and unexpectedness of the issues on which employers and workpeople fail to agree. The matters which the Court have considered range from straightforward claims for the adjustment of wages and salaries, covering large bodies of workpeople, to questions of detail affecting only a handful of men. As illustrative of the latter may be mentioned a question regarding the number of men necessary to work a dredging hopper, a problem for the satisfactory solution of which it was arranged that the members of the Court should take a trip to sea on the hopper and work the winches themselves.

To place the machinery of the law in motion to dispose of a difficulty which, looked at in itself, is of small dimensions, is no novelty; in industrial matters it often has ample justification. We have seen that the earliest attempts to introduce arbitration were inspired by the wish cheaply and expeditiously to dispose of questions which might arise between an employer and a workman from day to day. The Industrial Court provides such means. It charges no fees and parties are put to no costs or expense, except possibly in respect of their own travelling expenses in appearing before it. If both parties are agreed upon the terms of reference, the matter can be remitted to the Court and disposed of in the course of a few days, save in cases of exceptional difficulty.

The value of the work which can be done by the Court in settling small differences, as well as large ones, has possibly upwards of 2,200 of which 58 were referred to single arbitrators and 46 to *ad hoc* boards of arbitration. In addition, a large number was settled through the machinery devised by the parties.

¹ *The Scotsman* (Edinburgh), 6 Jan. 1926; cf. Herbert Feis, Ph.D., *Principles of Wage Settlement* (New York, 1924).

not been fully realized. It provides an alternative on the one hand to an expensive and troublesome appeal to the ordinary Courts, and on the other to the unsatisfactory practice of allowing small grievances to smoulder. Lord Goderich¹ had emphasized the importance of keeping the air clear in the draft report which he prepared for the Mackinnon Committee (*ante*, p. 64) and used it as an argument for limiting the compulsory powers of an arbitration tribunal to those smaller disputes which arise on 'work done'. He thought that the strike over wages would not usually occur 'if there had not been a previous want of good understanding and a friendly intercourse between the master and his workmen', and that this want was often due to previous dispute 'about the execution of a piece of work, the value of work done by the piece or the amount of stoppage to be made in accordance with the practice of the particular trade or shop' and the feeling of the operatives that the man concerned had been harshly treated.

The possibilities of extending the usefulness of the Industrial Court in this direction might well be considered. Even though future terms and conditions of employment continue to be a matter on which the voluntary character of arbitration is to remain unimpaired, there may still be a case for giving the Court powers, for example, analogous to those possessed by Police Courts under the Employers and Workmen Act, 1875. As has been pointed out for a hundred years, a Police Court does not provide a favourable setting in which to consider differences of a technical character arising between an employer and a workman. The ordinary Courts with their fees and inevitable delays are not very suitable for the purpose. The right of direct approach to the Industrial Court by either of the parties in difference and the power of the Court to give an enforceable decision where

¹ Afterwards the Marquis of Ripon (1827-1909), Governor-General of India, War Secretary, India Secretary, Colonial Secretary, &c.

the matter in dispute relates to the past might not only conduce to the immediate convenience of the disputants but also place industrial relationships on a healthier basis.

Practically all trades and industries have at some time submitted cases to the Court. No exception need be made of trades in which well-established machinery exists for dealing with differences between employers and workpeople, such as the cotton industry and the coal-mining industry, which have each appeared before the Court. One of the most important and interesting cases with which the Court has been called upon to deal was a question raised by the cotton weaving industry as to what deductions should be made from the Colne or Uniform lists—which were generally current in the industry—by firms carrying on their business in outlying districts. Cotton weaving establishments had in times past been established in relatively remote places, which, under modern conditions, found themselves at a disadvantage in the matter of transport charges and distance from the commercial centres and in which—so the employers contended—the class of labour available was not so efficient as in the larger towns. The question to be decided appears to have been specially difficult, since even though some deduction from the list was justifiable, it did not follow that the same deduction was right in respect of all the districts, each of which had its own peculiarities.¹

The last-mentioned case is an example of one in which the Court had the assistance of assessors, many of the points arising being of a highly technical character. The cases in which assessors are required are relatively few in number. As a rule, the trade knowledge of members of the Court is sufficient to enable them clearly to follow and appreciate the points made by the parties. There is often a basic similarity between industrial questions which is perceptible

¹ 2 Industrial Court Decisions, No. 281, 28 Apr. 1920.

to the experienced eye notwithstanding marked differences between the trades in which such questions arise. It may be noted that when assessors sit with the Court they are taken into consultation privately but take no part in and are not responsible for the final decision.

A study of the decisions given by the Court shows that a departure has been made from the form in which it had been the practice of arbitrators to publish their awards. With certain exceptions it had been usual for an industrial arbitrator to give his decision without any statement of the facts or arguments. The decisions given by the Industrial Court are more expansive. The general practice has been to set out the facts and circumstances connected with the dispute with a good deal of care, and often to refer with or without comment to the arguments submitted by the parties. The systematic presentation of the facts serves to clarify the issue and sometimes, indeed, to show that the nature of the difference has been wrongly apprehended by the parties themselves.¹ In any event, it enables the decisions to be read and studied intelligently, and facilitates a comparison between one case or class of cases and another. Further, a clear summing up of the points in dispute and the placing of various conflicting considerations in right relationship to one another are also of value to the parties, especially in those numerous cases where behind those immediately concerned in the negotiations there are large numbers of employers on the one hand and employees on the other, who, though deeply concerned in the matter, have often a vague or imperfect knowledge of the relevant facts upon which the case is put forward on their behalf.

More noteworthy, however, is the endeavour of the Court to indicate the grounds of their decision. In the past it had been the rarest event for an industrial arbitrator to give any indication of the reasons which led him to decide as he had

¹ Cf. 3 Ind. Ct. Dec., No. 546, 26 Nov. 1920.

done. Reticence on this point had, indeed, been counted almost a virtue. The Court thought otherwise. They took the view that the silence maintained by arbitrators regarding the direction in which their thoughts had moved had the effect of making recourse to industrial arbitration unnecessarily hazardous. Appeal to a tribunal which keeps its counsel wholly to itself and announces its decision without any explanation must appear to parties to be a speculative proceeding. They have no knowledge of the criteria adopted by the tribunal in considering the pertinence and importance of submissions in previous cases, and hence they are under a disadvantage in preparing and presenting their own case. It is important also that each case should be considered on its own merits and not by reference to facts and circumstances beyond the interest or concern of the parties. Where no grounds of a decision are stated it must often happen that the parties are left without sufficient assurance on this point. The innovation of occasionally indicating the general point of view from which the Court itself regarded the problem before it, though it seemed slight and tentative, nevertheless soon attracted a great deal of attention. The first occasion of any importance on which the Court enunciated a principle recognized by them as governing wage variations was an award given upon an application from the engineering and shipbuilding industries, under the national Agreement noticed above (*ante*, p. 142). The awards by the Committee on Production and Interim Court of Arbitration on these general four-monthly applications had previously been influenced mainly by the movements in the cost of living. The time at which the application before the Industrial Court was made—February 1920—was one of great trade activity. Under the influence of demand and supply wages in many occupations were rapidly advancing, and the Court was called upon to consider whether, in these circumstances, the cost of living afforded a satisfactory basis of wages adjust-

ment. In issuing their decision giving an advance to the workers, the Court said:

‘During the war period, when commercial conditions were disturbed or in abeyance, the cost of living was an important factor in determining wages. Now that the markets are again open it appears to the Court that an alteration in the cost of living does not in itself necessarily warrant any corresponding alteration in wages. The remuneration of the various classes of workpeople should, in ordinary circumstances, depend on the value of the work done, and the value of the work done depends on the state of the market, and the demand for the products of the workshop.’¹

This statement by the Court gave rise to vigorous comment; and, in many quarters, dissent from the Court’s view was forcibly expressed; though it may be noted that those who dissented were not by any means agreed among themselves. The language used by the Court is not that of a professed economist writing for the instructed. It does, however, put sufficiently well the truth that the extent to which rates of wages can be varied without causing displacement of labour is limited. No one would deny that wages enter into cost of production, that cost of production influences selling prices, and that selling prices again influence demand, so that if wages are increased beyond certain limits, a less amount of labour will be required. The directness and rapidity of the reactions of price on demand, demand on supply, and supply again on price depend upon the circumstances of the particular case, and represent the real problem which confronts the wage-fixing authority. But that there is such reaction in industries carried on under competitive conditions is a matter outside the realm of controversy.

The discussion which ensued on the Court’s declaration

¹ 1 Ind. Ct. Dec., No. 180, 10 Mar. 1920; See also 3 Ind. Ct. Dec., No. 521, 8 Nov. 1920. In 6 Ind. Ct. Dec., No. 871, 19 Feb. 1924, the point was considered how far the rates in one industry may affect the rates in another industry.

made manifest a difficulty which is fundamental to industrial arbitration. On the one hand, the very fact that recourse is had to arbitration indicates that sheer individualism has broken down and that the circumstances require something better than that each workman should make his own bargain with his employer. On the other hand, the Court has to give a decision to meet present-day requirements, and must take the world as it is. Whatever may be their political and social views, the individual members of the Court cannot, in their professional capacity, ignore existing facts or give decisions related to a state of affairs which, however much desired, is of the future and not of the present. They are concerned not with what the workers 'ought' in a moral sense, to receive, but what it is proper that they should receive in view of the state of the industry, if more good than harm is to result from the Court's decision.

