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BRITISH LAW REGULATING THE TERMINATION OF LABOR CONTRACTS

G. T. SCHWENNING*

Modern labor legislation includes provisions designed to protect workers against the hazard of arbitrary and abrupt discharge. It is sought to stabilize employment contracts for workers by special laws that limit the employers' freedom of discharging employees at will. Legislation of this type is based on two fundamental premises: (1) that the worker has an equity in his job and that compensation is due him if he is discharged without just cause, and (2) that the practice of indiscriminate discharging works too great a hardship upon the working population and should be inhibited. Dismissal legislation is thus a step toward the humanization of labor relations in industry.

A vast number of laws have been enacted in approximately fifty countries with a view to dealing with this aspect of the labor problem.¹ Under these statutes employers are required to give their employees certain advance notice of the termination of the labor contract or to pay them an indemnity in lieu of notice. The length of the time notice ranges in various countries for different categories of workers from six days to two years, while the dismissal compensation varies in amounts from one week's to two years' regular earnings. At times discharged employees may also claim damages for injury, and may claim traveling expenses if the loss of employment necessitates a change in residence. In a number of countries employees who have been notified that their services would not be required after a certain date may absent themselves on company time for specified periods of the day or week in order to seek another situation.

Under this state labor policy workers are entitled to compensation for the loss of employment resulting from a surprisingly wide variety of causes. While there is no uniformity in the legal pro-

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¹ For a discussion of the provisions of such laws in seventeen countries see G. T. Schwenning, *The Worker's Legal Right to His Job*, AMERICAN FEDERATIONIST, January, 1932; *Protection of Employees Against Abrupt Discharge*, (1932) 30 MICH. L. REV. 666; *Dismissal Legislation*, AMERICAN ECONOMIC REVIEW, June, 1932.

visions of the several countries that have passed such laws, taken together existing laws require that workers be given the stipulated advance notice or be paid compensation if they are dismissed for the following, among other, reasons: cessation of operations, introduction of labor-saving machinery, rationalization, management's dislike of the employee, unfitness of the employee for his job, participation in strike activities, union affiliation, a change in the ownership of the enterprise, bankruptcy of the undertaking, death of the employer, and even upon the regular expiration of the contract of service. Thus the employee's income is safeguarded to a considerable extent even if he loses his job, providing he is not discharged for punitive reasons. The laws even specify what constitutes justifiable cause for summary discharge.

With the exception of seven states² that have permissive dismissal wage laws on their statute books, laws dealing with this phase of labor relations are not in force in the United States, and our employers still enjoy and exercise absolute freedom in discharging personnel.³ Proposals for the enactment of effective legislation regulating the termination of labor contracts in the several states of the Union have been advanced for some time. In 1918, Professor Ross outlined the fundamental principles of such legislation and made a strong plea for its enactment.⁴ In the following year Royal Meeker, then U. S. Commissioner of Labor Statistics, stated in discussing industrial hazards: "In addition to unemployment insurance taxes or premiums, industry should be required to pay a 'dismissal wage' to employees discharged for no fault of their own."⁵

While nothing came of these proposals, the present unemploy-

² Inadequate laws that require employers to give equal notice or compensation if they require that workers notify the company before they quit or forfeit wages for the notice period are in force in Maine, Massachusetts, New Jersey, Pennsylvania, Rhode Island, South Carolina, and Wisconsin. A more effective law on the subject is also in effect in Porto Rico.

³ Certain forces have, of course, tended to modify this "sacred" right of American employers. Salaried employees under contract may not be let out without advance notice or compensation. In shops that accept collective bargaining, this right is conditioned by the respective trade union. Progress in personnel administration has tended to establish a policy under which employers voluntarily bind themselves to give advance notice of dismissal or to pay dismissal wages. Then under the National Recovery Act, 48 STAT. 195, 15 U. S. C. A. §701 *et. seq.* which imposes collective bargaining, workers may not be discharged for trade union affiliation or activity. Except for these minor restrictions, American employers are free to hire and fire workers at pleasure as in no other industrial country.

⁴ Ross, *A Legal Dismissal Wage*, MONTHLY LABOR REVIEW, March, 1919.

⁵ MONTHLY LABOR REVIEW, September, 1919, at 8.

ment crisis has revived interest in discharge indemnity legislation. A dismissal wage act has been drafted and presented through the press to the American people for consideration,⁶ and a dismissal wage bill to provide relief to Federal Government employees for the loss of employment was introduced in the House of Representatives on May 1, 1933 by Congressman Schulte of Indiana.⁷ However, no adequate law has been passed dealing with this problem, and American workers receive compensation for the loss of employment only in perhaps two hundred firms that have voluntarily inaugurated dismissal wage schemes.

Great Britain is generally omitted from the list of nations in which the manner of dismissing employees is regulated by statutory provisions, the assumption being that the matter is dealt with in that country as in the United States. Such a presentation of the situation is incorrect, for British employers are far from unhampered in their freedom to terminate labor contracts. It is the purpose of this paper to present the facts in the case and to show Great Britain's actual place in the whole dismissal legislation movement. It is hoped that this brief discussion of the nature of this form of labor legislation in foreign countries and its virtual absence in the United States will serve to make clear the British position.

