George Sutherland Speech to the

Senate of the United States

Workers Compensation

1912

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SENATOR SUTHERLAND:- Mr. Chairman, ladies and gentlemen: I feel some embarrassement in undertaking to discuss this subject before you this morning because it is so big a subject that it cannot be covered in the course of a brief talk. I shall be able to refer only to a few of the salient features of this kind of legislation.

I am one of those who have no sort of patience with the modern pessimist who insists that the world - and particularly this part of it- is growing a little worse all the time. I do not believe it. I think the world is getting better. We are doing more for humanity all the time. In the several States of late years we have been building more hospitals for the sick, more homes for the aged, more free schools for the children, more asylums for the insane. We have been passing more laws limiting the hours of labor, providing for safety devices in order to protect their lives and limbs than has ever been done before in the history of the world. I am therefore one of those who believe that, while the millenium may be long delayed and may never come upon this earth, we are getting a little nearer to it all the time.

And following this world movement in the direction of doing better for one another is the tendency, marked not only in this country, but to a greater extent in foreign countries, of compensating working men and women who have been injured in the course of their employment.

The United States has lagged far behind every other country in

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the world in this respect. Twenty-five years ago or more the German people saw the necessity of legislation of this character and as a result their compensation act was adopted. Later along in England a law was enacted along somewhat different lines, but seeking the same end, and now in Europe with one or two exceptions every country has adopted legislation varying in detail, but all to the end of getting rid of the old system of employers' liability based upon negligence and putting in the place of it a compensation law based upon the fact of injury.

There has been during the last five or six years a marked increase of interest upon this subject among the various States of the Union. There have been, I think, not less than fifteen commissions at work in different States, and about two years ago Congress authorized the appointment of a Federal commission to investigate the subject. In the countries of Europe where these laws are in operation the working men apparently without exception have been satisfied with these compensation laws, and so far as I know have never demanded the return in any way to the old system. If the compensation law was not as good for the workingman in those countries as the employers' liability system we would naturally expect that womewhere wome workingman in these countries would have discovered it.

In the various States of the Union where commissions have been at work, after most thorough investigation these commissions have agreed that the compensation plan is better than the old liability plan. I think today there are ten States, perhaps more, where laws of this character have been adopted, and it is a remarkable fact that in the consideration of our Federal compensation law the

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objections which have come to this method from working men have not been from the States where these investigations have been carried on or laws adopted, but from the States where no investigation of the subject has been had. Most of the objections are from Texas, Georgia, North Carolina and Tennessee, and in no one of these States has the subject been investigated. Wherever compensation laws have been adopted and wherever commissions have been at work, with rare exceptions, the railroad employees have declared themselves in favor of the compensation system.

If it be true that the proof of the pudding is in the eating, this would seem to be a rather significant fact in support of this sort of legislation. The doctrine of the common law that the employer could not be held liable for an accident to an employee unless the employer was guilty of negligence, and in addition to that the employee could not recover, notwithstanding the negligence of the employer, if the employee himself was guilty of negligence. In addition to this doctrine of contributory negligence there was also the doctrine of assumption of risk and the fellow servant doctrine, which I need not now take up the time to discuss.

These doctrines to which I have called attention were not the result of any statutory declaration, but were adopted by the courts to conform to what they believed to be in accordance with public policy. At the time they were adopted they were measurably just because the industrial conditions were of the simplest possible character. The master employed perhaps a dozen or twenty men. The conditions surrounding the employment and appliances used, and the work performed were all of a simple character. The power used was of a primitive

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character, such as horse power or water power. Under these conditions if an employee sustained an injury it was usually due to somebody's want of care, because if the work was pursued in the normal way with ordinary care accidents could not generally happen, but under modern conditions, where not only the relation of employer and employee has radically changed, but the character of the work has become sometimes of a highly technical character, where complicated machinery has supplanted the primitive forms of power, where instead of a dozen or twenty men thousands and sometimes tens of thousands of men are employed by the same employer, these doctrines of the common law have become obsolete and no longer comport with justice.

The doctrine of assumption of risk, the contributory negligence and fellow servant doctrines have all been outgrown. Under the common law conditions the men were brought into direct contact with one another, their habits and characteristics were mutually understood, each knew whether or not his fellow with whom he worked was careful or the reverse. Upon some of the great railroad lines of the country tens of thousands of men are employed. These men are not brought into contact with one another, they know nothing about each other's characteristics, their names even are not known to one another. The engineer in his cab knows nothing about the man who works upon the section, and the section hand knows nothing about the man in the operating department. Work is carried on often at high pressure. It must often be done without opportunity for deliberation as to the choice of means, and under these conditions what sometimes appears to be the result of negligence is nothing more than the result of performing the work at high pressure and in a more or less automatic fashion.

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Take an illustration, and you men familiar with the technical work in which you are engaged will understand the force of it. Here is a man employed in the factory upon machinery. This machine is kept in motion, and sometimes in very rapid motion, by power furnished from some central point. The man who manipulates the machine is removed from the man who regulates the power. The employee at the machine turns the power off or on by a motion of his foot upon a treadle. He is engaged, we will say, in feeding material into the machine so that his hands and feet are both employed. As a beginner, every motion which this man makes is more or less a conscious motion. Every motion of his foot, every motion of his hands, every motion of his eyes and his head in his work is a separate and distinct motion, separately directed and noted by his brain, just as in the beginning when you learn to play upon the piano,-if any of you did, I did n't,- you looked at the music and were told that a certain mark meant that you were to touch a certain key. You translated each of these marks with your brain and directed your finger to fall upon the particular key indicated, but after a while you did all of this unconsciously. You learned to play the score upon the piano and to carry on a conversation with some one at the same time.