The Court is indeed in a position similar to that of the Courts of Justice which administer the Common law. The Common law is organic; it undergoes change, and at any time bears a relationship to current moral and ethical opinion. It must, however, move in the rear rather than in the van of reform. Its function is rather to peg down and make secure gains which have been won in the march of progress and not itself to lead the advance. The judges who apply and administer the law do so consistently with this view, and however advanced and progressive may be their opinions in private, on the bench they must see that they do not go beyond the point reached by the general body of ordinary people.

There must always be a minority of people for whom progress is too rapid, and another for whom it is too slow. The criticism of the Court's pronouncement regarding the relationship between the rate of wages and the state of trade is sufficiently accounted for by this fact. At one

extreme there were people who thought that to give the workers a direct and immediate interest in the prosperity of the trade with which they were concerned was a dangerous innovation. At the other extreme there were those who criticized the pronouncement because, in their view, in a properly organized society, wages would somehow be regulated according to principles of justice without reference to the capacity of the industry at all. It is for the reader himself to decide whether the Court did not, after all, really state a proposition which, to the vast majority of people, was common sense.

The Court's decisions contain many other expressions of view, which may fairly be regarded as 'principles', on the subject of the right method of determining wages and the relationship of management and labour and of sections of labour to one another as well as working hours and conditions. On the whole these gave rise to no controversy; some of them, if open to criticism at all, may be regarded as almost trite; but they nevertheless provide fixed points, as it were, from which the future consideration of such problems by the Court itself or any other body accepting its authority can proceed. Thus the Court expressed the view that, notwithstanding the general principle that wages must be determined by the capacity of the industry, a wage sufficient to afford a man 'an adequate and decent livelihood' must be regarded as a first charge on the industry.¹ The Court did not enter into details as to the exact meaning of the expression 'adequate and decent livelihood' and there was probably no need for them to do so. They were merely confirming the policy, approved by Parliament itself, in the Trade Boards, Agriculture and other Acts, of a minimum wage, that is to say, a rate of remuneration which must be observed at all costs, even though it should

¹ Cf. 1 Ind. Ct. Dec., No. 61, 12 Jan. 1920; 5 Ind. Ct. Dec., No. 853, 23 Nov. 1923.

result in some disturbance of the existing organization of the industry.

As regards employees of public authorities, the Court made it clear that in their view the right method of determining wages was to have 'regard to the nature of the duties discharged and the qualifications possessed by the men concerned', and to be 'guided by the level of wages paid to men of similar qualifications in industry generally'.¹ Municipal employment was not, however, to be wholly outside the principle of payment according to the prosperity or otherwise of the industry, as laid down in Decision No. 180 (*ante*, p. 185), because we find, in a subsequent decision affecting the employees of a local authority,² that the Court in deciding the issue recognized that the municipal salaries and wages came directly from the ratepayers, and they took into account the fact that any increase in local rates resulting from an advance in wages would be very burdensome to a community suffering as was shown from the trade depression.

The Court also showed a respect for what may be called prescriptive rights, whether of employer or workpeople. In the case affecting the cotton industry, referred to above, the Court did not feel obliged to go into the question whether mills ought to have been established where they were; they were content to accept the fact and to give a decision on the basis that, being there, their existence ought not to be brought to a sudden end. In the same way, in a case affecting the painting trade in Scotland the Court found on the evidence that a practice had become established under which the men received remuneration having a definite relationship to that of men in other skilled sections of the

¹ 3 Ind. Ct. Dec., No. 377, 5 July 1920; cf. also 4 Ind. Ct. Dec., No. 665, 1 July 1921; and No. 743, 13 Nov. 1922 (Dockyards, &c. establishments); 6 Ind. Ct. Dec., No. 967, 1 Aug. 1924.

² 3 Ind. Ct. Dec., No. 604, 25 Jan. 1921.

building trades. The practice being what it was, the Court thought that it should not be suddenly terminated, even though the rate was not one which would be fixed, if regard was had only to the conditions of the painting trade itself.¹

The Court were more venturesome, and were obliged in fact by the nature of the case to enter upon controversial ground, in the important issue brought before them arising in the railway workshops.² The difference was not merely one between the employees and the railway companies, but between sections of the employees themselves. The question of the rates of wages was bound up with the equally important and more difficult question whether those rates should be determined by reference to the rates of wages paid to similar classes of employees in other industries. For example, should the rate paid to the engineer-fitter in a railway constructional or repairing workshop be that recognized for fitters in the engineering trade, or should it be determined by reference to the circumstances of the railway industry? The Court decided in favour of the industrial basis; and it is difficult to see how, having regard to its former decisions (No. 180, for example) it could consistently have done otherwise. 'The manufacturing and maintenance side of the companies' work undertaken by railway companies', the Court said, 'is of such great extent and so closely connected with the main business of transport that it cannot properly be regarded as something merely subordinate to it. It is bound up with the whole question of the prosperity or success of railway enterprise and cannot in practice be divorced from the other functions of the companies.'

The Court, while thus proceeding on an industrial basis,

¹ 3 Ind. Ct. Dec., No. 605, 25 Jan. 1921; see also 6 Ind. Ct. Dec., No. 952, 16 July 1924.

² 4 Ind. Ct. Dec., No. 728, 8 July 1922; see also 4 Ind. Ct. Dec., No. 746, 30 Dec. 1922.

refrained from giving a decision which disturbed existing rates or conditions too violently. The decision was of a very detailed character; so vast was the mass of material produced in connexion with the case that its orderly arrangement and examination occupied several months. The men concerned numbered some 110,000 belonging to about 1,500 grades or occupations and distributed among about 650 places of diverse size and character. With some ingenuity the Court brought all classes within a comparatively small number of different scales of wages without prescribing rates for the railwaymen widely different from those paid in other establishments.

Many other problems of general industrial interest have been decided, such as the bases for the determination of the wages of maintenance men in factories; the effect of unrestricted foreign competition on wages in a home industry; the effect of foreign competition on wages in overseas trades; the influence of rates of wages in one industry on those in another industry; the relation of co-operative societies to industry; demarcation questions; co-operative production; promotion and the claims of seniority; the construction of industrial agreements, and codes of working conditions.

In stating the considerations to which they had regard in arriving at their decisions, the Court have taken the first tentative step towards the formation of a body of industrial case law.¹ The analogy between what they have attempted

¹ The question of building up a body of industrial case law was raised before the Royal Commission on Labour (1892-4). Mr. W. J. Parry, Chairman of the Standing Joint Committee of the Carnarvonshire County Council, at one time General Secretary to the N. Wales Quarrymen's Union, in the course of his evidence submitted a plan for dividing the country into districts with courts consisting of two permanent judges or arbitrators, paid by the Government, with a county court judge or high court judge as umpire, and was examined by Mr. Gerald Balfour, a member of the Commission, as follows:

and what was done by the old Courts of Common law is an interesting one. The early Courts endeavoured on the particular facts of a case to give a decision which would be regarded by men in general as a right one—not right according to ‘law’ which was embryonic and unfounded, but right according to prevailing ideas. Much depended on custom because custom or established practice was regarded as embodying what may be called the good sense of mankind, and was a safer guide than abstract notions of right and wrong. Notwithstanding the appeal to custom and later to precedent, however, the principles of the Common law were in fact rules devised by the judges themselves as conducive to a proper adjustment of men’s relationships in the various affairs of life. It is hardly open to doubt that should the Industrial Court or any other industrial tribunal

‘Would you propose a code of labour laws and that the decisions of the arbitrators should be merely the carrying out of these laws?’

‘Yes. . . .’

‘But suppose the dispute was a question of the rate of wages, how would you settle that?’

‘The whole of the facts would be laid before the arbitrators and they would be able to decide as to the reasonableness of the demand.’

‘Would you have a law which laid down beforehand what was reasonable and what was unreasonable in the matter of wages?’

‘No, I would not.’

‘In that case it is clear you would not have anything for this board to proceed upon corresponding to the law of the land in the case of the ordinary courts?’

‘Cases are now referred to arbitrators; they have to consider the cases on both sides and decide which is the reasonable decision to which they should come.’

‘I only desire to understand from you whether you consider the fact that the present judges have a body of law to go upon does not constitute an important difference between a court of law and a court established for the purpose of deciding disputes between employer and employee?’

‘But law is made by decisions very often.’

‘Not entirely?’

‘Very often. It is largely a matter of precedents.’ (Questions 9616–22 [C. 6795], iv. 1892.)

of authority continue to indicate the principles or considerations upon which its decisions are based there would develop in course of time a body of 'law' governing industrial relationships, recognition of which would not only facilitate the settlement of disputes which had, in fact, occurred, but would tend to prevent their occurrence; for the rights of the parties in any matter of difference would thus be indicated from the outset.