DISMISSAL UNDER COMMON LAW⁸

Britain has enacted no specific statutes regulating the period of notice of dismissal for private employees and wage earners. This does not mean, however, that in practice no period of notice is observed and that workmen have no redress in the courts if they are discharged abruptly and unjustly. Generally speaking, the practice of giving dismissal notice or the payment of compensation in lieu of notice is regulated by custom, usage, or collective or individual contract. The duration of the contract of employment is determined by agreement, either individual or collective. It may be for any period—an hour, a day, a specific task, years, or even for the lifetime of the parties to the contract. Contracts of fixed duration are terminated like all agreements under contract law. If an employee is dismissed before the expiration of the time specified in the agreement, and if

⁶ Draper, *A State Dismissal Wage Act*, THE SURVEY, January 15, 1931.

⁷ H. R. REP. No. 5364, 73rd Cong., 1st Sess.

⁸ SMITH, A TREATISE ON THE LAW OF MASTER AND SERVANT (7th ed. by C. M. Knowles); BATT, THE LAW OF MASTER AND SERVANT.

he has not been discharged for cause, he has recourse to the law courts where he can sue for damages for breach of contract.

Very often, however, no provision is made as to the length of the agreement. Indeed, it is uncommon in England to engage domestic servants, clerks, craftsmen, and manual workers for definite periods or to set time limits on the duration of their service. All indefinite term contracts are terminable only upon giving advance notice. The matter of when notice can be given and what period of notice is necessary to terminate the engagement is determined by trade custom and the locality in which the agreement is concluded. In the case of employments in which no usage regarding dismissal notice exists, courts have ruled that reasonable notice is due to workers.

As a general rule, the length of the notice necessary to dissolve the employment relation is conditioned by the method of payment. Thus employees paid quarterly are entitled to three months' notice, those paid monthly to one month's, those paid weekly to a week's notice, while hourly rated workers can be dismissed on an hour's notice. Workmen on piece work and on commission can be discharged abruptly. It appears that the higher the position occupied by the worker and the larger his earnings, the longer the notice required to dispense with his services. Notice can be given at any time unless it is otherwise required by custom or by the terms of the agreement.

Under a custom long established and generally recognized, domestic and menial servants are always entitled to a month's notice of dismissal. Commercial travelers are by custom entitled to three month's notice, while agents and representatives in the woolen trade can be dismissed by giving one month's notice. Juries have ruled one month to be sufficient notice for ending the engagement of advertising agents, six months' notice for editors of daily newspapers, and one month's notice for regular contributors to newspapers. Clerks and bank clerks have been held in London courts to be entitled to three months' notice.

Workers may, however, be dismissed at any time without notice by paying the earnings due for the notice period customary in the trade, profession, or locality, and dismissal under such conditions is not regarded as being wrongful. Where a workman considers that he has been unjustly discharged, he can base his claim to damages not only on the actual wages lost but also on any other financial loss, such as tips, profit-sharing with the enterprise, the value of board

and lodgings, etc. In awarding damages, the jury will take all of these factors into consideration as well as the difficulty of securing new employment in the worker's calling at the time of discharge.

COURT AWARDS OF DISMISSAL COMPENSATION

Though the common law establishes no uniform principle for dealing with the problems of dismissal comparable to those found in the specific statutes enacted in most industrial nations, it does not leave the British workman wholly unprotected from the hazard of abrupt discharge. The following court cases, only a few of a very large number, have been selected to show that English workers may and do receive some legal protection against wrongful dismissal.

In the County of Surrey a farm bailiff was dismissed on a month's notice, his employer treating him as though he were a domestic servant. The bailiff brought an action for wrongful dismissal, and a local jury held that the plaintiff did not fall within the rule by which a domestic or menial servant may be discharged with a month's notice or a month's pay, and gave a verdict of a year's wages.⁹

Ottoman Bank v. Chakarian.¹⁰ One Chakarian, an Armenian Turkish subject, was employed in 1901 by a British bank at its branch office in Asia Minor. Chakarian was arrested in 1919 by Kemalist troops and sentenced to death but escaped to Smyrna after being rescued by the Greek army. In Smyrna he served his employers in a branch bank until 1922, when he was sent to the head office at Constantinople. Meanwhile, the Greek army had been driven out of Smyrna, and fearing that the death sentence would be executed by the Turks if his identity was discovered Chakarian repeatedly asked for a transfer outside of Turkey. His request was refused, and he fled to Athens for personal safety. Thereupon his employers discharged him without notice or compensation. He took his case to the Supreme Court of Cyprus, which decided in his favor and awarded him damages for wrongful dismissal. The bank appealed the judgment before the Privy Council but lost the case.

*Savage and Power v. British India Steam Navigation Company, Ltd.*¹¹ The chief officer of a passenger steamer, who had no written

⁹ Smith, *op. cit. supra* note 8, at 39.

¹⁰ INTERNATIONAL SURVEY OF LEGAL DECISIONS ON LABOUR LAW, 1930, at 14-15.

