SECTION XXVII.

INDUSTRIAL UNIONISM AND INDUSTRIAL LEGISLATION.

§ 1. Development of Trade Unions in Australia.

1. **General.**—In the following account of the origin and development of trade unions in Australia, and of legislation affecting them, as well as of the history and nature of industrial legislation generally in Australia, brevity has necessitated the abandonment of all matters of minor detail, such for example, as a sketch of the differences between the laws of individual States, and cognate matters.

Each State of the Commonwealth, it may be said, has enacted, with more or less elaboration, legislation respecting trade unions and respecting the regulation of the conditions of industrial life, particularly those of factory employment. Some of the States have also established machinery for the regulation of wages, as well as of other matters connected with employment.

At the present time there is an obvious tendency to adjust such matters throughout Australia on uniform lines. The industrial condition of any State of the Commonwealth naturally reacts quickly on any other State. This is one of the consequences of a unified tariff, and of the fact that the general economic conditions of any one part of the Commonwealth must necessarily affect very intimately any other part. An expression of the intimacy of these economic and industrial relations of different parts is seen, for example, in the refusal of an Arbitration Court in New South Wales to fix wages in the boot trade in that State at a higher rate than that fixed by the Wages Board in Victoria, because of the additional burden which such a rate would place on local manufacturers.

2. **History of Unions in Australia.**—(i.) *Commencement of Unionism.* The first trade union in Australia was the "Operative Masons' Society," established in Melbourne in 1850, and in 1851 a branch of the "English Amalgamated Society of Engineers" was founded in Sydney. For many years the only unions existing were practically those formed by the several branches of the building trades. They were all subject to the English law prohibiting conspiracies and combinations in restraint of trade, though it does not appear that such law was ever put in force in Australia. The main objects of the early unions were the limitation of the working week to forty-eight hours, and such minor and friendly society benefits as are usual amongst the older unions, the former object being for many years the chief link between the unions. It is, however, difficult to obtain detailed information concerning the unions prior to trade union legislation. In 1857 only nine trades and 700 men took part in the Melbourne Eight Hours procession, but the establishment of new industries caused a steady increase in numbers. From 1869 to 1879 five trades entered the ranks of the unionists of Victoria. From 1880 to 1890 there was great activity in the organisation of labour, more particularly at the end of that period. In sympathy with the widespread industrial unrest in England the occurrence of similar unrest in Australia drew the wage-earners into the unions in large numbers: the return of industrial peace, however, was marked by a decrease in numbers.

(ii.) *Organisation of Unions.* The first regular association of unions in Australia was the Trades Committee in Melbourne, formed in 1859, which afterwards became the present Trades and Labour Council. Similar councils now exist in all the States. Composed of delegates from the unions they exercise a general care over the interests of their members.

(iii.) *Union Acts.* The Trade Union Acts of England and the collateral Conspiracy and Protection of Property Act have been copied by the States, the Acts also providing for unions of employers. The latter provision has been but slightly utilised, however, as apparently it offers no well-defined inducement. South Australia adopted the Acts in 1876, New South Wales in 1881, Victoria in 1884, Queensland in 1886, Tasmania in 1889, and Western Australia in 1902.

The Acts referred to provide for the legal recognition of combinations which come under the definition of trade unions; the registration of unions of seven or more persons, the registration of councils or other bodies to which registered trade unions are affiliated; the vesting of union property in registered trustees, with penal provisions in respect of defaulting officers. The registered unions are required to furnish annual returns of members and funds to a special department.

3. **Operations and Organisation of Unions subsequent to the Acts.**—(i.) *Unions.* Except as hereinafter mentioned, the unions do not avail themselves of the Trade Union Acts to any large extent, and information concerning them in some States is consequently not at present available. The operation of the Industrial Arbitration Acts of New South Wales and Western Australia—especially the former, which alone authorises trades unions, as such, to register as industrial unions—and to some extent of the Commonwealth Act, shews the position of the unions in the States mentioned, and also the position of a few of the unions in other States. In the tables hereinafter such information as is available is afforded, but such tables are a very incomplete guide to the position of unionism in Australia.

For convenience of comparison the tables of industrial unions registered under the Industrial Arbitration Acts are placed immediately after the table of registered trade unions. The discrepancy between the numbers of registered and unregistered unions in some States may be gauged by the fact that there are seventy-three unions affiliated with the Melbourne Trades Hall, thirteen with the Bendigo, and fifteen with the Ballarat Trades Hall, making a total of 101. In Victoria only seven, however, are registered, and some of the latter are not affiliated. In South Australia there are sixty unions affiliated to the local Trades Council, but only twenty-three are registered. In Western Australia the number of unionists registered under the Industrial Arbitration Act is about 33 per cent. more than the number registered under the Trade Union Acts. In New South Wales the numbers are almost identical.

The failure to register under the Trade Union Acts does not deprive the unions of the privileges conferred by the Conspiracy Acts.

The largest individual union in Australia is the Australian Workers' Union, whose members are pastoral workers (shearers, etc.), and number more than 20,000. It has branches in Queensland, New South Wales, and Victoria, and the east centre of South Australia, covering the whole of the principal wool-growing districts of Australia. It maintains newspapers in Sydney and Brisbane, each of which is known as *The Worker*.

(ii.) *Workmen and Employers in Unions.* Available statistics at present do not shew what proportion of Australian workmen are members of trade unions, though a census of occupations would at least for some States enable an estimate to be made.

The Acts are but little availed of by employers.

(iii.) *Concerted Action.* An intercolonial congress of delegates of trades unions was first held in Sydney in 1879. At the second congress in Melbourne, in 1884, sixty-nine delegates from New South Wales, Victoria, and South Australia were present, representing forty-one unions, branches, or societies. Following the methods of European

associations the Australian unions sought to achieve an improved condition for their members by the establishment of rules concerning minimum wage, limited hours of toil, the restriction of the number of apprentices and improvers, and the prohibition of the employment of non-union labour. Some of the unions refuse to admit to membership any but skilled journeymen, on the ground that their object is to encourage the attainment of proper skill.