No human institution is perfect, but it may be fairly said that the Industrial Court affords a more rational and convenient means of settling differences than has ever heretofore been devised, and that in its practice no less than in its constitution it may be regarded as the consummation of the long period of experiment and experience reviewed in these pages.

This narrative may, however, have served to show that the cause of industrial peace does not depend on the mere machine that is set up for the settlement of differences. In this respect industrial peace is like international peace. It is important that well-devised facilities for the consideration and disposal of questions should be provided and kept readily available. But the extent to which these facilities will be used effectively depends upon the strength and genuineness of the will to peace possessed by the parties concerned.

APPENDIX I

List of Members of Industrial Court, as constituted in 1919.

(See *ante*, p. 174)

President: Sir William Mackenzie, K.B.E., K.C.¹

Chairmen: Mr. F. H. McLeod, C.B., Sir William Robinson, J.P., the Right Hon. Sir Dunbar Plunkett Barton, Bart., K.C.

Members: Messrs. Ernest J. Brown, J. McKie Bryce, C.B.E., F. S. Button, J.P., D. C. Cummings, C.B.E., Colonel John M. Denny, C.B., J.P., Mr. J. Duncan Elliot, Mr. James Fullerton, C.B.E., J.P., Miss Violet Markham, C.H., J.P., Miss Cécile Matheson, and Mr. William Mosses, O.B.E.

Secretary: Mr. G. T. Reid.

List of Members of Committee on Production, as reconstituted in 1917. (See ante, p. 131)

Chairmen: The Right Hon. Sir David Harrel, Sir George Gibb, Mr. William W. Mackenzie, K.C.

Members: Mr. F. S. Button, Colonel John M. Denny, C.B., Messrs. J. Duncan Elliot, W. Mosses, George Rowe, and J. W. White.

Secretary: Mr. H. J. Wilson, C.B.E.

List of Members of Interim Court of Arbitration.

(See *ante*, p. 147)

Chairmen: The Right Hon. Sir David Harrel, G.C.B., G.B.E., Sir William Mackenzie, K.B.E., K.C., Sir Cyril Jackson, K.B.E., Prof. E. C. K. Gonner, C.B.E., His Honour Judge Sir Walworth Roberts, C.B.E., Sir T. F. Wilson, and Mr. W. H. Stoker, K.C.

Members: Colonel J. M. Denny, C.B., Sir Duncan Elliot, Captain R. H. Green, Mrs. Granville Streatfield, Messrs. F. S. Button, John Barker, James Fullerton, C.B.E., James Gavin, J.P., William Mosses, O.B.E., George Ryder, O.B.E., John W. White, C.B.E., W. A. Clowes, and G. Heron Wilson.

Secretary: Mr. H. M. Hook and after him Mr. G. T. Reid.

¹ Now Lord Amulree.

*List of Members of first National Wages Board for Railways
(May 1920). (See ante, p. 164)*

Chairman: Sir William Mackenzie, K.B.E., K.C.

Representing Railway Companies: Sir Henry Thornton, K.B.E.,
Sir Herbert A. Walker, K.C.B., Sir Thomas Williams,
Mr. D. A. Matheson.

Representing Railwaymen: The Right Hon. J. H. Thomas,
M.P., Mr. W. J. Abraham, Mr. W. J. R. Squance, Mr. W.
Stevenson.

Representing Users: Sir Thomas Robinson, M.P., Mr. E. Man-
ville, M.P., Mr. W. J. Davis, C.H., Mr. H. J. May.

Secretary: Mr. G. T. Reid.

*List of Members of Tramway Tribunal for Great Britain
and Northern Ireland (July 1924). (See ante, p. 167)*

Chairman: Sir William Mackenzie.

Nominated by the Employers' Side: Sir William Larke, K.B.E.,
Sir Allan M. Smith, K.B.E.

Nominated by the Employees' Side: Mr. J. J. Mallon, Mr. A. A.
Purcell, M.P.

Representatives of the Employers: Sir John Timpson, K.B.E.,
Alderman C. Higham, Mr. A. Barker, Mr. H. Holliday, and
Mr. R. J. Howley, C.B.E.

Representatives of the Employees: Mr. John Cliffe, Mr. Ben
Smith, M.P., Mr. G. Dobson, Mr. T. McLean, and Mr. J. C.
Trustum.

Secretary: Mr. W. H. Reynolds, M.B.E.

APPENDIX II

WAGE ADVANCES DURING THE WAR PERIOD: AWARDS OF THE COMMITTEE ON PRODUCTION

(See *ante*, p. 145)

THE total amount of general advances under the awards of the Committee on Production during the War in the engineering trades (which may be taken as typical of the general advances in industry) to male adult workers paid on time-rates between 1 March 1915 and 9 November 1918 (when the Committee ceased) was 28s. a week plus $12\frac{1}{2}$ per cent. on earnings. The total amount of general advances to piece-workers and workers on other systems paid by results was 21s. 6d. a week plus 10 per cent. plus $7\frac{1}{2}$ per cent. on earnings. The cost of living when this total was awarded had advanced to 115-20 per cent. over pre-war prices.

Under the National Wages Agreement (see *ante*, p. 142) the Interim Court of Arbitration awarded a further 5s. a week to time-workers and piece-workers, and the Industrial Court a further 6s. a week to time-workers and 15 per cent. to piece workers. The total general advances were thus 39s. a week plus $12\frac{1}{2}$ per cent. on earnings to male adult workers paid on time-rates, and 26s. 6d. a week plus 25 per cent. plus $7\frac{1}{2}$ per cent. on earnings to piece-workers. After the depression in trade set in, in 1921, and the reduction in the cost of living these war advances were readjusted, mainly through the agency of the parties.

In some instances, especially during the early part of the War period, parties mutually agreed on advances on wages rates, but they did not follow any uniform course. In some establishments they took the form of a 'war bonus' of so much a week, which, without special mention, did not carry any extra rate for overtime or week-end work; and some employers paid the full 'bonus', although a full week had not been worked, the argument being that the 'bonus' was given to meet the extra cost of

living and the workman incurred this extra cost whether he put in a full week or not. A 'war bonus' was used in the above sense to distinguish the concession from a 'war advance'. Some of the employers gave the 'bonus' on condition that the worker kept good time; hence called a 'good time-keeping bonus'. In other instances, the advance was given according to the number of dependants of the worker, that is to say, so much a week for the worker and, in addition, so much for each dependant. This latter was perhaps the most logical scheme, as it purported to grant the advance according to the needs of the worker. It was, however, strongly resented by the unions on the ground that it was too inquisitorial and that it gave the man with no or few dependants an advantage with an employer over a man with many, and eventually had to be abandoned. Sometimes the advance took the form of a larger sum to the low paid men than to the better paid men; thus a workman earning 30s. a week or over would receive an advance of 2s. a week, while a workman receiving less than 30s. a week would receive an advance of 3s. a week. There was thus a good deal of confusion, and each of these various methods entailed a complicated system of book-keeping. The Committee on Production acted on the principle from the outset that the advances during the War period should be regarded as war advances or war wages but in other respects should follow the usual incidents of wages in respect of overtime and week-end work, and the various advances mentioned above were eventually brought into line with this principle.

Another scheme of adjusting wages and salaries to war-time conditions was adopted whereby adjustment was made according to the variations in the cost of living. A scheme of this nature was adopted by, *inter alia*, the dyeing industry, the traffic side of the railway industry, the Civil Service, and the clerical section of public authorities.

We have already seen that the total number of awards issued by the Committee on Production was 3,746. The large majority was issued during the later period of the Committee's existence, after its value as a judicial body had been fully tested. For example, the number issued between 15 March 1915 and May 1917 (when the Committee was reconstituted) was 802; the number from May 1917 to December 1917 inclusive was 653;

the number from 1 January to 21 November 1918 inclusive was 2,291, that is:

January	138
February	119
March	173
April	209
May	236
June	214
July	258
August	205
September	251
October	253
November 1st to November 21st	235

The disputes referred to the Committee for settlement included cases relating to all the principal trades and industries of the country—engineering and iron foundry, shipbuilding and ship repairing, iron and steel, electrical trade, chemicals, explosives and allied trades, drug and fine chemicals, building, aircraft construction, tube making, wagon building and repairing, sheet metal and miscellaneous metal trades, tinplate, copper, zinc and spelter trades, linen and jute manufacture, printing trades, railwaymen, dock labourers, carters and other classes of transport workers, tramway men, gas workers, employees of local and public authorities, woollen and worsted and allied trades, glove making, flour milling, sugar refining, file manufacturing, leather trades, clay industry, soap and candle trades, bakers, quarrymen, coke-oven and by-product workers, clerks, and draughtsmen. (See Awards of the Committee on Production which have been published in seven volumes.)