¹¹ *Ibid.*, pp. 15-16.

contract of service, was summarily dismissed by his employers for negligence. He claimed he had been wrongfully discharged and sued for damages. The King's Bench Division held that he was in fact wrongfully dismissed and awarded him damages in lieu of notice, which in this case was considered to be a period of twelve months.

Wilson v. Ucelli.¹² Action was brought by a tutor for a breach of contract to employ him as tutor to the defendant's son. He sued for six months' salary in lieu of dismissal notice and board and lodging for the period. The King's Bench Division held that the plaintiff had been wrongfully dismissed and awarded him three months' salary plus three pounds a week for board and lodging for the corresponding period.

*Hands v. Simpson Fawcett & Company, Ltd.*¹³ In this case a commercial traveler had an accident with his car which resulted in his driving license being suspended for three months. Upon being convicted in police court, his employers dismissed him from their service. He thereupon brought action against his employers for damages for wrongful dismissal. In awarding the plaintiff damages, the King's Bench Division held that the defendants were not justified in discharging the plaintiff without notice for such misconduct.

*Bell v. Lever Brothers, Ltd.*¹⁴ An interesting court case involving the payment of large sums of money in compensation for rescission of contracts of employment was that of *Bell v. Lever Brothers*, decided finally by the House of Lords in December, 1931. During the protracted trials of the case, it developed that Levers owned more than 99 per cent of the stock of Niger Company, Ltd., a firm with a paid-up capital of £4,750,000 and issues of debenture stock amounting to £5,500,000. The business of Niger was that of dealing in West African products, including cocoa, a product used by Levers. For several years prior to 1925 Niger had been suffering heavy losses which losses fell largely upon Levers.

To protect its interests Levers engaged two London business men, H. E. Bell and W. E. Snelling, to reorganize and manage Niger and look after their business interests in West Africa for a period of five years. In 1923, Bell became chairman of Niger at a salary of £8,000 a year and Snelling became vice-chairman at a salary of £6,000 per year. Under their joint management Niger and its subsidiaries pros-

¹² INTERNATIONAL SURVEY OF LEGAL DECISIONS ON LABOUR LAW, 1929, at 5-6.

¹³ INTERNATIONAL SURVEY OF LEGAL DECISIONS ON LABOUR LAW, 1928, at 7-8.

¹⁴ L. R. [1932] A. C. 161.

pered, and they were reappointed to their offices when their engagement lapsed after five years for a similar term and under similar conditions.

In 1929, Niger was merged with other companies engaged in the same line of business in West Africa and subsequently administered by officials of United Africa, Ltd. The amalgamation destroyed the offices held by Bell and Snelling and made it necessary for Levers to dispense with their services. To compensate them for the loss of their positions and to reward their meritorious services, Levers offered and paid them the sums of £30,000 and £20,000, respectively.

After the dismissal had been negotiated and the compensation had been paid, it was disclosed that Bell and Snelling had secretly engaged in cocoa speculation on their own behalf during 1928 while they were still managing the affairs of Niger. These speculations did, however, in no way damage either Niger or Levers. When this breach of conduct became known, Levers brought action to recover the £50,000 paid to Bell and Snelling as compensation for the rescission of contract, holding that if this misconduct had been known these officers would have been dismissed from their posts without notice or compensation.

In a judgment upon the trial of the action by a London special jury it was ordered that the agreements of the settlement should be set aside and that the money paid thereunder should be repaid to Levers. Bell and Snelling appealed the decision before the Court of Appeals, but the judgment of the lower court was affirmed. They then appealed to the House of Lords, the highest court of the land, which reversed the judgments of the lower courts holding that Bell and Snelling were lawfully entitled to retain the dismissal compensation they had received from Levers.

STATUTORY DISMISSAL COMPENSATION

It would be incorrect to conclude from the above summary of the common law of England that Great Britain has enacted no specific dismissal compensation legislation. On the contrary, laws dealing with this phase of personnel relations have been passed by Parliament periodically since 1859. These laws relate, however, not to private employees of industrial and commercial establishments in general but to special occupational groups, noticeably to state employees and civil servants and other workers who are deprived of employment through government action. From the following survey, it will be evident

that these statutes are of considerable importance not only because they apply to a very large number of people, actual or potential, but also because they establish the principle that state and government employees are entitled to indemnity when their posts are abolished by a government ruling or by an act of Parliament. This is of special interest in view of the fact that in the contemplation of British constitutional law state officials and servants are regarded as servants of the King who hold their offices only at the pleasure of the Crown and cannot, therefore, sue for wrongful dismissal.

CIVIL SERVANTS.¹⁵ The oldest government dismissal compensation law relates to British civil servants, who number more than 310,000. Under a non-contributory pension system established by a series of statutes known as the Superannuation Acts (1859, 1887, 1909, 1914), civil servants are entitled to partial pensions and dismissal gratuities when their offices are abolished. The existing scheme recognizes two classes of civil servants, established (or pensionable) and unestablished (or unpensionable). The scale of compensation differs for these two classes of civil servants, and different compensation scales prevail for men and women civil servants.