(iv.) *Representation in Parliament.* It was during the decade 1880-1890 that the trade unions of Australia espoused direct legislative representation and advocated State interference between employer and employé. This policy has been called "new unionism." A resolution affirming the desirability of Parliamentary representation of labour being carried at the congress of 1884, a number of members representing the special interests of the wage-earners were elected to the Legislatures of some of the States, but the unions took no steps to obtain representation by men chosen from among their own ranks until after the great labour troubles of 1890-1892. In that period serious strikes occurred in the maritime, shearing, and mining industries, and it was then that the Labour party proper was formed, though a certain amount of ameliorative legislation had already found its way into the Statute books of the States.

Triennial federal conferences laid down a policy for the party, but at present there is no authoritative Commonwealth organisation, and the policy is not binding upon a State league. The Political Labour Council controls political and the Trades Hall Council trade union matters. The former consists of delegates from both unions and "branches." The branches are coterminous with State electoral districts, and nominate candidates for those districts. Candidates for the Commonwealth Senate are balloted for by all league members in the State, and for the Commonwealth House of Representatives by the branches in the constituency.

4. **Registered Trade Unions and Industrial Associations.**—(i.) *Unions of Employés.* The statistics of registered trade unions of employés not only do not represent the position of unionism, but, in addition, the statistics themselves for past years are so defective as to be practically valueless. Only those for 1906, therefore, are given; the figures are as hereunder:—

REGISTERED TRADE UNIONS OF EMPLOYES, AUSTRALIA, 1906.

State.	No. of Unions.	No. of Members.	Receipts.	Expenditure.	Funds.
			£	£	£
New South Wales	134*	87,435	70,731	63,426	81,122
Victoria	7	8,820	6,750	6,486	5,418
Queensland	19	8,332	7,159	7,195	5,208
South Australia	23	5,106	6,809	5,347	12,926
Western Australia	82†	12,031	31,018	25,948	21,506
Tasmania	1	53	200	220	343
Commonwealth ...	266	121,777	122,667	108,622	126,523

* 129 unions filed returns. † Includes associations and councils.

(ii.) *Unions of Employers.* There are in New South Wales two unions of employers, with 1043 members; in Queensland three, with 135 members; and in Western Australia fifty-seven, with 534 members.

5. **Registration under Industrial Arbitration Acts.**—New South Wales and Western Australia are the only States with Industrial Arbitration Acts under which industrial associations can be and actually are registered. The development of such registered associations during the period 1901 to 1906, and a comparison with the development of trade unions for the period 1903 to 1906, are given in the tables hereunder:—

INDUSTRIAL ASSOCIATIONS REGISTERED UNDER INDUSTRIAL ARBITRATION ACTS[1] (INCLUDING COUNCILS AND ASSOCIATIONS).

EMPLOYERS.

Under Act of—	1901.			1902.			1903.		
	Unions	Members.	Funds.	Unions	Members.	Funds.	Unions	Members.	Funds.
			£			£			£
N.S.W. ...	...	...	...	109	2,302	...	119	2,916	...
W. Aust.	7	54	...	15	199	...	17	221	98
C'wealth	...	...	...	...	...	...	...	...	...
	1904.			1905.			1906.		
N.S.W. ...	122	3,204	...	120	3,343	...	107	3,165	...
W. Aust.	45	441	98	59	520	27	57	534	—17
C'wealth	...	...	...	...	...	...	1	6	...

EMPLOYES.

	1901.			1902.			1903.		
N.S.W. ...	...	...	...	87	58,203	...	124	63,510	...
W. Aust.	*56	8,920	...	*80	11,442	...	†132	15,294	†19,250
C'wealth	...	...	...	...	...	...	...	...	...
	1904.			1905.			1906.		
N.S.W. ...	127	71,031	...	122	78,472	...	121	88,075	...
W. Aust.	§140	15,743	§22,421	¶140	15,461	¶25,255	‖130	16,015	‖26,000
C'wealth	...	...	...	...	...	...	20	‡41,413	‡17,460

1. New South Wales and Western Australia are the only States of the Commonwealth with Industrial Arbitration Acts.

* Includes two councils and associations. † Includes five councils and associations ‡ 1906-7. The funds are of five unions only, the rest being registered less than twelve months. § Includes eight councils and associations with £5783 funds. ¶ Includes seven councils and associations with £6427 funds. ‖ Includes six councils and associations with £5443 funds.

TRADE AND INDUSTRIAL UNIONS COMPARED.

Year.	New South Wales.						Western Australia.					
	Trade Unions.			Industrial Unions.			Trade Unions.			Industrial Unions.		
	No.	Members	Funds.	No.	Members.	Funds.	No.	Members.	Funds.	No.	Members.	Funds.
			£						£			£
1903	*135	72,312	63,540	124	63,510	†	65	9,999	†	132	15,294	19,250
1904	*134	79,815	69,409	127	71,031	†	83	11,025	†	140	15,743	22,421
1905	*135	84,893	73,324	122	78,472	†	80	11,235	†	140	15,461	25,225
1906	*129	87,435	81,122	121	88,075	†	82	12,031	21,506	130	16,015	26,000

* Number filing returns. † No information.

§ 2. Laws Relating to Conditions of Labour.

1. **Tabular Statement of Statutes affecting Labour.**—The following tabular statement shews at a glance the various statutes in the several States of the Commonwealth which affect, more or less directly, the conditions of labour generally :—

TABLE OF STATUTES.