The National Wages Agreement for the engineering trade (see *ante*, p. 142) provided that the unions might bring forward for special consideration at the periodical hearings the case of any district in which it was claimed that the rates of wages were unduly low or that the total amount of war advance was inadequate. Similarly the employers might bring forward for special consideration any cases they desired. Under this heading the Committee adjudicated on 366 claims, called 'special district cases' preferred by the unions, generally on the ground that the

district rate of wages was too low. (See Awards of the Committee, Nos. 545, 586, 1326, 1327, 1335, 2076, 2147.) The Interim Court of Arbitration and after it the Industrial Court heard claims for special consideration until the middle of 1920 when the agreement came to an end. The employers appear to have brought only one claim under this part of the agreement. (See Award of the Committee, No. 545, vol. ii, new series.) Claims for special consideration were also brought under the Heating and Domestic Engineers' Agreement. (See Award of the Committee, No. 2038.)

APPENDIX III

THE following are extracts from the several Statutes noted in the text in respect to industrial arbitration (omitting Amending Acts, the Munitions Acts, and the Wages (Temporary Regulation) Acts, 1918-19) which show the various stages, from the rigid forms of compulsory arbitration with penal sanctions to the simple form of voluntary arbitration with the moral sanction only. The parts of the Statutes not extracted in general consist of provisions relating to procedure.

39 & 40 Geo. III, c. 90. (*Ante*, p. 23)
(Repealed 5 Geo. IV, c. 96, 1824)

AN Act for settling Disputes that may arise between Masters and Workmen engaged in the Cotton Manufacture in that part of *Great Britain* called *England*. (28th July, 1800)

‘Whereas considerable Abuses have for several Years last past subsisted in the Trade or Manufacture of Cotton Weaving, in that part of *Great Britain* called *England*, to the great Oppression of the Persons employed in the Manufacture thereof and concerned therein, and manifest Hindrance and Injury of the Trade: And whereas it will be a great Convenience and Advantage to all Parties concerned in such Trade and an Encouragement to the Manufacture, that a cheap and summary Mode be established for settling all Disputes that may arise in respect thereof, between the Masters and Workmen engaged in the said Trade’:

May it therefore please your Majesty that it may be enacted: and be it enacted by the King’s Most Excellent Majesty, by and with Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same,

That, from and after the first Day of August in the year of our Lord one thousand eight hundred, in all Cases that shall or may arise within that Part of *Great Britain* called *England*, where the Masters and Workmen cannot agree respecting the Price or Prices to be paid for Work done, or to be done, in the said Manufacture, whether such Dispute shall happen or arise between them respecting the Reduction or Advance of Wages

or any Injury or Damage done, or alleged to have been done by the Workmen to the Work, or respecting any Delay, or supposed Delay, on the part of the Workmen in finishing the Work or the not finishing such Work in a good and workmanlike Manner:

And also in all Cases where the Workmen are to be employed to work any new Pattern which shall require them to purchase any new Implements of Manufacture for the working thereof, and the Masters and Workmen cannot agree upon the Compensation to be made to such Workmen for or in respect thereof,

And also respecting the Length of all Pieces of Cotton Goods, or the Wages or Compensation to be paid for all Pieces of Cotton Goods that are made of any great or extraordinary Length,

And respecting the Manufacture of Cravats, Shawls, Polycat, Romall and other Handkerchiefs, and the Number to be contained in one Piece of such Handkerchiefs, and the Wages to be paid in respect thereof,

And in all cases of Dispute or Difference arising or happening by and between the Masters and Workmen employed in such Manufacture, or of, for, or touching such Trade or Manufacture, which cannot be otherwise mutually adjusted and settled by and between them:

It shall and may be lawful, and it is hereby declared to be lawful, for such Masters and Workmen, between whom such Dispute or Difference shall arise as aforesaid, or either of them, to demand and have an Arbitration or Reference of such Matter or Matters in Dispute: And each of them is hereby authorised and empowered forthwith to nominate and appoint an Arbitrator for and on his respective Part and Behalf, to arbitrate and determine such Matter or Matters in dispute as aforesaid,

And such Arbitrators so appointed as aforesaid, after they shall have accepted and taken upon them the Business of the said Arbitration, are hereby authorised and required to summon before them, and examine upon Oath the Parties and their Witnesses, (which Oath the said Arbitrators are hereby authorised and required to administer according to the Form set forth in the Schedule to this Act,) and forthwith to proceed to hear and determine the Complaints of the Parties, and the Matter or Matters in Dispute between them, and the Award to be made by

such Arbitrators shall in all Cases be final and conclusive between the Parties:

But in case such Arbitrators so appointed cannot agree to decide such Matter or Matters in Dispute so to be referred to them as aforesaid, and do not make and sign their Award within the Space of three Days after the signing of the said Submission, that then they shall forthwith, and without Delay, go before and attend upon one of His Majesty's Justices of the Peace acting in and for the County, Riding, City, Liberty, Division, Township or Place, or residing nearest to the Place where such Dispute shall happen and be referred, and state to such Justice the Points in Difference between them the said Arbitrators, which Points in Difference the said Justice shall and he is hereby authorised and required to hear and determine, which Determination of such Justice shall be made and signed within the Space of three Days after the Expiration of the Time hereby allowed the Arbitrators to make and sign their Award, and shall be final and conclusive between the Parties so differing as aforesaid:

And if either of the said Parties, or their respective Witnesses, having been duly summoned, shall neglect or refuse to attend such Arbitrators at the Time and Place by them for the Purpose appointed, it shall and may be lawful for any one or more of His Majesty's Justices of the Peace acting in and for the County, Riding, City, Liberty, Division, Township or Place, where such Dispute shall happen, and he or they is or are hereby required, upon Proof on Oath being made before him or them of the Service of such Summons, either personally or by leaving the same at the last or usual Place of Abode of such Person summoned, and also upon the like Proof of the Neglect or Refusal of such Person to attend the said Arbitrators in pursuance of such Summons (unless a reasonable Excuse be made for such Non-attendance to the Satisfaction of such Justice or Justices,) to issue his or their Warrant under his or their Hand or Hands for the apprehending and bringing such Person before him or them,

And if any such Person so being brought before such Justice or Justices shall refuse to be examined, or give his or their Testimony before such Arbitrators touching the Premises, such Person so refusing shall be by the said Justice or Justices com-

mitted to the House of Correction within his or their Jurisdiction, there to remain without bail or mainprize until he, she, or they shall submit to be examined and give Evidence before the Arbitrators touching the Premises aforesaid.

II. Provided always, and be it further enacted, That if the Parties who shall have signed any Submission to Arbitration shall think it expedient, or be minded and desirous to extend the Time hereby limited for the making of the Award or Umpirage, it shall and may be lawful for them to extend the same accordingly by Indorsement on the Back of such Submission, to be signed by both of them in the Presence of one or more credible Witness or Witnesses: any Thing hereby contained to the contrary thereof in any wise notwithstanding.

(5. If any party refuse for two days to sign submission or to appoint an arbitrator or to submit to the Award, he shall forfeit to the other party £10 to be recovered before a Justice and leviabie by distress and sale or the offender to be committed for not more than 3 months nor less than 2.)

39 & 40 Geo. III, c. 106. (*Ante*, p. 28)

(Repealed 5 Geo. IV, c. 96, 1824)

AN Act to repeal an Act passed in the last Session of Parliament, intituled, *An Act to prevent Unlawful Combinations of Workmen*: and to substitute other Provisions in lieu thereof.

(29th July, 1800)

XVIII. 'And whereas it will be a great Convenience and Advantage to Masters and Workmen engaged in Manufactures, that a cheap and summary Mode be established for settling Disputes that may arise between them respecting Wages and Work':

Be it further enacted by the Authority aforesaid,

That from and after the first day of August in the Year of our Lord one thousand eight hundred, in all Cases that shall or may arise within that part of *Great Britain* called *England*, where the Masters and Workmen cannot agree respecting the Price or Prices to be paid for Work actually done in any Manufacture,

or any Injury or Damage done or alleged to have been done by the Workmen to the Work,

or respecting any Delay or supposed Delay on the Part of the

Workmen in finishing the Work or not finishing such Work in a good and workmanlike Manner, or according to any Contract ;

And in all Cases of Dispute or Difference touching any Contract or Agreement for Work or Wages between Masters and Workmen in any Trade or Manufacture, which cannot be otherwise mutually adjusted and settled by and between them,

It shall and may be, and it is hereby declared to be lawful, for such Masters and Workmen, between whom such Dispute or Difference shall arise as aforesaid, or either of them, to demand and have an Arbitration or Reference of such Matter or Matters in Dispute, and each of them is hereby authorised and empowered forthwith to nominate and appoint an Arbitrator for and on his respective Part and Behalf to arbitrate and determine such Matter or Matters in Dispute as aforesaid, by Writing, subscribed by him in the Presence of and attested by one Witness, in the Form expressed in the second Schedule to this Act, and to deliver the same personally to the other Party, or to leave the same for him at his usual Place of Abode, and to require the other Party to name an Arbitrator in like Manner within two days after such Reference to Arbitration shall have been so demanded :