(1) *Established Civil Servants.* If a male civil servant is retired on the abolition of his office after he has completed ten years' service or more, he receives an annual pension of $1/80$ of his salary for each year of service, plus a lump sum, called an additional allowance, of $1/30$ of his salary for each year of service, subject to maxima of $40/80$ and $45/70$ respectively. If he is retired on the abolition of his office during the first ten years of service, his compensation for his loss is a gratuity of one month's salary for each year of service, and an additional allowance of $1/30$ of his salary for each year of service in cases of retirement after not less than two years' service. Women civil servants are paid an annual pension of $1/60$ of salary for each year of service, subject to a maximum of $40/60$, if retired for similar reasons after ten or more years' of service, and a gratuity of one month's salary for each year of service if dismissed during the first ten years of service.

(2) *Marriage Gratuities for Established Women Civil Servants.* Under two Treasury rulings of 1894 and 1895, female employees in all public departments are required to resign their posts upon marriage. They are, however, paid a marriage gratuity for the loss of

¹⁵ ROYAL COMMISSION ON THE CIVIL SERVICE—REPORT, 1929-1931.

their positions. This extra-statutory regulation has the force of a law and provides for a gratuity calculated at the rate of one month's salary for each year of service, subject to a minimum qualifying period of six years' service and to a maximum payment of one year's salary. Unestablished service is counted toward the qualifying period, but is not taken into account in calculating the amount of the gratuity.

(3) *Compassionate Gratuities for Unestablished Civil Servants.* Unestablished civil servants, both men and women, are entitled to compassionate gratuities under the act of 1887. Such gratuities are awarded at the rate of one week's pay for each year of service if the civil servant is removed on the abolition of his office, providing the servant has completed not less than seven years of service.

LOCAL GOVERNMENT OFFICIALS.¹⁶ An act to amend the laws relating to local government in England and Wales was passed on August 13, 1888. The act provided that any officers who were dis-

¹⁶ LOCAL GOVERNMENT ACT, 1888, (51 & 52 Vict. c. 41). Selected paragraphs of §§119 and 120 of the act prescribe the following procedure:

The county council may abolish the office of any existing officer whose office may be deemed unnecessary, but such officer shall be entitled to compensation under this act.

Every existing officer declared by this act to be entitled to compensation, and every other existing officer, whether before mentioned in this act or not, who by virtue of this act, or anything done in pursuance of or in consequence of this act, suffers any direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, shall be entitled to have compensation paid to him for such pecuniary loss by the county council, to whom the powers of authority, whose officer he was, are transferred under this act, regard being had to the conditions on which his appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this act or of anything done in pursuance of or in consequence of this act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the acts and rules relating to Her Majesty's Civil Service, is paid to a person on abolition of office.

If a claimant is aggrieved by the refusal of the county council to grant any compensation, or by the amount of compensation assessed, or if not less than one third of the members of such council subscribe a protest against the amount of the compensation as being excessive, the claimant or any subscriber to such protest (as the case may be) may, within three months after the decision of the council, appeal to the Treasury, who shall consider the case and determine whether any compensation, and if so, what amount ought to be granted to the claimant, and such determination shall be final.

The sum payable as compensation to any person in pursuance of this section shall commence to be payable at the date fixed by the council on granting the compensation, or, in case of appeal, by the Treasury, and shall be a specialty debt due to him from the county council, and may be enforced accordingly in like manner as if the council had entered into a bond to pay the same.

missed or suffered financially due to the transfer of the administrative business of quarter sessions to county councils, as ordered and established by the act, be compensated for such loss.

PERSONNEL ADMINISTERING THE POOR LAW.¹⁷ The Local Government Act of March 27, 1929, amended the law relating to the administration of poor relief, registration of births and deaths and marriages, highways, town planning, local government, etc., and provided for the transfer of the functions of each authority to the council of the county or county borough comprising the area for which the authority acted. It also provided for the compensation of the staff members of each local authority where their positions and offices were abolished or where they suffered pecuniary loss in consequence of the act. The compensation for such loss is regulated by the civil service rules in force before the passage of the Local Government Act, 1888, and may not exceed two-thirds of the annual pecuniary loss suffered in consequence of this act.

WORKERS IN THE ELECTRICITY SUPPLY INDUSTRY.¹⁸ The electric light and power industry in the United Kingdom is regulated by a series of acts known as the Electricity (Supply) Acts, 1882-1926. The Act of December 23, 1919, provided for the appointment by the

¹⁷ LOCAL GOVERNMENT ACT, 1929 (19 Geo. 5, c. 17).