New South Wales.	Victoria.	Queensland.	South Aust.	Western Aust.	Tasmania.
Factories & Shops 1896 Early Closing 1899 ,, 1900 ,, 1906	Factories and Shops 1905 (2) Factories and Shops 1907	Factories and Shops 1900	Factories 1894 ,, 1900 ,, 1904 ,, 1906 Early Closing 1900-1, 2, 3	Factories 1904 Early Closing 1902 Early Closing 1904 (2) Seats for Shop Assistants 1899	Women and Children Employment 1884 ,, ,, 1905 Chimn'y Sweepers 1882
Mines Inspection 1901 Coal Mine Regulation 1902 Coal Mine Regulation 1905 Miners' Accident Relief 1900-1	Mines 1897	Mining 1898 ,, 1901 ,, 1902	Mining 1893	Mines Regulation 1906 Goldfields Act 1895 Coal Mines Regulation 1902 Sunday Labour in Mines 1899	Mining 1900
Contractors' Debts 1897	Employers and Employés	Contractors' & Workmen's Lien 1906 Wages 1870 ,, 1874	Workers' Liens 1893 Workers' Liens 1896	Workers' Wages 1898	—
Attachment of Wages Limitation 1900	—	Wages (as above)	Wages Attachment 1898	Workers' Wages 1898	Wages Attachment 1900
Public Health 1896	Health 1890	Health 1886 ,, 1890 ,, 1900	—	Health 1898 ,, 1906	Public Health 1903
Truck 1900-1	See Factories	See Factories	See Factories	Truck 1899, 1900-4	—
Shearers' Accommodation 1901	—	Shearers' and Sugarworkers' Accommodation 1905-6	Shearers' Accommodation 1905	—	—
—	Closer Settlement (Workers' Homes)	—	—	—	—
—	Boilers' Inspection	—	—	Steam Boilers 1897	Inspection of Boilers
—	Servants' Registry offices 1897	—	—	Employment Brokers 1897 Imported Labour Registry 1897	—
Masters & Servants	Employers and Employés	—	—	—	—
Apprentices 1901	Masters and Apprentices 1890	Apprentices 1828 ,, 1844 Master and Servants 1861	Masters & Servants 1878	Masters and Apprentices 1873 Masters & Servants 1892	Masters & Servants 1856 ,, ,, 1882 ,, ,, 1884 ,, ,, 1887
Employers' Liability	Employers and Employés (Employers' Liability)	Employers' Liability 1886-8 Workers' Compensation 1905	Employers' Liability 1884-89 Workers' Compensation 1900 Workers' Compensation 1904	Employers' Liability 1894 Workers' Compensation 1902	Employers' Liability 1895, 1898, 1903
Bankruptcy 1898 (preference to wages)	Insolvency	Insolvency 1874-6	Insolvency	Insolvency Associations Incorporation 1895	Bankruptcy 1870, 1899
—	—	—	—	Fisheries 1899	—

2. **Limitation of Hours.**—(i.) *Factories and Mines.* Eight hours a day, or, more accurately, forty-eight hours a week, constitute the limitation of time of labour recognised throughout Australia. The regulation is stated to have originated in Sydney in 1855, when it was demanded by the building employés, and after some friction conceded. The trades gradually urged a division of the day into equal periods for labour, recreation, and rest, and this has become established for a majority of occupations.

There is no general legislation to enforce this idea. The forty-eight hours' limit was, in 1873, enacted in Victoria with reference to women and children in factories, in 1874 with reference to miners, and in those instances is law throughout the Commonwealth. On the establishment of Wages Boards and Arbitration Courts, in the States where those institutions exist, the authorities thus created adopted the rule as part of their determinations and awards wherever it seemed reasonably applicable. Reasonable provision is, however, made by statute or award for overtime working. It may be said that there has been but little opposition in Australia to the establishment of the "eight hours" system.

(ii.) *Shops.* All the States, excepting Tasmania, have statutes containing provisions respecting the hours during which shops may be kept open for business. These provisions, in effect, not only limit the hours during which shop-hands may be employed, but apply also where the shops are tended by the proprietor alone and by himself and family, with, however, certain exceptions, such as exist in the State of Victoria. In that State shops wherein not more than one assistant, whether paid or not, is employed, are permitted to remain open for two hours a day longer than other shops of the same class. The object of this is to relieve the hardship which exists for such persons, for example, as widows who are wholly dependent for a livelihood upon the casual trade of small shops. Generally speaking, the hours during which shops may remain open for business are from 9 a.m. to 6 p.m., but these hours may be varied according to the nature of the business affected. Provision is also made for weekly half-holidays, on which shops must close entirely, with in some cases, however, compensatory provisions permitting them to remain open on one night a week.

(iii.) *Hotels, etc.* Establishments, the opening of which in the evening is presumably necessary for public convenience—such as hotels, restaurants, chemists' shops, etc.—are required to remain open for longer hours or are permitted to do business during hours prohibited in other establishments.

(iv.) *Half-holidays.* The provisions of the early closing laws differ somewhat in each State, but the main objects, namely, the restriction of long hours of labour, are throughout identical. Formerly, in some of the States, there were, and there are still in others, provisions making the early closing of a business, or the selection of a day for a half-holiday, dependent upon the option of the majority of the business people concerned, or upon the local authority. The anomalous results of the system whereby shops on one side of the street bounding two municipalities were open, when those upon the other side were closed, led to the introduction of the compulsory system in force in Victoria, now likely to be introduced in the other States of the Commonwealth. Under the Victorian statutes the hours of business are absolutely fixed by those statutes. Each shopkeeper may elect to have the half-holiday either upon a Wednesday or Saturday, but having made his choice must adhere to it.

Special holidays are provided for carriers.

There are stringent prohibitions against overworking of women and young persons.

3. **General Conditions of Labour.**—(i.) *General.* Aids for the protection of the life, health, and general well-being of the worker are in force in most of the States, and are referred to in the table already given (page 868). Though in some cases founded upon English legislation, they are also in many instances peculiar to Australia. Years of experience and continued amendment have not even yet left them in a settled form. The State of Victoria has the most complete system of industrial legislation, and the

other States are gradually adopting the Victorian statutes, either *en bloc*, or with amendments suggested by local conditions.

(ii.) *Historical.* The first Australian Factories Act was passed in 1873 in Victoria. It was entitled "The Supervision of Workrooms and Factories Statute," and contained only six sections. The existing Victorian Act, passed in 1905, contained originally 163 sections, and is now extended by two amendments of 35 and 40 sections respectively. There are, moreover, numerous regulations in force under its authority. The Act of 1873 defined a "factory" or "workroom" as a place where ten or more persons are engaged for hire in preparing or manufacturing articles for trade or sale. It limited the working day for females to eight hours, and empowered inspection by central or local Boards of Health. It conferred upon the Boards power to regulate the sanitary conditions of factories. This system was found, however, not to be as effective as was hoped. The conditions which have given rise to trouble in the old world tended to reproduce themselves in the young and growing industries of the States. The advocacy of legislation to control the conditions of employment became pronounced in Victoria in 1880, and a strike of tailoresses in Melbourne in 1882 led to a recognition of the real state of affairs. In 1883 a Royal Commission reported the necessity of legislation for the regulation of factories, and in particular pointed out the fact that men were compelled to toil for as many as eighteen hours a day and women sixteen hours, and shewed that the condition of out-workers was very undesirable, that the apprenticeship system was frequently used to obtain labour without remuneration, apprentices being dismissed upon asking for payment at the end of their time. The Factories and Shops Act 1884, while providing for the suppression of many evils in respect of accommodation and lengthy hours, did not touch the two last mentioned. Another Royal Commission sat in 1895, resulting in the Act of 1896, which dealt with the matters previously untouched, and the system of regulation was carried on by the Act of 1900 and the complete codification of the law in 1905.