And such Arbitrators so appointed as aforesaid, after they shall have accepted and taken upon them the Business of the said Arbitration, are hereby authorised and required to summon before them, and examine upon Oath the Parties and their Witnesses, (which Oath the said Arbitrators are hereby authorised and required to administer according to the Form set forth in the second Schedule to this Act,) and forthwith to proceed to hear and determine the Complaints of the Parties, and the Matter or Matters in Dispute between them :

And the Award to be made by such Arbitrators within the Time herein-after limited shall in all Cases be final and conclusive between the Parties :

But in case such Arbitrators so appointed shall not agree to decide such Matter or Matters in Dispute so to be referred to them as aforesaid, and shall not make and sign their Award within the Space of three Days after the signing of the Submission to their Award by both Parties, that then it shall be lawful for the Parties, or either of them, to require such Arbitrators

forthwith and without Delay to go before and attend upon one of His Majesty's Justices of the Peace acting in and for the County, Riding, City, Liberty, Division or Place where such Dispute shall happen and be referred, and state to such Justice the Points in Difference between them the said Arbitrators,

Which Points in Difference the said Justice shall and is hereby authorised and required to hear and determine, and for that Purpose to examine the Parties and their Witnesses upon Oath, if he shall think fit;

Which Determination of such Justice shall be made and signed within the Space of Three Days after the Expiration of the Time hereby allowed the Arbitrators to make and sign their Award, and shall be final and conclusive between the Parties so differing as aforesaid;

And if either of the said Parties, or their respective Witnesses, having been duly summoned, shall neglect or refuse to attend such Arbitrators at the Time and Place by them for the Purpose appointed, it shall and may be lawful for any one or more of His Majesty's Justices of the Peace acting in and for the County, Riding, City, Liberty, Division, Township or Place where such Dispute shall happen, and he or they are hereby required, upon Proof on Oath being made before him or them of the Service of such Summons personally, and also upon the like Proof of the Neglect or Refusal of such Person to attend the said Arbitrators in Pursuance of such Summons, (unless a reasonable Excuse be made for such Non-attendance to the Satisfaction of such Justice or Justices,) to issue his or their Warrant under his or their Hand or Hands for the apprehending or bringing such Person before him or them,

And if any such Person so being brought before such Justice or Justices shall still refuse to be examined, or to give his or their [*sic*] Testimony before such Arbitrators touching the Premises, such Person so refusing shall be by the said Justice or Justices committed to the House of Correction within his or their Jurisdiction, there to remain without Bail or Mainprize until he or she shall submit to be examined before the Arbitrators touching the Premises aforesaid, or until the Time for making an Award by such Arbitrators shall be expired.

XIX. Provided always, and be it further enacted, That if the

Parties who shall have signed any Submission to Arbitration shall think it expedient, or be minded and desirous to extend the Time hereby limited for the making of the Award or Umpirage, it shall and may be lawful for them to extend the same accordingly by Endorsement on the Back of such Submission, to be signed by both of them in the Presence of one or more credible Witness or Witnesses: any Thing hereinbefore contained to the contrary thereof in any wise notwithstanding.

(22. If an arbitration be demanded and the submission signed and an arbitrator named by either party, and the other shall refuse to sign the submission and appoint his arbitrator, he shall, on conviction, forfeit £10 one moiety to his Majesty and the other to the poor of the parish, which may be levied by distress, or in default may be committed for three months or not less than two. If either party shall not perform what is directed by the award, he may be committed till performance. No person guilty in not attending at more than one arbitration at a time or more than two in one day. Non-resident masters may appoint persons to act for them.)

43 Geo. III, c. 151. (*Ante*, p. 30)

(Repealed 5 Geo. IV, c. 96, 1824)

AN Act for preventing and settling Disputes which may arise between Masters and Weavers engaged in the Cotton Manufacture in *Scotland*, and Persons employed by such Weavers: and Persons engaged in ornamenting Cotton Goods by the Needle.

(11th August, 1803)

‘Whereas it is desirable that a proper Mode should be devised which may tend to prevent, and that a cheap and summary Mode should be adopted for settling, all Disputes which may arise between Masters and Weavers in the Cotton Manufacture in that Part of the United Kingdom of *Great Britain* and *Ireland* called *Scotland*, or between such Weavers and Persons employed by them, or between Masters and Persons engaged in ornamenting Cotton Goods by the Needle’:

May it therefore please your Majesty that it may be enacted;

And be it enacted by the King’s Most Excellent Majesty by and with the Advice and Consent of the Lords Spiritual and

Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same,

That from and after the passing of this Act in all Cases relative to the weaving of the said Manufacture that shall and may arise within that part of *Great Britain* called *Scotland*, where the Masters and Weavers, and the Weavers and those employed by them cannot agree respecting the Price or Prices to be paid for Work done or in the Course of being done in the said Manufacture, whether such dispute shall happen or arise between them respecting the Reduction or Advance of Wages,

or any Injury or Damage done or alleged to have been done to the Work,

or respecting any Delay or supposed Delay in finishing the Work or the not finishing such Work in a good and workmanlike Manner:

And also in all Cases where the Weavers are to be employed to work any new Pattern which shall require them to purchase any new Implements of Manufacture, or to make any Alteration upon the old Implements for the Working thereof, and the Masters and Weavers cannot agree upon the Compensation to be made to such Weavers for or in respect thereof:

And also respecting the Length, Breadth or Quality of all Pieces of Cotton Goods whether mixed or unmixed with other Materials, or the Yarn thereof, or the Quantity and Quality of the Work thereof;

And in all Cases of Dispute or Difference whatsoever, arising or happening by and between the Masters and Weavers or Persons employed in such Branch of the said Manufacture out of, for or touching such Trade or Manufacture, so far as such Disputes relate to such Branch of the same, which cannot be otherwise mutually adjusted and settled by and between them,

It shall and may be lawful for any Justice of the Peace of the County, Stewartry, City, Burgh or Place in which the Dispute shall arise, and he is hereby required, on Complaint made before him, and Proof by the Examination of the Party making such Complaint and Application had been made to the Person or Persons against whom such Cause of Complaint has arisen, or his, her, or their Agent or Agents, if such Dispute has arisen with

such Agent or Agents, to settle such Dispute, and that the same has not been settled upon such Complaint being made,

Or where the Dispute relates to a bad Warp, that such Cause of Complaint has not been done away within forty-eight hours after such Application,

To summon before him such Person or Persons or Agent or Agents, on some Day not exceeding two Days, exclusive of Sunday, from the making such Complaint, giving Notice to the Person making such Complaint of the Time and Place appointed in such Summons for the Attendance of such Person or Persons, Agent or Agents as aforesaid:

And if at such Time and Place the Person or Persons so summoned shall not appear by himself or send some Person on his, her, or their Behalf, to settle such Dispute, or appearing shall not do away such Cause of Complaint,

Then and in such Case it shall be lawful for such Justice, and he is hereby required, at the Request of either of the said Parties, to nominate Referees for the settling the Matters in Dispute, and such Justice shall then and there at such Meeting propose one Referee on the Part and Behalf of the Master or Agent aforesaid who shall be a Master Manufacturer, or Agent or Foreman of some Master Manufacturer:

And when such Master Manufacturer, Agent or Foreman cannot be found, it shall be lawful for such Justices to propose some Workman having a competent Knowledge of the Manufacture on the Part of the said Master or Agent:

And the said Justice shall then and there propose another Referee on the Part and Behalf of the Workman, who shall be some Workman having a competent Knowledge of that Branch of the Manufacture with regard to which such Dispute shall have arisen (such respective Referees residing in or near the Place where the Meeting for such reference shall be held),

And it shall be lawful for any such Manufacturer, Agent or Foreman, or such Workman or any Person attending for them respectively, peremptorily, and without assigning any Reason, to challenge any Referee so proposed:

And the Justice shall in such Case immediately propose another Person of the like Description as aforesaid, who may be

also peremptorily challenged, so as that each Party may have two peremptory Challenges without assigning any Cause:

But if the Persons so proposed as Referees shall not be so challenged, or if either of such Parties shall not attend at any such Meeting to make any such Challenge, the Persons so proposed, or in the Event of all the Challenges hereby allowed being made, the Persons thereupon proposed by the said Justice shall be nominated Referees to settle such Dispute.

and the said Justice shall thereupon appoint a Place of Meeting according to the Directions of this Act, and also a Day for the Meeting, Notice of which Nomination, and of the Time of Meeting shall thereupon be given to the Persons so nominated Referees, and to any Party to any such Dispute who may not have attended the Meeting before such Justice as aforesaid, which Appointment shall be by such Justice certified in the Form following: that is to say—

‘I, A.B., one of the Justices of the Peace acting for do hereby certify that C.D., and E.F., are by me duly nominated referees to settle the Matters in Difference between G.H., of Master Manufacturer or Agent, or foreman of, (as the case may be) and I.K., of , Weaver, pursuant to an Act passed in the forty-third Year of the Reign by his present Majesty: and that the said Referees are hereby directed to meet at on the day of at of the clock. A.B.’