¹⁸ ELECTRICAL SUPPLY ACT, 1919 (9 & 10 Geo. 5 C. 100); ELECTRICAL SUPPLY ACT, 1922 (12 & 13 Geo. 5 C. 46); ELECTRICITY SUPPLY ACT, 1926 (16 & 17 Geo. 5, C. 51). What specific provisions were made to compensate workers in the electrical supply industry for possible loss of employment can best be presented in the following extract from the acts:

If within five years from the date when under or in consequence of this Act a generating station has been closed or acquired or restrictions on the working or use thereof imposed, or a main transmission line or any part thereof has been acquired, any officer or servant who before the closing, acquisition, or imposition of the restrictions was regularly employed by any authorized undertakers, proves to the satisfaction of a referee or board of referees appointed by the Minister of Labour that in consequence of such closing, acquisition or restriction, he—

- (i) has suffered loss of employment, or diminution of salary, wages or emoluments, otherwise than on grounds of misconduct, incapacity, or superannuation; or
- (ii) has relinquished his employment in consequence of being required to perform duties such as were not analogous or were an unreasonable addition to those which before such closing or acquisition or imposition of restrictions he had been required to perform; or
- (iii) had been placed in any worse position in respect to the conditions of his service (including tenure of office, remuneration, gratuities, pension, superannuation, sick or other fund, or any benefits or allowances, whether obtaining legally or by customary practice);

and, in the case of a generating station being closed, or restrictions on the working or use thereof being imposed, the authorised undertakers to whom the station belonged or belongs, or in the case of the acquisition of a generating station or a main transmission line, or any part thereof, the acquiring authority,

Board of Trade of a body known as Electricity Commissioners for the purpose of promoting, regulating, and supervising the supply of electricity. An additional power authority known as the Central Electricity Board was created by the Act of December 15, 1926, which was charged with the duty of supplying electricity to authorized undertakings but not to generate electricity, except in special circumstances. Under the wide powers granted these two bodies by the acts, they may introduce standardization, close generating stations, discontinue transmission lines, etc. Such regulation may, of course, have the consequence of abolishing jobs and displacing workers. Such eventualities were given consideration and provisions were made in the acts beginning with the 1919 act for compensating any workers who might thus suffer loss of employment.

WORKERS IN MUNITIONS FACTORIES.¹⁹ A law was passed in 1915 which virtually gave the government power to draft civilian labor to man the munitions plants. This war measure subjected the cancellation of employment contracts in munitions industries to an extremely severe governmental control.

By the law of August 21, 1917, the government was granted authority to abrogate by special order the act of 1915 when circumstances should permit, and it prescribed that from the date of that abrogation every contract of service concluded between an employer and a worker engaged in works of armament could be cancelled, provided that a week's notice were given by either party. The parties

do not show to the satisfaction of the referee or board of referees that equivalent employment on the like conditions as those obtaining with respect to him at the date when the generating station was closed or restrictions on the working or use thereof were imposed, or the generating station or main transmission line or part thereof was acquired, was available, there shall be paid to him by those undertakers, or the acquiring authority, such compensation as the referee or board of referees may award, including any expenses which the officer or servant necessarily incurs in removing to another locality:

Provided that, where loss or relinquishment of employment is involved, such compensation shall, in the case of an officer employed on an annual salary, be based on, but not exceed, the amount which would have been payable to a person on abolition of office under the Acts and rules relating to His Majesty's Civil Service in force at the date of the passing of the Local Government Act, 1888, but, in computing the period of service of any officer, service under any authorised undertakers shall be reckoned as service under the authorised undertaker in whose employment he is at the time when the loss or relinquishment of employment occurs; and where any such officer or servant was temporarily absent from his employment whilst serving in or with His Majesty's Forces or the forces of the Allied or Associated Powers, or in any other employment of national importance during the war, such service shall be reckoned as service under the authorised undertakers in whose employment he was immediately before and after such temporary absence.

¹⁹ Jean Deprez, *Le Délai-Congé en Législation Comparée*, pp. 58, 266, 448.

could not by law waive the period of notice or even reduce it to less than eight days. They could, however, stipulate unequal notice periods and fix a conventional notice period in excess of eight days. No distinction was made in this law in regard to the notice period between contracts of definite and indefinite duration, though the act did not apply to temporary or migratory workers.

Each party had the right, under the 1917 law, to break the employment contract abruptly when the conduct of the other party forced him to make that decision. But it specified that in case of a dispute with the worker, the employer could not take advantage of the fact that the worker was a member of a trade union or that he had taken part in a strike. The indemnity payable for abrupt and unjustifiable cancellation of employment, as fixed by the act, was equal to the wages or salary corresponding to the notice period. By paying that indemnity, the parties could immediately free themselves from the terms of the contract. A worker discharged for being affiliated with a trade union or for taking part in a strike was entitled to an additional special indemnity up to a maximum of £10.

RAILWAY EMPLOYEES.²⁰ Parliament passed an act on August 19, 1921, to provide for further governmental regulation of British railways. Reorganization and grouping of the country's carriers, which affects over 2,000 separate railway companies and 600,000 employees, into four great systems was ordered with a view to securing greater efficiency and more economical operation of the roads.

A phase of the amalgamation scheme under this act is the payment of indemnities to both directors and operating personnel of the roads whose posts are subsequently abolished. Directors may, with the consent of the proprietors, be paid a compensation out of the assets of a constituent company where they suffer loss by the abolition of their offices. With respect to officers and servants (managers, office personnel, laborers, etc.), the law imposes the payment of compensation for any loss of position or job they may sustain in consequence of the enforcement of the act. Specific provisions for the procedure for making claims and for the payment of such indemnities are prescribed in the Third Schedule of the act as set forth in the accompanying note.²¹

²⁰ RAILWAY ACTS, 1921 (11 & 12 Geo. 5, C. 55); INTERNATIONAL SURVEY OF LEGAL DECISIONS ON LABOUR LAW, 1930, at 31-32.