Similar conditions were found to prevail in other States. New South Wales and Queensland adopted regulative measures in 1896 and subsequent years, and South Australia in 1894, 1900, and 1906; Western Australia followed suit in 1902 and 1904. Tasmania adopted the Victorian Act of 1873 in 1884, with a small extension in 1905, and a Royal Commission in 1907 reported the desirability of legislation.

The same remarks apply in a general way to the condition of employés in shops.

4. **Legislation Regulating Conditions of Labour.**—(i.) *Factories and Shops.* The Factories and Shops Acts and the Early Closing Acts in some States are combined, but in others are separate enactments. The following analysis is descriptive, as a whole, of the legislation now under review:—

(*a*) *Factories* are defined to be places where four or more hands are employed in preparing articles for trade or sale, or in which steam or other power is employed. Any place where one or more Chinamen are working is a factory.

(*b*) The *Minister for Labour* administers the Act with a permanent head of department, known as the Chief Inspector of Factories.

(*c*) *Factories must be registered*, particulars of the nature of them must be given, and a certificate of the suitability of the premises for the purpose intended must be supplied by the Chief Inspector to the local municipal council.

(*d*) *A record of the employés*, giving the names, age, wages, and work of each under twenty-one must be filed annually in the Chief Inspector's office.

(*e*) Employers must post up in a conspicuous manner the name and address of the *district inspector* and certifying *medical practitioner*, the *holidays and working hours* of the factory, the name of the employer, and a list of fines imposed upon employés. The last-mentioned list must be forwarded to the Chief Inspector.

(*f*) *A record of out-work* must be kept and produced to inspectors.

(*g*) The only *places exempt from registration* are those in which only the near kin of the occupier are employed.

(*h*) *Out-workers* are required to register.

(*i*) *Factories must be kept clean.* They must contain a prescribed amount of cubic space for each person employed, and a prescribed amount of ventilation; the ventilation must carry away all injurious impurities generated by the work; proper means of egress must, and fire prevention appliances may, be required to be maintained. Proper sanitary conveniences must be provided and factories must not be used as sleeping places, and any rooms used therefor connected with factories must be effectively separated from them.

(*j*) Amongst the numerous other provisions for the care of health are clauses *forbidding the employment of women and young persons* for more than five hours without a break for meals. Meals may not be taken in factories unless such factories are of open construction and exempted by the inspector. Employés in noxious trades must be provided with a *proper meal-room.*

(*k*) Special provisions are made for the *regulation of bakehouses.*

(*l*) The employment in factories of *children under thirteen years of age* is forbidden.

(*m*) Women and persons under sixteen years of age may not be employed for more than forty-eight hours in the week, ten hours in a day, or after nine o'clock at night. *Permits to work overtime* are granted when an "unforeseen" press of work occurs, but no more than fifty-one hours per week is to be asked of the above-mentioned persons. Payment for overtime and tea-money must be made.

(*n*) Special provision is made limiting the hours of work permitted to the Chinese.

(*o*) *Medical certificates* of fitness are required as a condition precedent to the employment of persons under sixteen years of age. Their work must cease at 6 p.m.

(*p*) *Guarantees* of an employé's good behaviour are void unless made with the consent of the Minister.

(*q*) "*Truck*" clauses are also inserted in some of the Acts.

(*r*) All persons in charge of steam engines or boilers must hold certificates of service or competency.

(*s*) Provision *safeguarding against accident* is made for the fencing off and proper care of machinery, vats, and other dangerous structures. Persons under eighteen and women are forbidden to clean machinery in motion or work between fixed and traversing parts of self-acting machinery while in motion.

(*t*) Notice of accidents must be sent to the district inspector.

(*u*) Provision is made for the stamping of furniture, in order to disclose the manufacturer, and whether it is made by European or Chinese labour.

(*v*) Shopkeepers are required to provide proper seating accommodation for female employés. (In some States this is the subject of special legislation.)

(*w*) Wide powers of regulation are granted to the Executive and large penalties imposed, including a penalty by way of compensation to any person injured or the family of any person killed through failure to fence machinery and other dangerous structures.

Tasmania is now the only State where no proper factories legislation has been enacted. The Act mentioned in the table of statutes is a copy of the Victorian Act of 1873.

Other Statutes of similar object are numerous, as the table shews.

(ii.) *Mining Acts* regulate the working of mines. The employment underground of females and of boys under fourteen years is prohibited. No boy under eighteen years may be employed as lander or braceman at any plat or landing place; no lander, braceman, underground worker, or man in charge of motive power may be employed more than eight hours a day. A large number of scientific provisions for the protection of the lives and health of miners are also inserted in the Acts. Enginedrivers must hold certificates of competency. Persons may be licensed to certify to the condition of boilers. Provision is made to enable injured persons or the relatives of persons killed to recover damages if the injury or death results from a breach of the regulations above referred to. Inspection of mines is fully provided for. Sunday labour is forbidden.

(iii.) *Other Acts.* (*a*) *The English Employers' Liability Acts*, and in some cases the Workmen's Compensation Act 1897, have been adopted by the States. In some States the former Act is extended to seamen.

(*b*) Power is given to workmen to *attach moneys* due to a contractor who employs them in order to satisfy a claim for wages. Such wages are made a first charge on moneys due to a contractor.

(*c*) Workmen are given a *lien for wages* over material whereon they are working, even if it becomes part of other property. This is in addition to the common law lien, which ceases when possession of the property is parted with.

(*d*) The *Conspiracy and Protection of Property Act of England* (38 and 39 Vic., c. 86) has been adopted.

(*e*) *Servants' Registry Offices* are placed under administrative control, and the rates of commission chargeable are fixed by regulation.

(*f*) Provision is made for the *compulsory resumption of suburban lands* to provide workers' homes.

(*g*) Workmen's *wages are protected from attachment.*

The results of the legislation described must be sought in the Reports of the Inspectors of Factories of the several States. Generally speaking, the perusal of these reports and of the reports of Royal Commissions which have enquired into the working of the Acts, affords satisfactory evidence that they have, on the whole, effected their objects.

§ 3. Legislative Regulation of Wages and Terms of Contract.