II. Provided also, and be it enacted, That all Complaints by any Weaver as to bad Materials, shall be made within four Weeks of the receiving the same: and all Complaints arising from any other Cause shall be made within three Days after such Cause of Complaint shall arise, and that it shall not be allowable to any Manufacturer who shall have received into his Possession any Cotton Cloth without Objection made by himself or his Clerk or Foreman, afterwards to make any Complaint on account of Work so received.

(4. Party not attending shall lose, if complainant, benefit of the Act, and if complained of, his right of challenge.

5. Referees shall determine within three days or refer to a Justice of the Peace who shall determine within two days. . . .

13. Award enforced by fine, distress and imprisonment. . . .
 23. Disputes respecting ornamenting cotton goods with the needle may be referred in like manner.) . . .

53 Geo. III, c. 75. (*Ante*, p. 35)
 (Repealed 5 Geo. IV, c. 96, 1824)

AN Act for the better Regulation of the Cotton Trade in *Ireland*.
 (2nd July, 1813)

‘Whereas it is desirable that a cheap and summary Mode should be adopted for settling all Disputes which may arise between Masters and Weavers in the Cotton Manufacture, or between such Weavers and Persons employed by them, or between Masters and Persons engaged in ornamenting Cotton Goods by the Needle, in that part of the United Kingdom of *Great Britain* and *Ireland* called *Ireland*’:

May it therefore please your Majesty that it may be enacted;

And be it enacted by the King’s Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same,

That from and after the passing of this Act, in all Cases of Disputes between Master and Weavers in the Cotton Manufacture in *Ireland*, respecting work Done, or in the Course of being done in the said Manufacture, whether the subject of Dispute shall relate to bad Materials, or to any Injury or Damage done or alleged to have been done the Work,

or any Delay or supposed Delay in finishing the Work or the not finishing the Work in a Good and Workmanlike manner,

or the Length, Breadth or Quality of any Pieces of Cotton Goods, either mixed or unmixed with other Materials, or the Yarn thereof, or of the Quantity or Quality of the Wool thereof,

or the Compensation for working any new Pattern requiring the Purchase of new, or the alteration of old Implements of Manufacture,

or any other matter connected with the Cotton Manufacture in *Ireland*,

It shall and may be lawful for any Justice of the Peace of the County, Barony, City, Liberty, Town or Place, in which the

Dispute shall arise, and he is hereby authorised and required on Complaint made before him, and Proof by Examination of the Party Complaining,

That Application has been made to the Person or Persons against whom such Cause of Complaint has arisen, or his, her or their Agent or Agents to settle such Dispute and that the same has not been settled upon such Application being made:

or where the Dispute shall relate to a bad Warp, that such Cause of Complaint had not been done away within Twenty four Hours after such Application,

To summon before him the Person or Persons complained against or his, her or their Agent or Agents on some day not exceeding Six Days, exclusive of *Sunday*, from the making such Complaint, and to give Notice to the Party complaining of the time and Place appointed in such Summons for the Attendance of the Person or Persons complained against, or his, her or their Agent or Agents as aforesaid:

And if at such time and Place the Person or Persons so summoned shall not appear by himself, herself or themselves, or some Person or Persons on his, her or their Behalf, and do away such Cause of Complaint, then in such case it shall be lawful for such Justice, and he is hereby authorized and required, at the request of either of the Parties, to nominate Referees for the settling the Matters in Dispute:

To which End such Justice shall then and there propose, on the Part and Behalf of the Master, one Referee, who shall be a Master Manufacturer, or Agent or Foreman of some Master Manufacturer resident in the Neighbourhood:

But where no such Master Manufacturer, Agent or Foreman can be found, then some Workman resident as aforesaid, and having a competent Knowledge of the Manufacture:

And the said Justice shall likewise then and there propose, on the Part and Behalf of the Weaver, another Referee, who shall be some Workman resident in the Neighbourhood, and having a competent Knowledge of the Manufacture:

And it shall be lawful for either of the Parties in Dispute peremptorily, and without assigning any reason, to challenge any Referee so proposed;

And the Justice shall in such case immediately propose

another Person, of the like Description as aforesaid, in lieu of the Person challenged:

Which Person so proposed as last mentioned, may also be peremptorily challenged, and so *toties quoties*, until each of the Parties shall have had Two peremptory Challenges, without assigning any Cause:

After which the Justice shall immediately propose two other Persons of the like Description as aforesaid to be Referees:

And the Persons so proposed as aforesaid and not challenged, or the Persons proposed, in the Event of all the Challenges hereby allowed having been made, shall be nominated Referees to settle such Dispute:

And the Justice shall thereupon appoint a Place of Meeting, according to the Directions of this Act, and also a Day for the Meeting, Notice of which Nomination, and of the Time and Place of Meeting shall thereupon be given to the Persons so nominated Referees, and to any Party to the Dispute who may not have attended the Meeting before such Justice as aforesaid:

And the Justice shall certify the Nomination and Appointment in the Form for that Purpose set forth in the Schedule to this Act, or in some other Form to the like Effect.

II. Provided always, and be it further enacted, That all Complaints by any Weaver, as to bad Materials, shall be made within Four Weeks after his receiving the same:

And that all other Complaints shall be made within Three days after the Cause of Complaint shall arise:

And that it shall not be allowable to any Master, who shall have received into his Possession any Cotton Cloth, without Objection made by himself or his Clerk or Foreman, afterwards to make any Complaint on account of Work so received.

(3. Person not attending to lose Benefit of Act: and if complained of his Right to Challenge. . . .

5. Referees shall determine within Three Days or refer to a Justice who shall determine within Two Days afterwards. . . .

7. Justice on Refusal of Referees to act, may name others. . . .

9. Where Parties agree, Justice may extend period limited for award. . . .

15. Obedience to Award enforced: Imprisonment. . . .

23. Disputes between Weavers and Persons employed by them,

or between Masters and Persons engaged in ornamenting Cotton Goods with Needle, may be referred in like manner *mutatis mutandis*.) . . .

XXVI. Provided also, and be it enacted, That nothing in this Act contained shall extend or be construed to extend or give to any Justice of the Peace power or Authority to regulate or prescribe the Rate of Wages for Work.

5 Geo. IV, c. 96. (*Ante*, p. 46)

(Repealed 59 & 60 Vict., c. 30, s. 7, 1896)

AN Act to consolidate and amend the Laws relative to the Arbitration of Disputes between Masters and Workmen.

(21st June, 1824)

‘Whereas it is expedient that the Laws relative to the Arbitration of Disputes between Masters and Workmen should be consolidated and amended, and one General Law made applicable to every Description of Trade and Manufacture’: . . .

II. And be it further enacted, That the following Subjects of Dispute arising between Masters and Workmen or between Workmen and those employed by them, in any Trade or Manufacture in any part of the United Kingdom of *Great Britain and Ireland*, may be settled and adjusted in Manner hereafter mentioned: That is to say,

Disagreements respecting the Price to be paid for Work done, or in the Course of being done, whether such Disputes shall happen or arise between them respecting the Payment of Wages as agreed upon, or the Hours of Work as agreed upon, or any injury or damage done or alleged to have been done to the Work, or respecting any Delay or supposed Delay in finishing the Work, or the not finishing the work in a good and workmanlike Manner, or according to any Contract, or to bad Materials:

Cases where the Workmen are to be employed to work any new Pattern which shall require them to purchase any new Implements of Manufacture, or to make any Alteration upon the old Implements for the working thereof, and the Masters and Workmen cannot agree upon the Compensation to be made to such Workmen for and in respect thereof:

Disputes respecting the Length, Breadth or Quality of Pieces

of Goods, or, in the case of Cotton Manufacture, the Yarn thereof, or the Quantity and Quality of the Wool thereof:

Disputes respecting the Wages or Compensation to be paid for Pieces of Goods that are made of any great or extraordinary Length:

Disputes in the Cotton Manufacture respecting the Manufacture of Cravats, Shawls, Policat, Romal and other Handkerchiefs, and the Number to be contained in one Piece of such Handkerchiefs:

Disputes arising out of, for or touching the particular Trade or Manufacture or Contracts relative thereto, which cannot be otherwise mutually adjusted and settled:

Disputes between Masters and Persons engaged in sizing or ornamenting Goods:

But nothing in this Act contained shall authorise any Justice or Justices acting as hereinafter mentioned to establish a Rate of Wages or Price of Labour or Workmanship at which the Workmen shall in future be paid, unless with the Mutual Consent of both Master and Workman:

Provided always, that all Complaints by any Workman as to bad Materials shall be made within Three Weeks of his receiving the same:

And all Complaints arising from any other Cause shall be made within Six Days after such Cause of Complaint shall arise.

(In 1837 the period was extended to fourteen days, six days having 'been found too short' (7 Will. IV & 1 Vict., c. 67, s. 1).)