²¹ The following provisions shall apply in respect to persons who at the date of the passing of this Act are, and for a period of not less than five years have been, officers or servants of any constituent company or subsidiary company,

and who shall not, prior to the amalgamation or absorption of such constituent or subsidiary company, have become pensioners or annuitants in accordance with the rules of any railway pension or superannuation fund of which they may be members, or have voluntarily retired, or have been removed from the service of any such constituent or subsidiary company by reason of misconduct or incapacity (all of which officers and servants are in this Schedule hereinafter referred to as "existing officers and servants") :

- (1) Every existing officer and servant shall, as from the date of amalgamation or absorption, become an officer or servant of the amalgamated company :
- (2) The amalgamated company may abolish the office or situation of any existing officer or servant which they deem unnecessary, and any existing officer or servant required to perform duties such as are not analogous or which are an unreasonable addition to those which as an officer or servant of the company from whom he was transferred he was required to perform may relinquish his office or situation :
- (3) No existing officer or servant so transferred shall, without his consent, be by reason of such transfer in any worse position in respect to the conditions of his service as a whole (including tenure of office, remuneration, gratuities, pension, superannuation, sick fund or any benefits or allowances whether obtaining legally or by customary practice of the constituent or subsidiary company) as compared with the conditions of service formerly obtaining with respect to him :
- (4) If any question arises as to whether the provisions of the last foregoing paragraph have been complied with, the question shall be referred to a standing arbitrator or board of arbitration appointed by the Lord Chancellor, and, if the arbitrator or board consider that those provisions have not been complied with, and that the officer or servant has thereby suffered loss or injury, they shall award him such sum to be paid by the amalgamated company as they think sufficient to compensate him for such loss or injury :
- (5) Every existing officer or servant whose office or situation is so abolished or who so relinquishes his office or service or whose services are dispensed with on the ground that they are not required or for any reason not being on account of any misconduct or incapacity, or whose salary, wages, or remuneration are reduced on the ground that his duties have been diminished, or who otherwise suffers any direct pecuniary loss by reason of the amalgamation or absorption, (including any loss of prospective superannuation or other retiring or death allowances and allowances payable to his widow or orphan children, whether obtaining legally or by customary practice of the constituent or subsidiary company), shall be entitled to be paid compensation for such pecuniary loss, to be determined and paid by the amalgamated company, subject to appeal to such standing arbitrator or board of arbitration as aforesaid, in accordance with the provisions contained in section one hundred and twenty of the Local Government Act, 1888, relating to compensation to existing officers, and those provisions shall apply accordingly as if they were herein reenacted with the necessary modifications. For the purpose of this schedule, any solicitor who was continuously retained by a company as their chief legal adviser for the period of five years before the passing of this Act shall be deemed to be an existing officer of the company :

Provided that, in the case of any officer or servant who was appointed to his office as a specially qualified person at an age exceeding that at which public service usually begins or of any officer or servant who suffers any loss of prospective superannuation or other retiring or death allowances as aforesaid, such addition may be made to the amount of compensation authorized under the said provisions as may

ROYAL IRISH CONSTABULARY.²² The Royal Irish Constabulary, a police force, was created by an act of Parliament in 1836, but was disbanded in 1922 as a result of the treaty establishing the Irish Free State. Officers and constables who were retired from service under the Constabulary (Ireland) Act, 1922, were entitled to compensation awarded them by the Treasury according to specific provisions in the act. Compensation was to be paid as an annual allowance and was to be equivalent in amount to the pension that would have been due the officer or constable if he had retired owing to length of service. To this was to be added the following hypothetical service record: ten years' service if the proportion of his salary on which his compensation was calculated was one-fiftieth, and twelve years' service if the proportion of his salary on which his compensation was calculated was one-sixtieth.

PERSONNEL OF RATING AND VALUATION AUTHORITIES.²³ Reorganization and concentration of the functions of rating and valuation authorities took place in Great Britain by virtue of an act passed on December 22, 1925. Officers adversely affected by the application of the statute were entitled to compensation under section 49 of the act, part of which reads:

Every officer of any authority or committee to or from whom duties are transferred by this Act, and every parish officer in office at the passing of this Act, who by virtue of this Act, or of anything done in pursuance or in consequence thereof, suffers any direct pecuniary loss by abolition of office or by determination of his appointment or by diminution or loss of fees, salary or emoluments and for whose compensation for that loss provision is not made by any other enactment for the time being in force, shall be entitled to compensation under this Act for that loss.

