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various aforementioned jurisdictions in substantiating their declarations of its constitutionality.⁵⁵

In 1944 Louisiana extended the use of the short form to all indictable offenses included in the Criminal Code of 1942. Extensive jurisprudence establishes the constitutionality of the forms provided by the 1928 enactment, and there is every reason to believe, that the 1944 amendment will be similarly construed. The latter accomplishes the same purpose by the same means. The accused may get specific details by a bill of particulars just as he could under the legislation of 1928. The form may be slightly different, but the substance and purpose remain constant.

ROBERT I. BROUSSARD

OCCUPATIONAL DISEASE COVERAGE UNDER WORKMEN'S COMPENSATION

The theory of the workmen's compensation acts is that industry should bear the loss of workmen and their families occasioned by injuries and death occurring in the employment. At first the acts comprehended only accidental injuries. As industry became more complex there developed an active need for the inclusion of industrial diseases. When the public began to understand and accept the idea of employer liability in the field of industrial accidents the demand grew for such inclusion. The demand has been met differently by the respective jurisdictions. Compensation has been allowed by express legislation in some states, while in others the courts construe the act to comprehend occupational diseases. There are yet a considerable number of states that have made no provision for the coverage of industrial diseases.

The phrase "injury by accident" was taken from the original English Workmen's Compensation Act of 1897.¹ This was at first interpreted rigidly by the English courts to mean only traumatic injuries.² Since *Fenton v. Thorley & Company, Limited*,³ however, the term has been extended by the courts. There compensa-

55. Alabama—Ala. Code (Michie, 1940) tit. 15, § 259; Illinois—Ill. Rev. Stat. Ann. (Smith-Hurd, 1935) c. 38, § 716; New Jersey—N.J. Stat. Ann. (1939) § 2:188; Texas—Tex. Ann. Code Crim. Proc. (Vernon, 1926) art. 409; West Virginia—W.Va. Code Ann. (Michie, 1943) § 6263 et seq.; Wisconsin—Wis. Stat. (1943) § 355.21 et seq.

1. 60 & 61 Vict., c. 37, § 1 (1897).

2. *Steel v. Cammell, Laird & Co., Ltd.* [1905] 2 K.B. 232.

3. [1903] A.C. 443.

tion was allowed to a workman who in the ordinary performance of his work was ruptured. A further extension was made in *Clover, Clayton & Company, Limited v. Hughes*,⁴ by holding that the bursting of an artery while the workman was tightening a nut, due to advanced aneurism, constituted an accident. In a more recent case⁵ recovery was allowed for a "dropped foot" which resulted from intense pressure on the peroneal nerve due to constant working in a crouched position. The court held that the injury constituted an accident. As a much quoted writer has said, "Since the case of *Fenton v. Thorley*, nothing more is required than that the harm that the plaintiff has sustained shall be unexpected. It is no longer required that the causes external to the plaintiff himself, which contribute to bring about his injury, shall be in any way unusual."⁶ England now has schedule of specified diseases which are compensable.⁷

In this country there is a marked lack of uniformity with respect to coverage of occupational disease. Varied results have been produced by statutory differences as well as by differences in the attitudes of the courts in interpreting the several workmen's compensation acts.

The states appear to fall into three groups with respect to their attitudes toward industrial disease: (1) those states where compensation is afforded for a limited group of occupational diseases; (2) those states where by either comprehensive legislation or liberal court attitudes universal coverage for occupational diseases is afforded; (3) those states where no express statutory provision for occupational disease has been made, and the court decisions vary with respect to coverage through more or less liberal interpretations of the term "accident," or "injury."

States Allowing Recovery for Specific Occupational Diseases

In thirteen states⁸ statutory provision has been made for specific groups of compensable diseases. The diseases recognized

4. [1910] A.C. 242.

5. *Fife Coal Co. Ltd. v. Young* [1940] A.C. 479.

6. Bohlen, *A Problem in the Drafting of Workmen's Compensation Acts* (1912) 25 *Harv. L. Rev.* 328, 339.

7. 15 & 16 *Geo. V.* c. 84 (1925).