III. And be it further enacted, That whenever such Subjects of Dispute shall arise as aforesaid, it shall be lawful for the Master and Workman or either of them, to demand and have an Arbitration or Reference thereof in Manner following; that is to say,

Where the Party complaining and the Party complained of shall come before or agree by Writing under their Hands to abide by the Determination of any Justice of the Peace or Magistrate of any County, Riding, Division, Stewartry, Barony, City, Burgh, Town or Place, *within which the Parties reside* ['where the party complained against resides' substituted 7 Will. IV & 1 Vict., c. 67, s. 2], it shall and may be lawful for such Justice of the Peace or Magistrate to hear and finally determine,

in a summary Manner, the Matter in Dispute between such Parties:

But if such Parties shall not come before or so agree to abide by the Determination of such Justice of the Peace or Magistrate, then it shall be lawful for any such Justice or Magistrate, and such Justice of the Peace or Magistrate is hereby required, on Complaint made before him, and Proof by the Examination of the Party making such Complaint, that application has been made to the Person or Persons against whom such Cause of Complaint has arisen, or his, her or their Agent or Agents, if such Dispute has arisen with such Agent or Agents, to settle such Dispute, and that the same has not been settled upon such Complaint being made, or where the Dispute relates to bad Work, that such Cause of Complaint has not been done away with within Forty-eight Hours after such Application,

To summon before him such Person or Persons or Agent or Agents, on some Day not exceeding Three days, exclusive of *Sunday*, after the making such Complaint, giving Notice to the Person making such Complaint of the Time and Place appointed in such Summons for the Attendance of such Person or Persons, Agent or Agents as aforesaid;

And if at such Time and Place the Person or Persons so summoned shall not appear by himself, herself or themselves, or send some Person on his, her or their behalf to settle such Dispute, or appearing, shall not do away such cause of Complaint, then and in such case it shall be lawful for such Justice, and he is hereby required at the Request of either of such Parties, to nominate Arbitrators or Referees for settling the Matters in Dispute;

And such Justice shall then and there at such Meeting propose not less than Four nor more than Six Persons, one Half of whom shall be Master Manufacturers, or Agents or Foremen of some Master Manufacturer, and the other Half of whom shall be Workmen in such Manufacture;

Such respective Persons residing in or near to the Place where such Disputes shall have arisen;

Out of which Master Manufacturers, Agents or Foremen, the Master engaged in such Dispute, or his Agent, shall choose One, and out of which Workmen so proposed, the Workman or his

Agent shall choose another, who shall have full power to hear and finally determine such Dispute.

IV. And be it further enacted, That in case any or either of the Persons so proposed by any such Justice shall refuse or delay to accept such Arbitration, or accepting shall not act therein within Two Days after such Nomination, the Justice shall proceed to name another or other Persons of the Descriptions aforesaid, in the Room of the Person so refusing as aforesaid to be Arbitrator or Arbitrators in the Place of any such Arbitrator or Arbitrators so refusing or delaying to accept, or who shall not act:

And in every Case of a Second Nomination the Arbitrators shall meet within Twenty-four Hours after the Application for the same, and at the same Place at which the Meeting of the Referees first named was appointed, or at some other convenient Place as the Justice may appoint;

And the Expense of every such Application for the Appointment of a Second Referee shall be borne and defrayed by the Party through whose Default or the Default of whose Referee, such Application is rendered necessary:

And the Justice making such Second Appointment shall certify the same in the Form for that Purpose hereafter set forth, or in some other Form to the like Effect;

And in every Case where a Second Arbitrator shall be appointed as aforesaid, and such Second Arbitrator shall not attend at the same Time and Place appointed for settling the matters in Dispute, it shall be lawful for the other Arbitrator, at such Time and Place, to proceed by himself to the hearing and determining of the same matters in dispute:

And in such Case the award of such Sole Arbitrator shall be final and conclusive as to all Matters in Dispute submitted to such Arbitrator, without being subject to Review, Appeal or Suspension.

(8. Evidence to be on oath.

9. Refractory witnesses liable to arrest and imprisonment.)

13. Provided always, and be it further enacted, That as well in all such Cases of Dispute as aforesaid as in all other Cases, if the Parties mutually agree that the Matter in Dispute shall be arbitrated and determined in a different Mode to the One hereby prescribed, such Agreement shall be valid and the Award and

Determination thereon final and conclusive between the Parties, and the same Proceedings of Distress, Sale and Imprisonment, as hereinafter mentioned, shall be had towards enforcing such Award, (by application to any Justice of the Peace of the County, Stewarty, Riding, Division, Barony, City, Town, Burgh, or Place within which the Parties shall reside) as are by this Act prescribed for enforcing Awards made under and by virtue of its Provisions.

(21. Time for making Award may be extended.

24. Award may be enforced by Distress and failing that the Party refusing shall be imprisoned.

31. Costs and expenses to be settled by the Arbitrators, whom failing by the Justice of the Peace, but no Master, Manufacturer, his Foreman or Agent to be allowed for costs, time or expenses by the Justice, unless the proceedings were vexatious and oppressive.)

Note. This Act applied to England, Scotland, and Ireland.

Lord St. Leonards' Act

The Councils of Conciliation Act, 1867

(30 & 31 Vict., c. 105) (*Ante*, p. 77)

(Repealed 59 & 60 Vict., c. 30, s. 7, 1896)

AN Act to establish Equitable Councils of Conciliation to adjust Differences between Masters and Workmen.

(15th August, 1867)

‘Whereas an Act was passed in the Fifth Year of the Reign of King George the Fourth, intituled *An Act to Consolidate and Amend the Laws relative to Arbitration of Disputes between Masters and Men*; and another Act was passed in the First Year of the Reign of Her present Majesty Queen Victoria, Chapter sixty-seven; and another Act was passed in the Eighth and Ninth Years of the Reign of Her present Majesty, Chapter seventy-seven; and another Act was passed in the Eighth and Ninth Years of the Reign of Her present Majesty, Chapter one hundred and twenty-eight, and the Three last-mentioned Acts were passed to amend the said first-recited Act;

And Whereas, in order the better to facilitate the Settlement

of Disputes between Masters and Workmen, it is expedient, without repealing the said several Acts, that Masters and Workmen should be enabled, when licensed by Her Majesty, to form Equitable Councils of Conciliation or Arbitration, and that the Powers in the said Acts contained for enforcing Awards made under and by virtue of the Provisions thereof should be extended to the enforcing of Awards to be made by and under the Authority of such Equitable Councils of Conciliation':

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

1. If any Number of Masters and Workmen, in any particular Trade or Trades, Occupation or Employment, being inhabitant Householders or Part Occupiers of any House, Warehouse, Counting-house, or other Property within any City, Borough, Town, Stewartry, Riding, Division, Barony, Liberty or other Place, and who, being a Master in such Trade, shall have resided and carried on the same within any such Place for Six Calendar Months previous to the signing of such Petition, and being a Workman shall have resided for a like Period within any such Place, and shall have worked at his Trade or Calling for Seven years previous to the signing of such Petition, shall at a Meeting specially convened for that Purpose agree to form a Council of Conciliation and Arbitration, and shall jointly petition Her Majesty to grant them a license to form such a Council, to hold, have, and exercise all the Powers granted to Arbitrators and Referees under the before-recited Acts, and in such Petition for the same shall set forth the Number of the Council, and also the Names, Occupation, and Residence of the Petitioners, and the Manner in which the Expenses of the said Council and of the Registry hereinafter directed are to be provided for, it shall then be lawful for Her Majesty, or Her Majesty's Principal Secretary of State for the Home Department, to grant such Licence, provided Notice of such Petition has been published One Month before the Application for such Licence in the *London Gazette*, and in One or more of the local Newspapers of the Place wherein such Petition emanates: Provided always, that it shall be lawful for any Masters and Workmen in any particular Trade or Trades,

Occupation or Employment as aforesaid, within the Limits of the Application of the Metropolitan Local Management Act, or within any two or more Boroughs or Districts of the Metropolis, to associate themselves for the purposes of this Act, and with such License as aforesaid to form Councils as aforesaid, as if they resided within one Borough or District.

(2. Councils to consist of not less than two nor more than ten Masters and Workmen and a Chairman.

3. Petitioners for Council to elect the first Council.)

4. The Council shall have Power to appoint their own Chairman, Clerk or such other officer or officers as they may deem requisite, and shall have Power to hear and determine all Questions of Dispute and Difference between Masters and Workmen, as set forth in the said before-recited Act of the Fifth Year of King George the Fourth, Chapter ninety-six, which may be submitted to them by both Parties, and shall have, hold and exercise all the Powers and Authority granted to Arbitrators and Referees by and under the various Enactments and Provisions of the Acts before recited; And any Award the said Equitable Councils of Conciliation and Arbitration may make in any case of Dispute or Difference submitted to them under the before-recited Act or Acts, or under this Act, shall be final and conclusive between the Parties to such Arbitration, without being subject to Review or Challenge by any Court or Authority whatsoever; and the said Council are hereby further authorised to adjudicate upon and determine any other case of Dispute or Difference submitted to them by the mutual Consent of Master and Workmen or Masters and Workmen, and the same Proceedings of Distress, Sale and Imprisonment as are provided by the said-recited Acts or any of them shall be had towards enforcing every such Award (by application to any Justice of the Peace of the County, Stewartry, Riding, Division, Barony, City, Town, Burgh or Place within which the Parties shall reside) as are by the said recited Acts or any of them prescribed for enforcing Awards made under or by virtue of the Provisions of them or any of them, and any Award in writing under the Hand of the Chairman of the Council shall be deemed sufficient evidence of the validity of such Award to authorise such proceedings of Distress, Sale and Imprisonment; but nothing in this Act contained shall authorise the said

Council to establish a Rate of Wages or Price of Labour or Workmanship at which the workman shall in future be paid.