This is also the case with a man engaged in operating a machine. After a while all his motions become automatic and after he has gone through a series of motions he could not have told you what he had done. Instead of his brain,as in the beginning, directing each separate motion with conscious effort, his brain simply directs a series of motions. While he is at work let us suppose that something intrudes from the outside which has the effect of disarranging his work. Impulsively and without stopping to think about it he reaches forward to arrange the dis-

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turbed work and his hands come into contact with the machine and he is maimed. The judge or the jury sitting in cold blood inquire why did not the man take his foot off the control before he put his hand into the machine. They find that he was guilty of negligence, and yet, in truth, the man was no more responsible for putting his hands into the machine while his foot was on the treadle than the machine was for continuing in motion. His brain had simply directed the whole series of motions and when the intruding circumstance came from the outside his impulsive act in reaching forward and at the same time continuing the machine in operation was wholly and purely automatic.

Now, if I had time I might go on at greater length, but I simply give this as an illustration showing how in the industrial operations of today these rules of the common law are no longer applicable. The question then arises, how are we to remedy this condition? So long as you leave in your law the element of negligence, just so long the vast number of injured employees must continue to bear the sole burden, and just so long a vast proportion of the families of the men who are killed must go without compensation.

A man who has his leg cut off in the railroad service, or any other service, as a result of a pure accident or of his own lack of care, is just as badly injured and just as much in need of help as the man who has had his leg cut off as the result of the neglect of his employer. The time has come when the element of negligence ought to have nothing to do with the compensation of the injured employee. Under modern industrial conditions the doctrine of chance has practically stepped out of the problem and the law of averages has stepped in as the controlling circumstance. We know that out of a certain number of employees engaged in

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the railroad service every year a definite proportion of them will be injured and another definite proportion of them killed. It is this law of averages which lies at the basis of all our statistics. It is what constitutes the value of all statistics and enables us from a consideration of them to determine with exactness what will happen in the future.

Let me illustrate what I mean. If you go in the Washington post office, or the post office in any other great metropolitan city, you will find that a certain definite proportion of all the letters which are mailed in the course of the year have no stamp attached or have no address upon them. Now, if I mail such a letter, so far as I am concerned, it is a matter of chance, but when you cover the whole business of the office the total proportionate number unaddressed and unstamped falls under the law of averages. And so it is with practically everything else. A single happening is the result of chance, but when you increase the number of such happenings to a sufficient extent you bring them under the law of averages.

Now, in the railroad service there are employed in this country something like 1,700,000 men. We know from past experience that in the future as in the past out of this total number of employees about 4000 of them will be killed each year. We know that about 200 will lose both legs, that about a certain other number will lose both arms, both eyes, one arm, and so on. We also know that a definite proportion of those injuries will be due to the negligence of the employer, another definite proportion to the man's own carelessness, and still another will be due to unavoidable accident. These statistics have been gathered with great care and they have shown year after year that with very little change approximately one-half of all accidents have been due to the ordinary risks of the industry, and under the existing system of law these injuries must go unrecompensed.

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A vast sum of money is expended in the way of damages for accidental injuries and deaths, but the larger part of it is absolutely wasted. It does not go into the pockets of the employees. At least one-half of it is lost in the process of going from the treasury of the company to the pockets of the men in paying personal injury lawyers. The injured man is compelled to pay every expense, and what he gets he obtains only after long and trying litigation. Cases drag along in the courts for years and often the injured man at the end of the litigation, although he may obtain substantial damages, has become a nervous wreck.

It is sometimes claimed that employees simulate their injuries. We are told that sometimes an employee who has hobbled about on crutches for two or three years during the pendency of his litigation immediately after a judgment has thrown his crutches away and gone to work. Undoubtedly there are cases of imposition, but many of these cases are not impositions. We know that the mind has a tremendous effect upon the body. That when a man has been injured, particularly if it is an injury which affects his nervous system, so long as his case is continued he is depressed and he is unable to recover his strength, but after a favorable verdict his mind becomes free from worry and he immediately begins to get well.

Everybody has had experience of this character. I have sometimes tried a case lasting many days or weeks. I have lived that case so long as I was trying it, thought about it at my meals, worried about it in the night until I was almost ready to collapse, but when a favorable verdict has come in I have been immediately buoyed up, became my normal self again and ready to take up the next case. And so it often is with these men.

Now I must conclude. The compensation law will enable us to

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prevent many accidents because it will enable us to get at the truth respecting how the accidents happen. This law will compel the employer in every case to pay a certain definite sum of money to the employee, and compel the employee to receive this definite sum irrespective of the question of negligence. You therefore will have taken away from both of them the incentive to falsify, the one to minimize his own negligence, the other to exaggerate it in order to obtain a favorable verdict. When we are able to get the truth as to how these accidents happen we will be able to apply the remedy with greater certainty, so that the law is not only just in providing compensation to all injured employees as one of the legitimate expenses of the industry, but what is perhaps still more important, it will tend greatly to reduce the number of accidents and consequently the aggregate of human suffering.

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