1. **General.**—Two systems, based upon different principles, exist in Australia for the regulation of wages and general terms of contracts of employment. A "Wages Board" system exists in Victoria and South Australia, and an Arbitration Court in New South Wales and Western Australia. There is also the Arbitration Court of the Commonwealth, which has power, however, to deal only with matters extending beyond the limits of a single State.

2. **Wages Boards.**—This system was introduced in Victoria by the Factories and Shops Act of 1896. The original Bill made provision only for the regulation of the wages of women and children, but was afterwards amended in Parliament to extend the system to adult operatives of both sexes.

The Act of 1896 made provision for the regulation of wages only in the clothing and furniture trades and the bread-making and butchering trades. By an Act of 1900 the

operations of the Act were extended to include all persons employed either inside or outside a "factory or workroom"—see sec. 4, i. (*a*)—in any trade usually carried on therein. This section is now in the Act of 1905. By an Act of 1907 the system was extended to all persons wheresoever employed in a "factory," trade, and also to shop employés, carters and drivers and their assistants, persons employed in connection with buildings or quarrying, or the preparation of firewood for sale or the distribution of wood, coke, or coal.

The regulation is effected by a Board, called a Special Board, to distinguish it from the Board of Health. Boards for the regulation of wages in the trades specified in the Act of 1896 are appointed as a matter of course, and by the Executive other Boards are appointed only if a resolution for appointment be passed by both Houses of Parliament. A Board consists of from four to ten members, who must be or have been at a recent time prior to appointment engaged in the trade concerned. Employers and employés are equally represented. If one-fifth of the employers or employés object to a representative nominated for them they may elect a representative. Originally the Board was elected in the first instance, but the difficulty of compiling electoral rolls led to the adoption of the present system, which has proved satisfactory. The Furniture Board is nominated outright owing to the preponderance of Chinese. An independent chairman, nominated by the Board, is appointed by the Executive. A Board holds office for three years.

The Board has power to determine the lowest wages, prices, or rates to be paid to persons or classes of persons coming within the Act for wholly or partly preparing, manufacturing, or repairing articles, and for other services rendered, and may fix special rates for aged, infirm, and slow workers.

The Board fixes the hours of work and may limit the number of "improvers" to be employed (usually done by prescribing so many to each journeyman employed). There is no power in Victoria to limit the number of apprentices employed. Such a power exists in South Australia. The Board fixes the wages of apprentices and improvers according to age, sex, and experience, and may fix a graduated scale of rates calculated on the same basis. Apprentices bound for less than three years are improvers, unless the Minister sanctions a shorter period of apprenticeship on account of previous experience in the trade. The Minister may sanction the employment of an improver over twenty-one years of age at a rate proportionate to his experience. Out-workers in the clothing trade must be paid piece rates. Manufacturers may, by leave of the Board, fix their own piece rates, if calculated upon the average wages of time workers as fixed by the Board.

Licenses for twelve months to work at a fixed rate lower than the minimum rate may be granted by the Chief Inspector of Factories to persons unable to obtain employment by reason of age, slowness, or infirmity. Licenses are renewable.

Determinations remain in force till altered by a Board or the Court of Appeal. These determinations apply to all cities and towns and such boroughs as the Executive determines, and the Executive may also apply them to any shire within ten miles of a city or town, or beyond that distance, if the shire council petitions to that effect. (Similar provisions are in force in other States.)

The children of an employer are exempt from a determination.

The Executive may direct a Board to fix out-workers' rates and the rates payable in allied trades.

Penalties are fixed for the direct or indirect contravention of determinations, the obedience to which is ascertained by examination of the records of wages, etc. (Sec. 4, i. *a*.)

A Court of Appeal, consisting of a Supreme Court Judge, has power to review determinations of the Boards. The Court may appoint assessors to assist the Judge.

The Acts fix an absolute weekly minimum wage, and the evasion of this provision in the case of females employed in the clothing trade by charging an apprenticeship premium is prevented by the prohibition of all such premiums in that particular case. This absolute minimum provision does not exist in New South Wales.

South Australia adopted the Wages Board system in 1900, 1904, and 1906, but the first-mentioned Act was rendered inoperative owing to the disallowance by Parliament of

the regulations necessary for carrying it into effect. The Act of 1904 revived the Wages Board system in respect to women and children employed in clothing and whitework trades. The action of this statute was paralysed by a decision, the effect of which was to prevent the fixing of a graduated scale of wages as is done by the Victorian Boards. The necessity for some protection to the persons intended to be benefited by these statutes was urged in the annual reports of the Chief Inspector of Factories, but, until 1906, without effect. Many employers, however, voluntarily complied with the Boards' determinations, though these were without legal force. The system has been brought into full operation by the Act of 1906, which preceded the Victorian Act of 1907, in extending the system to other than factory trades, and is of a still wider scope than the Victorian Act.

It may be noted that the Boards of Conciliation, appointed in England under the Conciliation Act 1897, appear to correspond to the Australian Wages Boards in a remarkable degree, and not in any way to the Arbitration Courts of Australia, inasmuch as they are appointed for each trade or calling, and not to adjudicate generally upon any cases which come before them.

3. **The Arbitration Court System.**—(i.) *Acts in force.* The following is a general account of the main features of the Compulsory Arbitration laws of Australia. A few important divergences between the Acts are noted.

The Acts in force are as follows:—

South Australia: The Conciliation Act 1894.
Western Australia: The Industrial Conciliation and Arbitration Act 1902.
New South Wales: The Industrial Arbitration Acts 1901 and 1905.
Commonwealth: The Commonwealth Conciliation and Arbitration Act 1904.

(ii.) *Significance of Acts.* In Victoria in 1891, and in New South Wales in 1892, Acts were passed providing for the appointment of Boards of Conciliation, to which application might be made voluntarily by the contending parties. The awards of the Boards had not any binding force. Boards were applied for on but few occasions, their lack of power to enforce awards rendering them useless for the settlement of disputes.

The first Australian Act whereby one party could be summoned before, and, presumably, made subject as in proceedings of an ordinary court of law to the order of a court, was the South Australian Act of 1894. Its principles have been largely followed in other States, but it proved abortive in operation and in many respects is superseded by the Wages Board system already described. Western Australia passed an Act in 1900—repealed and re-enacted with amendments in 1902—New South Wales followed in 1901. A bill introduced into the Tasmanian Parliament in 1903 was rejected by the Upper Chamber. The Commonwealth Act, passed in 1904, applies only to industrial disputes extending beyond the limits of a single State.

