Workmen's Compensation Acts--Occupational Diseases

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NOTES

WORKMEN'S COMPENSATION ACTS—OCCUPATIONAL DISEASES.

There is little judicial dissent from the general rule that occupational diseases are not compensable under Workmen's Compensation Acts. Such diseases are the gradual result of continuing to perform the particular kind of work, so that it would be impossible to refer the happening of the injury to any particular time, and the disease is what might naturally be expected, if work of that character is pursued.

For convenience the cases on the subject may be divided into four groups. Each of the forty-two compensation states will fall into one of these.

(a) Massachusetts grants compensation for any incapacity resulting from occupational disease. Although the usual Workmen's Compensation Act provides that the injury must be "by accident" or "accidental," the Massachusetts statute does not make use of the word "accident" in any form but provides for compensation for "personal injury." This same phrase "personal injuries" without reference to their accidental character is found in other states but they have not given it the same liberal construction as has the Massachusetts court.¹

The broad meaning given to the term "personal injury" by the Massachusetts court is illustrated in Hurle's case.² "The difference," the court said "between the English and Massachusetts acts in the omission of the words 'by accident' from our act, which occur in the English act as characterizing personal injuries, is significant that the element of accident was not intended to be imported into our act. The noxious vapors which caused the bodily harm in this case were the direct production of the employer. The nature of the workman's labor was such that they were bound to be thrust in his face. The resulting injury is direct. If the gas had exploded within the furnace and thrown pieces of 'cherry' hot coal through the holes into the workman's eyes, without question he would have been entitled

to compensation. Indeed there probably would have been common law liability in such case. . . . There appears to be no sound distinction in principle between such case and gas escaping through the holes and striking him in the face whereby through inhalation the vision is destroyed.”

(b) The statutory definition of a compensable injury under the Maryland Act is not that it is an “accident” or that it is an injury “by accident” but that it must be “accidental injury.” A distinction between the adjective “accidental” in this statute and the usual noun “accident” found in most acts permits the granting of compensation for occupational diseases in Maryland.

In a recent Maryland case the appellee contracted phosphorous poisoning while employed by the appellant in the making of fireworks. She worked in the “spit devil department” where, some time during the years 1921, 1922, 1923, or parts thereof, she gradually contracted the disease through the inhalation of noxious fumes and gases collected in the place where she worked. The court in calling attention to the fact that the Maryland act provides compensation for “accidental injuries” as distinguished from injuries “by accident” said, “the difference is important as it marks the divergence between the thing or the event (i.e., accident) and a quality or a condition (i.e., accidental) of that thing or event. As the substantive carries the idea of something happening unexpectedly at a time and place the term ‘accident’ or ‘injury by accident’ has been consistently construed by the courts to embrace two different notions; the first is that of unexpectedness, and the second, that of an injury sustained on some definite occasion, whose date can be fixed with reasonable certainty. The adjective ‘accidental’ is not a technical term but a common one whose popular usage would not necessarily mean that the words ‘accidental injuries’ indicated the existence of an accident, but rather the idea that the injury was either unintended or unexpected. See 25 Harvard Law Review, pp. 338, 342. In the term ‘accidental injuries,’ the substantive ‘injuries’ expresses the notion of the thing or event, i.e., the wrong or damage done to the person; while ‘accidental’ qualifies and describes the noun by ascribing

3 The Victory Sparkler & Specialty Co. v. Catherine R. Franoks, decided February 12, 1925.
to 'injuries' a quality or condition of happening or coming by chance or without design, taking place unexpectedly or unintentionally.'"

The court held that, although the disease was the gradual result of the employment, the fact that the appellee continued at her place of labor, in the doing of her common and regular task, made it clear that the phosphorous poisoning happened without her design or expectation, and so her injury was accidental within the meaning of the act.

(c) The majority of compensation statutes contain the provision that compensation shall be payable for injuries by "accident." Practically all of the cases passing upon the question have decided that occupational diseases contracted by the inhaling of poisonous fumes or gases or being exposed to industrial conditions productive of disease are not by "accident" within the meaning of the statutes. Generally the courts adopt the rule that the word "accident" denotes an event "which occurs upon the instant, rather than something which continues, progresses, or develops.4 Others express it by saying that the expression "accident" is "used in the public and ordinary sense of the word, as denoting an unlooked for event which is not expected or designed."5 The elements of suddenness and unexpectedness are the essential ones.

(d) The Kentucky Compensation Act provides that personal injury by accident shall not include diseases "except where the disease is the natural and direct result of a traumatic injury by accident." The inclusion of the word "traumatic" in the Kentucky act not only excludes occupational diseases but makes it essential that a physical force be directed against the body. The statute was construed in Jellico Coal Company v. Adkins,6 where the court, said, "It will be observed that all of these definitions of 'trauma' and 'traumatic' imply the presence of physical force, and this is the generally accepted meaning of the word. Evidently the act implies that some external physical force actually directed against the body must occur in order to constitute traumatic injury by accident." In that case the ap-

5 Fidelity & Casualty Co. v. Industrial Accident Commission of Cal., 171 Pac. 429.
6 197 Ky. 684, 247 S. W. 972.
pellee was injured by breathing impure air and noxious gases in a mine, during a period of several months and the court denied compensation. It would be seemingly impossible under the Kentucky act to grant compensation for an injury from breathing noxious gases in a mine even though the injury could be traced to an unexpected event happening at a particular time or on a particular day.

It may be concluded that Kentucky is not in accord with the majority of states on the question of compensation for sudden and unexpected injuries from noxious gases and poisonous air. In accord with practically all of the states, Kentucky holds that occupational diseases are not compensable, but the added provision that the disease must be of traumatic origin puts the state in a class by itself.

It is submitted that the act should be amended to exclude the word "traumatic." There was no remedy at common law for occupational diseases and the general legislative intent seems to be that they should not be included under the provisions of compensation acts. These are the natural and reasonably to be expected results of workmen following certain occupations for a considerable period of time and since they may be expected, the workman is on guard as to what he may expect.

On the other hand, a disease, which is not the ordinary result of an employee's work, reasonably to be anticipated as a result of pursuing the same, but contracted as a direct result of unusual circumstances connected therewith, meets all the other requirements of the act, is an accident, and should be compensable.

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CONDITIONAL SALES.

The business man's most serious problem has always been to provide sufficient security for his sales. The answer to the problem is the conditional sale. It has crept into our law and caused much litigation in the courts. This conditional sale, however, has become well established, and is recognized as valid and enforceable in the majority of jurisdictions. The courts holding that the condition is not valid1 and the transaction is an absolute

1 24 R. C. L., p. 463, n. 11; 20 Colo. 353; 46 Ill. 487; 10 Bush (Ky.) 337; 21 Md. 406; 92 Pa. St. 53.