For the purpose of this section, any transferred officer—

- (a) who relinquishes under the provisions of this Act a transferred office; or
- (b) whose services are dispensed with or whose salary is reduced by any assessment committee or by any rating authority, seem just, having regard to the particular circumstances of such case:

Provided further that the expression in subsection (1) of section one hundred and twenty of the Local Government Act, 1888, "the Acts and Rules relating to Her Majesty's Civil Service" shall mean the Acts and Rules relating to His Majesty's Civil Service which were in operation at the date of the passing of the Local Government Act, 1888.

²² CONSTABULARY (IRELAND) ACT, 1922 (12 & 13 *Geo.* 5, c. 55); INTERNATIONAL SURVEY OF LEGAL DECISIONS ON LABOUR LAW, 1930, pp. 23-24.

²³ RATING AND VALUATION ACT, 1925 (15 & 16 *Geo.* 5, c. 90).

within five years after the appointed day, because his services are not required, or his duties are diminished, and not on the ground of misconduct;

shall be deemed, unless the contrary is shown, to have suffered a direct pecuniary loss in consequence of this Act.

The amount of compensation payable under such circumstances is regulated by §120 of the Local Government Act, 1888, with the modification that the total compensation may not exceed two-thirds of the annual pecuniary loss suffered.

DISMISSAL LAWS OF BRITISH INDIA

There are in existence three remarkable instances of legal protection against arbitrary and abrupt dismissal for private workers in British India. One law relates to estate laborers of Ceylon, one to laborers on the plantations of Madras, and one to women employed in the factories of the Central Provinces of India.

INDIAN ESTATE LABORERS OF CEYLON.²⁴ Ceylon has been a British colony since 1802. Europeans have employed Indian laborers on their tea, coffee, and rubber plantations in Ceylon for more than a century. In 1931 these Indian estate laborers and their dependents numbered over 790,000. It is significant that while unemployment is practically unknown in Ceylon and although labor legislation in the colony is far behind that in Western and Australasian countries, these laborers cannot be discharged without being given a month's advance notice. §3 of Ordinance No. 11 of 1865, which applies to all contracts for hire and service, contains these provisions:

Every verbal contract for the hire of any servant, except for work usually performed by the day, or by the job, or by the journey, shall (unless otherwise expressly stipulated, and notwithstanding that the wages under such contract shall be payable at a daily rate) be deemed and taken in law to be a contract for hire and service for the period of one month, and to be renewable from month to month, and shall be deemed and taken in law to be so renewed unless one month's previous notice or warning be given by either party to the other of his intention to determine the same at the expiry of a month from the day of giving such notice.

Contracts for hire and service must be in writing and must be signed before a magistrate or justice of the peace if the period for which they are concluded exceeds one month.

²⁴ COLONIAL REPORTS—ANNUAL, No. 1567, CEYLON REPORT FOR 1930.

LABORERS OF THE PLANTATIONS OF MADRAS.²⁵ The law of 1903 (Articles 4, 9, 10, 11, 12) regulates the employment of laborers on the plantations in the Presidency of Madras. Contracts must be for definite durations, drawn up in writing according to a specific formula, and concluded under the surveillance of the justice of the peace. To terminate such employment agreements, notice must be given in writing three months' in advance. Cases of discharge, even regular in form, can be brought before the justice of the peace who brings the parties to an agreement by fixing, if necessary, a sum of money to be paid by the party breaking the contract. The employer can demand that the justice of the peace authorize abrupt cancellation of labor contracts for serious cause, but if the magistrate grants the request he remains always free to impose the payment of an indemnity. In case of abrupt or unjustifiable discharge the competent magistrate can issue the civil sanctions which seem to him to best conform to justice.

WOMEN FACTORY WORKERS OF INDIA.²⁶ In 1930 India passed a maternity benefit act which safeguards employment for women factory workers before and after confinement. The act extends to the whole of the Central Provinces of India and applies to all women employed in industrial establishments. Maternity benefits consisting of regular earnings are payable by the employer for a total period of eight weeks, four weeks before and four weeks after childbirth. It is unlawful for an employer to dismiss the woman employee while she is entitled to the maternity benefit. Furthermore, the woman's place must be kept open for her for an additional period of not more than three months in case she is unable to return to her work one month following confinement.

INADEQUACY OF EXISTING LEGISLATION

Except for statutes that provide for the payment of indemnities to public employees and a few special classes of workers when their positions are abolished by government action, and with the further exception of the legal regulation of employment contracts in the case of certain groups of workers in British India, England has enacted

²⁵ Reprez, *op. cit. supra* note 19, at 65, 179, 271, 452, 453.

²⁶ INTERNATIONAL LABOUR OFFICE, LEGISLATIVE SERIES, 1930—INDIA 2; REPORT OF GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE UPON THE CONVENTION COVERING THE EMPLOYMENT OF WOMEN BEFORE AND AFTER CHILD-BIRTH, p. 20; INTERNATIONAL LABOUR OFFICE, WOMEN'S WORK UNDER LABOUR LAW, pp. 68-69.

no specific laws regulating the discharge of private employees and workers comparable to laws passed in most industrial nations. The absence of statutes prohibiting abrupt dismissal and imposing penalties in cases of unjust discharge is anomalous in view of the fact that Britain has passed legislation that regulates almost all other matters dealing with labor relations. It may be that the existence of extensive labor legislation, including the various forms of social insurance, has tended to inhibit the passing of dismissal laws.