(iii.) *Industrial Unions.* The Arbitration Act, made to encourage a system of collective bargaining and to facilitate applications to the court, and to assure to the worker such benefits as may be derived from organisation, virtually creates the Industrial Union. This, except in New South Wales, is quite distinct from the trades union; it is not a voluntary association, but rather an organisation necessary for the administration of the law. Industrial unions (or "organisations," as they are styled in the Commonwealth Act) may be formed by employers or employés. They must be registered, and must file annual returns of membership and funds. Unions of employers must have a minimum number of employés. In New South Wales and Western Australia the minimum is fifty, under the Commonwealth Act 100. All unions of employés must possess the following qualifications:—In New South Wales the union must be a trade union or branch thereof, or be an association of unions; in Western Australia a membership of fifteen, and by the Commonwealth Act a membership of 100 is required. The union rules must contain provisions for the direction of business, and, in particular, for regulating the method of making applications or agreements authorised by the Acts. In Western Australia rules must be inserted prohibiting the election to the union of men

who are not employers or workers in the trade, and the use of union funds for the support of strikes and lockouts; a rule must also be inserted requiring the unions to make use of the Act. *The Commonwealth Act forbids the employment of funds for political purposes.*

(iv.) *Industrial Agreements.* Employers and employés may settle disputes and conditions of labour by industrial agreements, which are registered and have the force of awards. They are enforceable against the parties and such other organisations and persons as signify their intention to be bound by an agreement.

Failing agreement, disputes are settled by reference to the court. This consists of a judge of the Supreme Court of the State, or, in the case of the Commonwealth, of the High Court. In the States, he is assisted by two "members," who are chosen by and are appointed to represent the employers and employés respectively. Technical assessors may be called in to sit with and to advise the court.

Cases are brought before the court either by employers or employés. The consent of a majority of a union voting at a specially summoned meeting is necessary to the institution of a case; the Commonwealth Act requires the certificate of the Registrar that it is a proper case for consideration.

The powers of the court are both numerous and varied; it hears and makes awards upon all matters concerning employers and employés. The breadth of its jurisdiction may be gathered from the Commonwealth definition of industrial matters. The definition includes the principal matters dealt with by the Acts in a concise form. "'Industrial matters' includes all matters relating to work, pay, wages, reward, hours, privileges, rights, or duties of employers or employés, or the mode, terms, and conditions of employment or non-employment; and in particular, without limiting the general scope of this definition, includes all matters pertaining to the relations of employers and employés, and the employment. preferential employment, dismissal or non-employment of any particular persons, or of persons of any particular sex or age, or being or not being members of any organisation, association, or body, and any claim arising under an industrial agreement."

(v.) *Powers of Court.* The court may fix and enforce penalties for breaches of awards, restrain contraventions of the Acts, declare any practice or regulation to be a "common rule" of the trade, and define the limits of its observation (the Commonwealth Court has power to mitigate the hardships of the common rule), to hear objections to it, and exercise all the usual powers of a court of law. In short, the Acts effect the creation of a system of jurisprudence, with appropriate artificial persons.

The court may prescribe a minimum rate of wage; it may also (except in Western Australia as regards employment) direct that preference of employment or service shall be given to members of unions. An opportunity is offered for objection to a preference order, and the court must be satisfied that preference is desired by a majority of the persons affected by the award who have interests in common with the applicants.

The Commonwealth Court is to bring about an amicable agreement, if possible, to conciliate and not to arbitrate, and such agreement may be made an award.

All parties represented are bound by the award, and also all parties within the ambit of a common rule or (in the case of Western Australia) giving adherence. The court possesses full powers for enforcement of awards.

In Western Australia there is also a system of Boards of Conciliation, consisting of representatives of employers and employés. They may make awards, which are binding if not challenged within a month after being filed. As a matter of fact, they are almost invariably appealed from, and the tendency is to go direct to the court.

The States have included their railway and tramway employés, and also the employés of certain other public bodies under the Acts; the section of the Commonwealth Act giving the Commonwealth Court power over State employés has been declared unconstitutional by the High Court.[1]

1. Federated Amalgamated Railway, etc., Employés *v.* N.S.W. Railway, etc., Employés (4 C.L.R. 488).

(vi.) *Miscellaneous.* The Commonwealth and Western Australian Acts absolutely forbid strikes and lockouts. The New South Wales Act specifically forbids them prior to or during the pendency of a case, leaving events after the award to be dealt with by the court. Protection is afforded to officers and members of unions against dismissal merely on account of such officership or membership, or on account of their being entitled to the benefit of an award.

It has been settled by the High Court that an Arbitration Court cannot direct—

(*a*) That non-unionists seeking employment shall, as a condition of obtaining it, agree to join a union within a specified time after engagement;

(*b*) That an employer requiring labour shall, *ceteris paribus*, notify the secretary of the employés' union of the labour required.[1]

4. **The "New Protection."**—The wide difference between the development in the several States of the Commonwealth of the regulation by State institutions of the remuneration and conditions of the workers, has given rise to a desire on the part of the Commonwealth Government to secure uniformity throughout Australia by any suitable and constitutional action on the part of the Commonwealth. In Victoria, Wages Boards, and in New South Wales and Western Australia, Arbitration Courts, have now existed for a considerable period of time, and have raised wages and improved the conditions of labour. The South Australian Wages Board system, however, has been in operation scarcely a year, while the Queensland Bill has been shelved,[2] and Tasmania is without similar legislation. The result of this is that the workers of the three last-mentioned States regard themselves as not so well off as their fellows in the three first-mentioned States. The desirability of uniformity has, as already mentioned, been recognised by the New South Wales Arbitration Court, which (conversely to the last-mentioned cases) refused the Bootmakers' Union an award which would increase the wages of its members to amounts exceeding those paid in Victoria in the same trade, the express ground of the refusal being that New South Wales manufacturers would be handicapped by the payment of a higher rate of wage than prevailing in Victoria. This attitude cannot be made effective by the Arbitration Court of the Commonwealth, which has jurisdiction only over industrial disputes extending beyond the limits of any one State.

The opinion has been expressed that a manufacturer who benefits by the Commonwealth protective tariff should charge a reasonable price for the goods which he manufactures, and should institute a fair and reasonable rate of wage and condition of labour for his workmen.