5. A Quorum of not less than three (One being a Master and another a Workman, and the Third the Chairman,) may constitute a Council for the hearing and Adjudication of Cases of Dispute, and may accordingly make their Award:

But a Committee of Council to be denominated the Committee of Conciliation, shall be appointed by the Council, consisting of one Master and one Workman, who shall sit at such Times as shall be appointed, and be renewed from Time to Time as Occupation shall require:

And all Cases or Questions of Dispute which shall be submitted to the Council by both Parties shall in the first instance be referred to the said Committee of Conciliation, who shall endeavour to reconcile the Parties at difference:

When such reconciliation shall not be effected, the matter in Dispute shall be remitted to the Council, to be disposed of as a contested matter in the regular course.

(8. Council to be elected for one year on November 1 in each year, with provision for casual vacancies.

9. Householders and Part occupiers may demand to be registered and have a vote for the Council and may be elected thereto.

10. Register of voters to be kept.

11. Meetings of Masters and Workmen to elect the Council.

12. When Poll demanded.)

Mundella's Act

The Arbitration (Masters and Workmen) Act, 1872

(35 & 36 Vict., c. 46) (*Ante*, p. 87)

(Repealed 59 & 60 Vict., c. 30, s. 7, 1896)

AN Act to make further provision for Arbitration between Masters and Workmen. (6th August, 1872)

Whereas by the Act of the fifth Year of George the fourth, Chapter ninety-six, intituled 'An Act to consolidate and amend the laws relative to the Arbitration of disputes between masters and workmen' hereinafter referred to as the 'principal Act', provision is made for the arbitration in a mode therein provided of certain disputes between masters and workmen:

And whereas it is expedient to make further provision for arbitration between masters and workmen:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled and by the Authority of the same, as follows:

1. The following provisions shall have effect with reference to agreements under this Act:

- (1) An agreement under this Act shall either designate some board, council, person or persons as arbitrators or arbitrator, or define the time and manner of appointment of arbitrators or of an arbitrator; and shall designate, by name or by description of office or otherwise, some person to be or some person or persons (other than the arbitrators or arbitrator) to appoint an umpire in case of disagreement between arbitrators:
- (2) A master and workman shall become mutually bound by an agreement under this Act (hereinafter referred to as 'the Agreement') upon the master or his agent giving to the workman and the workman accepting a printed copy of the agreement.

Provided that a workman may within 48 hours after delivery to him of the Agreement, give notice to the master or his agent, that he will not be bound by the agreement, and thereupon the agreement shall be of no effect as between such workmen and the master.

((4) The Agreement may provide *inter alia* for matters in difference being referred to arbitration.

(8) The Agreement shall be deemed to be an Agreement within Sect. 13 of the Principal Act (that is, the Act of 1824.)

The Conciliation Act, 1896

(59 & 60 Vict., c. 30)

(*Ante*, p. 107)

AN Act to make better Provision for the Prevention and Settlement of Trade Disputes. (7th August, 1896)

2. (1) Where a difference exists or is apprehended between an

employer or any class of employers, and workmen, or between different classes of workmen, the board of trade may, if they think fit, exercise all or any of the following powers, namely:

- (a) inquire into the causes and circumstances of the difference;
- (b) take such steps as to the board may seem expedient for the purpose of enabling the parties to the difference to meet together, by themselves or their representatives, under the presidency of a chairman mutually agreed upon or nominated by the board of trade, with a view to the amicable settlement of the difference;
- (c) on the application of employers or workmen interested, and after taking into consideration the existence and adequacy of means available for conciliation in the district or trade and the circumstances of the case, appoint a person or persons to act as conciliator or as a board of conciliation;
- (d) on the application of both parties to the difference, appoint an arbitrator.

(2) If any person is so appointed to act as conciliator, he shall inquire into the causes and circumstances of the difference by communication with the parties, and otherwise shall endeavour to bring about a settlement of the difference, and shall report his proceedings to the board of trade.

(3) If a settlement of the difference is effected either by conciliation or by arbitration, a memorandum of the terms thereof shall be drawn up and signed by the parties or their representatives, and a copy thereof shall be delivered to and be kept by the board of trade.

(3. Exclusion of Arbitration Act, 1889.)

4. If it appears to the board of trade that in any district or trade adequate means do not exist for having disputes submitted to a conciliation board for the district or trade, they may appoint any person or persons to inquire into the conditions of the district or trade, and to confer with the employers and employed, and, if the board of trade think fit, with any local authority or body, as to the expediency of establishing a conciliation board for the district or trade.

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The Industrial Courts Act, 1919

(9 & 10 Geo. V, c. 69)

(Ante, p. 172)

AN Act to provide for the establishment of an Industrial Court and Courts of Inquiry in connection with Trade Disputes, and to make other provision for the settlement of such disputes, and to continue for a limited period certain of the provisions of the Wages (Temporary Regulation) Act, 1918.

(20th November, 1919)

PART I

Industrial Courts.

1. *Constitution of Industrial Court.* (1) For the purpose of the settlement of trade disputes in manner provided by this Act, there shall be a standing Industrial Court, consisting of persons to be appointed by the Minister of Labour (in this Act referred to as 'the Minister') of whom some shall be independent persons, some shall be persons representing employers, and some shall be persons representing workmen, and in addition one or more women.

(2) A member of the Industrial Court shall hold office for such term as may be fixed by the Minister at the time of his appointment.

(3) For the purpose of dealing with any matter which may be referred to it, the Court shall be constituted of such of the members of the Court as the president may direct.

(4) The president of the Court, and the chairman of any division of the Court, shall be such person, being one of the independent persons aforesaid, as the Minister may by order, given either generally or specially, direct.

2. *Reference of disputes to Industrial Court or to arbitration.*

(1) Any trade dispute as defined by this Act, whether existing or apprehended, may be reported to the Minister by or on behalf of either parties to the dispute, and the Minister shall thereupon take the matter into his consideration and take such steps as seem to him expedient for promoting a settlement thereof.

(2) Where a trade dispute exists or is apprehended, the

Minister may, subject as hereinafter provided, if he thinks fit and if both parties consent, either—

(a) refer the matter for settlement to the Industrial Court; or

(b) refer the matter for settlement to the arbitration of one or more persons appointed by him; or

(c) refer the matter for settlement to a board of arbitration consisting of one or more persons nominated by or on behalf of the employers concerned and an equal number of persons nominated by or on behalf of the workmen concerned, and an independent chairman nominated by the Minister, and, for the purpose of facilitating the nomination of persons to act as members of a board of arbitration, the Minister of Labour shall constitute panels of persons appearing to him suitable so to act, and women shall be included in the panels.

(3) The Minister may refer to the Industrial Court for advice any matter relating to or arising out of a trade dispute, or trade disputes in general or trade disputes of any class, or any other matter which in his opinion ought to be so referred.

(4) If there are existing in any trade or industry any arrangements for settlement by conciliation or arbitration of disputes in such trade or industry or any branch thereof, made in pursuance of an agreement between organisations of employers and organisations of workmen representative respectively of substantial proportions of the employers and workmen engaged in that trade or industry, the Minister shall not, unless with the consent of both parties to the dispute, and unless and until there has been a failure to obtain a settlement by reason of those arrangements, refer the matter for settlement or advice in accordance with the foregoing provisions of this section.

(3. Procedure of Industrial Court and on arbitrations. Arbitration Act, 1889, not to apply to references to Industrial Court or to references to arbitration under this Act.)

PART II

Courts of Inquiry.

PART III

Continuance of certain Provisions of Wages (Temporary Regulations) Act, 1918.

PART IV

General.

8. *Definition of 'Trade Dispute'.* For the purpose of this Act: The expression 'trade dispute' means any dispute or difference between employers and workmen, or between workmen and workmen connected with employment or non-employment, or the terms of the employment or with the conditions of labour of any person:

The expression 'workman' means any person who has entered into or works under a contract with an employer whether the contract be by way of manual labour, clerical work, or otherwise, be expressed or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour. . . .

11. *Provision in case of trade disputes in the industry of Agriculture.* In case of a trade dispute in the industry of agriculture, steps to be taken under this Act by the Minister of Labour shall be taken in conjunction with the Board of Agriculture and Fisheries.

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