A partial explanation of the absence of legal regulation of discharge is perhaps to be found in the history of the English workers' long struggle to gain the freedom of fixing employment relations with employers by means of contracts.²⁷ Up until about a century ago the labor relation arose from status, all aspects of that relation being minutely regulated by the state. By 1825 English workers had succeeded in throwing off these restrictions, and during the last hundred years they have enjoyed the right to organize themselves into trade unions and the freedom to determine their conditions of employment by collective and individual agreement with their employers. There is, however, some question today as to whether the union has afforded adequate protection against the abuse of unjust discharge and as to whether the workers' right to bargain with employers for the sale of their labor was not gained at the expense of economic security.

Under the common law, which regulates present-day employment relations and imposes the giving of the customary notice of dismissal or the payment of an indemnity in place of notice, the worker is not wholly defenseless. But this regulation has resulted in confusion and irregularity in administering the law, for no uniform principles have been established regarding the notice necessary for determining indefinite term contracts of service or for fixing the amount of indemnity payable in cases of abrupt discharge. With regard to notice, it becomes largely "a question for the jury, or for the judge acting as an arbitrator of fact in lieu of jury, to say what length of notice is reasonable in any given case," and "often there is nothing more perplexing (for the jury or the judge) than to advise an employer or employee as to what length of notice is necessary to terminate their legal relations."²⁸ A study of court cases will show that great dif-

²⁷ See Harry M. Cassidy, *The Emergence of the Free Labor Contract in England*, AMERICAN ECONOMIC REVIEW, June, 1928, at 201-226.

²⁸ Batt, *op. cit.* *supra* note 8, at 48.

ferences exist in the sums awarded to workers for wrongful dismissal, the matter resting apparently entirely in the hands of the judge deciding the case. Such uncertainty in the law leaves the British worker largely at the mercy of his employer, a condition that does not exist in countries that have enacted specific legislation on the subject.

It is questionable whether this phase of labor relations can be regulated satisfactorily without specific legislation. The voluntary dismissal compensation schemes in existence, however valuable, are after all confined to a few enterprises and cover only a relatively small number of British workers. And the common law is too indefinite in its provisions to give the worker adequate protection. The solution of the problem would seem to lie, therefore, in the passage of special laws.

Demands for such Parliament acts have already been expressed by both workers and employers who are dissatisfied with present regulations. At a meeting of the Council of the British National Federation of Professional Workers, held in 1927, the clerical group of the federation reported that it had given special consideration to the problem of laws affecting salaried workers in Great Britain and in other countries.²⁹ Among the subjects on which the Federation declared it necessary to promote legislation are these: (1) statutes requiring periods of notice of the termination of employment, (2) statutes providing protection against wrongful dismissal, and (3) statutes imposing compensation grants on leaving employment after a specified period of service. The Irish Union of Distributive Workers and Clerks held their annual meeting in March, 1932. In the name of the shop workers of Ireland, the meeting called for the introduction of legislation relating to conditions of employment in shops, and specifically "To provide that normally reasonable notice shall be required to terminate the services of an employee."³⁰

A book of some importance was published in 1928 dealing with the industrial future of Great Britain.³¹ In this report leading members of the Liberal Party join men prominent in business and professional life in charting Britain's future course if she is to progress industrially. A large part of the study contains specific recommendations for the improvement of industrial relations and suggestions to

²⁹ INDUSTRIAL AND LABOUR INFORMATION, February 7, 1927, at 217-218.

³⁰ INDUSTRIAL AND LABOUR INFORMATION, May 10, 1932, at 255.

³¹ BRITAIN'S INDUSTRIAL FUTURE: BEING THE REPORT OF THE LIBERAL INDUSTRIAL INQUIRY.

be followed when it becomes necessary to dismiss workers. The large influence that the authors of the book exercise on British public opinion gives significance to the following excerpts from their statements and shows the direction of British thought on the matter:³²

There are three possible reasons for discharge: a serious moral or disciplinary offence; inefficiency as a workman; and shortage of work. There should be definite legal protection secured by . . . rules against unfair treatment in any of these three cases. . . .

We also recommend that every firm should be required by law to give to every man taken into its service a printed or written statement of the terms on which he is engaged, including a statement of the grounds upon which, and the way in which, he may be discharged. . . . The effect of their provision by law would be that if any man was discharged without being allowed the safeguards provided for, he would have a ground of action in the courts against the firm which discharged him. Probably few men would be ready to incur the cost and publicity of such action on their own account; but it is likely that the Trade Unions would take up such cases often enough to make it certain that the provisions of the law would be generally observed. . . .

In Germany a whole system of local Labour Courts has been set up to deal with cases of this character, and the existence of these tribunals, which are very freely used for the settlement of individual disputes that might otherwise lead to serious friction, has had the effect of giving a real sense of security, and of conjuring away the feeling that the workman is always at a disadvantage in dealing with the employer and must swallow injustices as best he can.

³² *Ibid.*, at 233-235.