The above view is known as the "New Protection," a phrase which, though novel, is already firmly established in Australian economic discussions; and the statutes referred to immediately hereinafter are the expression thereof.

By the Customs Tariff 1906, increased duties were imposed upon certain classes of agricultural machinery, notably the "stripper-harvester," a machine invented in Australia, which has, to a great extent, replaced the "reaper and binder and thrashing machine" in the harvesting of wheat. By the same Act it was enacted that the machines scheduled should not be sold at a higher cash price than was thereby fixed, and that if that price should be exceeded, the Commonwealth Executive should have power, by reducing the Customs duties imposed by the Act, to withdraw the tariff protection.

By the Excise Tariff Act 1906 (No. 16 of 1906), an excise of one-half the duty payable upon imported agricultural machinery was imposed upon similar machinery manufactured in Australia. But it was provided that the latter should be exempt from excise if the manufacturer thereof complied with the following condition, namely, that the goods be manufactured under conditions as to the remuneration of labour, which—

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1. Trolly, etc., Union of Sydney and Suburbs v. Master Carriers' Association of New South Wales. (2 C.L.R. 509.)

(*a*) Are declared by resolution of both Houses of the Commonwealth Parliament to be fair and reasonable;

(*b*) Are in accordance with the terms of an industrial award under the Commonwealth Conciliation and Arbitration Act 1904;

(*c*) Are in accordance with the terms of an industrial agreement filed under the last-mentioned Act;

(*d*) Are, on an application made for the purpose to the President of the Court, declared to be fair and reasonable by him or by a judge of a State court or a State industrial authority to whom he may refer the matter.

By the Excise Tariff Act 1906 (No. 20 of 1906), excise duties are imposed in respect of spirits, and it is provided that if any distiller (i.) does not, after the Act has been passed a year, pay his employés a fair and reasonable rate of wages per week of forty-eight hours or (ii.) employs more than a due proportion of boys to men engaged in the industry, the Executive may on the advice of Parliament impose an additional duty of one shilling per gallon on spirits distilled by that distiller.

Exemptions have been claimed by the manufacturers of agricultural machinery in South Australia, New South Wales, Victoria, and Tasmania. These were granted in the two first-mentioned States in consequence of an agreement entered into between the employers and employés. In Victoria, "this whole controversial problem with its grave social and economic bearings" (to quote the words of the President of the Court) was discussed in a lengthy case upon the application for exemption by Victorian manufacturers, now widely known as the "Harvester Case," and in the report of that case may be found the legal interpretation of the Acts under consideration. The exemptions claimed were refused, and the court after discussing the meaning of the words "fair and reasonable" defined them by laying down what it considered to be a scale of fair and reasonable wages. It is sufficient to point out how new a departure the Acts described are in modern industrial legislation.

It is now proposed by the Commonwealth Ministry to apply a similar system to all manufactures affected by the Commonwealth Customs tariff. The methods proposed to be adopted have been set forth in a memorandum recently circulated by the Prime Minister of the Commonwealth. In the absence of actual legislation upon the subject it does not seem desirable to describe tentative proposals which have not yet been circulated even in the form of a Bill. It may be remarked that the question of the constitutionality of the "New Protection" has been challenged.

The Bounties Act 1906 makes provision for the encouragement of certain Australian industries by the payment to producers of certain moneys allotted by the Act upon the production of the commodities specified. This Act also provides for the refusal or reduction of a bounty, if the production of a commodity is not accompanied by the payment to the workers employed in that production of a fair and reasonable rate of wage.

§ 4. Operation of the Wage-regulating Laws.

1. **System of Wages Boards.**—Wages Boards are appointed upon the application of either employers or employés. The grounds usually alleged by the former are that their business is hampered by "unfair" competitors, who pay only a sweating wage; by the latter, that they are sweated or are entitled to a consideration of their wages, by reason of the prosperity of the trade in which they are engaged.

2. **Wages Boards.**—There were at the end of 1906 forty-nine special Boards in existence in Victoria and in South Australia. Some of the Victorian Boards, however, of then recent

appointment, had not made any determination. The following table shews the position of trades in relation to the Boards :—

WAGES BOARDS, 1906.

Total Number of Distinct Trades carried on in Registered Factories.		Total Trades under Boards.	Total Factories Regist'r'd	Total Factories under Wages Boards.	Total Employés	Total Empl'yés under Wages Boards.	Percentage under Boards.	Number of Determinations.
Victoria ...	149	49	4,766	3,425	67,545	49,500	73%	42
S. Australia	63	8	1,578	312	19,511	3,574	18%	8

The following table shews the number of convictions for disobedience to determinations of Boards (not including overtime working) :—

VICTORIA.

1901.	1902.	1903.	1904.	1905.	1906.
34	33	41	39	27	52

There has only been one serious strike in the trades under the system since its inception in Victoria. The increased prosperity of that State naturally brings demand for increased wages, and these demands have met with no more friction than is necessarily attendant on such re-adjustments.

In 1906 the exemptions granted in Victoria to old and infirm workers were 413, and to slow workers 88. One exemption was granted to a slow worker in South Australia. The Court of Appeal in Victoria has heard four appeals from determinations of Boards. In one case the decision was upheld, in three cases decisions were reversed or amended. In one Victorian case the Board was unable to come to a determination and the matter was referred to the Court, which exercised the power of fixing a proper wage where the average wage paid by employers did not afford a living wage.

3. **Effect of Acts.**—The question whether the operation of the Acts has bettered the monetary position of the operative may be answered in the affirmative. Starting from the lowest point, the provision of an absolute minimum wage per week has stopped one form of gross sweating. Another case is that of the "white-workers" and dressmakers; with these the lowest grade was the "outworkers," who were pieceworkers. In some branches of the Victorian trade, in 1897, the wages paid to outworkers for all classes of certain goods were only from one-third to one-half the wages paid in the factories for low-class production of the same line of stuff. By working very long hours the outworker could earn ten shillings per week. The average wage of females in the clothing trade in 1897 was ten shillings and tenpence per week; there were, however, in that year 4164 females receiving less than one pound per week, and their average was eight shillings and eightpence. It was almost a revolution when a minimum wage of sixteen shillings per week of forty-eight hours was fixed by the Board, when pieceworkers' rates were fixed to ensure a similar minimum, and when outworkers were placed on the level of pieceworkers. Many employers refused to continue to give out work and took the workers into the factories on time work. The sanitary conditions required were far more healthy than could exist in the poorer class of dwellings. The evidence of South Australian reports discloses similar facts in that State.

4. **Change of Rate of Wage.**—The following table shews the change of affairs in these trades :—

WAGES OF FEMALES IN CLOTHING TRADES, 1897 AND 1906.

Year.	Class.	Females Employed in the Dress, Mantle, and Underclothing Trade.		Females Employed in the Shirt Trade.	
		Number	Average Wage.	Number.	Average Wage.
			£ s. d.		£ s. d.
1897	16 yrs. and over receiving under £1 per wk.	4,164	0 8 8	435	0 12 3
	,, ,, £1 and over ...	593	1 9 1	144	1 3 10

	Females Employed in ...	Dress and Mantle Trade.		Shirt Trade.		Underclothing Trade.	
		Number.	Average Wage.	Number.	Average Wage.	Number.	Average Wage.
			£ s. d.		s. d.		s. d.
1906	Females at minimum wage and over ...	2,383	1 1 4	241	19 11	542	19 8
	Pieceworkers	259	0 16 0	763	15 8	231	16 8

The above trade, the sweating in which is world-wide, is taken as an example, and the same results may be obtained in any State, according as there is or is not a regulative law. In Tasmania, where no such law exists, the scale of wages may be gathered from the fact that in clothing factories females of three and five years' service, and of twenty to twenty-six years of age, receive twelve shillings per week.

It may be stated generally that some of the most prosperous trades in Victoria, e.g., the boot trade, have been longest under the Acts.

§ 5. Operation of the Arbitration Acts.

1. **New South Wales and Western Australia.**—The impetus given to organisation of employers and employés by the Acts may be gathered from the table already given. In New South Wales sixty-five agreements have been registered, most of which continue in force and affect over 1000 employers and nearly 30,000 employés. In Western Australia thirty-four agreements have been registered. The courts have been kept extremely busy. In New South Wales, up to the end of 1906, 170 industrial disputes have been filed, sixty-nine awards have been made, and the balance of the disputes were settled, withdrawn, or, for some other reason, removed from the list. The court has also heard several hundred minor matters arising out of the Act or industrial questions. The "Common Rule"[1] power has been largely availed of; 140 cases for breaches of awards have been filed in New South Wales. In Western Australia 247 and four disputes have been before the court. The attached tables shew the effect of the awards upon the rate of wage. There have been a certain number of labour troubles in New South Wales since the passing of the Act, and between thirty and forty instances of cessations of work have been reported. One "strike" conviction has been obtained. In the majority of instances the strikes were by small bodies of men and were usually soon settled.

§ 6. Other Commonwealth Legislation affecting Labour.

1. **Constitutional Power.**—By sec. 51 of the Commonwealth of Australia Constitution Act power is conferred upon the Parliament of the Commonwealth to make laws respecting, *inter alia*—

(xix.) Naturalisation and aliens.
(xxiii.) Invalid and old-age pensions.
(xxvii.) Immigration and emigration.
(xxxv.) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State.

1. See § 3, 3 (v.) of this section.

2. **Legislation.**—(i.) Sub-section xxiii., relating to *old-age pensions*, etc., has not been, as yet, acted upon.

(ii.) One of the first Acts of the Commonwealth was the *Pacific Island Labourers Act 1901*, which prohibited the importation of further Kanaka labour for sugar plantations and provided for the deportation of those already in the State.

(iii.) *The Immigration Restriction Acts 1901 and 1905* prohibit the immigration of any persons who are unable to comply with certain educational conditions. The effect of this Act is to exclude Asiatic and other coloured peoples from Australia.

(iv.) *The Contract Immigrants Act 1905* defines a contract immigrant as an immigrant to Australia under a contract or agreement to perform manual labour in Australia. The contract must be in writing and must be made by or on behalf of a resident in Australia. Its terms must be approved by the Minister of External Affairs before the admission of the immigrant. It must not be made in contemplation of, or with a view of affecting an industrial dispute. The Minister must be satisfied that there exists a difficulty of obtaining a worker of equal skill and ability in the Commonwealth, but this last provision does not apply to contract immigrants who are British subjects either born in the United Kingdom or descended from persons there born. The terms of the contract must offer to the immigrant advantages equal to those of local workers. Domestic servants and personal attendants accompanying their employers to Australia are excluded from the operation of the Act. Contract immigrants not complying with the above conditions are excluded from Australia.

During the year 1907, 972 contract immigrants were admitted into the Commonwealth, of these 731 were British, 107 were Spaniards, 80 Scandinavians, 41 Austrians, and 13 Germans. Out of this total 912 were agricultural labourers introduced for the Queensland sugar industry, viz., 571 by the Queensland Government, and 341 by the Colonial Sugar Refining Company. The labourers for the sugar plantations included all the Spaniards, Scandinavians, and Austrians, and 684 out of 731 British. The remaining 47 British and the 13 Germans were required for various industries.

(v.) *The Sugar Bounty Act 1903* makes the payment of the bounty contingent on all work being done by white labour.

(vi.) *The Trade Marks Act 1905* provides for the registration of marks by any individual Australian worker or association of Australian workers for the purpose of indicating that the articles to which it is applied are the exclusive production of the worker or of members of the association, with penalties for the infringement of such a mark. The mark may be applied to work which is partially manufactured by an association, provided that the non-association proportion be distinguished; and it is to be attached only by the producing employer or, with his authority, by a worker or member of the association.

This provision is an adaptation of the "union label," which is of American origin, and is legalised in a large number of the States of the United States of America. It will be observed that the word "association" is used instead of "union." Another feature which distinguishes the Australian from the American "union label" is that the label is in Australia affixed by the employer, and not by a union, while in America the case is reversed. While there is nothing on the face of the Act to connect "association" with "trade union," and while the label might well be used by any co-operative association whose members work jointly for themselves and not for an employer, yet the word "association" is, for practical purposes, synonymous with "trade union," and was, indeed, substituted for the latter, during the course of the Bill through Parliament.

One mark only has been registered by a co-operative brewing company in Sydney. Otherwise the provisions cited are in abeyance.[1]

1. A considerable amount of information concerning the origin, history, and uses of the "union label" is given in the Bulletin of the Department of Labour (U.S.A.) for 1898, p. 207.