8. Arizona: *Ariz. Code Ann.* (Supp. 1943) § 56-1236; Arkansas: *Ark. Act* 319 of 1939; Delaware: *Dela. Acts of 1937*, c. 241; Idaho: *Idaho Sess. Laws of 1939*, c. 21, § 43-2103; Kentucky: *Ky. Stat. Ann.* (Carroll, 1936) § 4880; Maryland: *Md. Code Ann.* (Flack, 1939) art. 101, § 34; Michigan: *Mich. Acts of 1937*, c. 61, § 2; New Jersey: *N.J. Stat. Ann.* (1940) tit. 34, c. 15, § 31; North Carolina: *N.C. Code Ann.* (Michie, 1935) § 8081(2); Pennsylvania: *Pa. Stat. Ann.* (Purdon, 1939) tit. 77, § 1102; Rhode Island: *R.I. Gen. Laws* (1938) c. 300, art. vii, § 2; Washington: *Wash. Rev. Stat. Ann.* (Remington, Supp.

as coming under the workmen's compensation acts vary from one⁹ to thirty-four.¹⁰ Pennsylvania in 1937 adopted an occupational disease act complete in itself, designating twelve diseases.¹¹ Arkansas enacted its first workmen's compensation act in 1939. Injury was defined as "accidental injury or death arising out of and in the course of employment, and such occupational disease or occupational infection as arises naturally out of such employment or as naturally and unavoidably results from such accidental injury."¹² All diseases would appear to be covered by this definition, but a later section enumerates several diseases with the provision that they alone would be deemed occupational.¹³

An interesting innovation is found in the workmen's compensation act of Washington. Prior to 1941, recovery for occupational disease was limited to twenty-two specific diseases.¹⁴ In that year, however, the legislature adopted an amendment so as to include "such disease or infection as arises naturally and proximately out of *extra-hazardous* employment."¹⁵ (Italics supplied). Thus there is comprehensive coverage for occupational disease in certain types of employment only. In other employments recovery is allowed only for designated disorders, as set forth above.

States Providing Comprehensive Coverage for Occupational Disease

New York and Ohio have inserted clauses in their respective acts which seem to place these states in the "complete coverage" category.¹⁶ After setting out twenty-seven diseases, the New York act simply adds, "any and all occupational diseases." Ohio by a special amendment in 1939 made a similar addition to its schedule.

Minnesota, Nebraska, and Oregon by their 1943 amendments brought the number of states allowing comprehensive coverage

1940) § 7679-1; West Virginia; W.Va. Code Ann. (Michie & Sublett, 1943) § 2545(10).

9. Ky. Stat. Ann. (Carroll Baldwin, 1 ed. 1942) § 342.005 (included poison by gas in mines); W.Va. Code Ann. (Michie & Sublett, 1943) § 2545(10) (dealing with silicosis).

10. Md. Code Ann. (Flack, 1939) art. 101, § 34 (the act sets out 34 diseases and the occupation in which the disease is acquired).

11. Pa. Stat. Ann. (Purdon, 1939) tit. 77, § 1102. Michigan also has a separate occupational disease act. Mich. Acts of 1937, c. 6, § 2.

12. Ark. Act 319 of 1939, § 2(f).

13. Id. at § 14(a)(5). Section 43(12) of the same act seems to recognize the possibility of additions to the list. Delaware has just recently made such an addition. 43 Laws of Delaware (1943) c. 269, § 10.

14. Wash. Rev. Stat. Ann. (Remington, Supp. 1940) § 7679-1.

15. Wash. Rev. Stat. Ann. (Remington, Supp. 1941) § 7679-1.

16. N.Y. Workmen's Compensation Law § 3; Ohio Gen. Code Ann. (Page, 1937) § 1465-68a.

of industrial disease to fourteen.¹⁷ Two states¹⁸ within this group have occupational disease acts separate from their workmen's compensation acts. In California's original act the term injury expressly included injury or disease arising out of the employment.¹⁹ A special amendment²⁰ was required to compensate for heart trouble and pneumonia.

Massachusetts and Iowa developed comprehensive coverage for occupational disease through the adoption by their courts of a liberal interpretation of the term "personal injury." The statutes in these states, unlike many others, did not restrict coverage to accidents. Hence an opportunity was afforded for a liberal attitude on the part of the courts. In Massachusetts, recovery has been allowed for dermatitis,²¹ lead poisoning,²² blindness,²³ and silicosis,²⁴ all of which developed over a comparatively long period of employment. Somewhat arbitrarily, however, the court of that state refused to include neurosis²⁵ resulting from posture and tuberculosis²⁶ contracted by a nurse in the course of her duties at a hospital. In both cases it was announced that coverage was not intended where there was a gradual breakdown of bodily tissues. These arbitrary limitations were alleviated in 1941 when the legislature of Massachusetts provided comprehensive statutory coverage for all occupational diseases.²⁷

The Iowa Supreme Court after a thorough review of the historical background of the workmen's compensation act and the cases decided in other jurisdictions held in the leading case of

17. California: Calif. Gen. Laws (Deering, 1931) act 4749; Connecticut: Conn. Gen. Stat. (1930) § 5226; Illinois: Ill. Stat. Ann. (Smith-Hurd, Supp. 1943) c. 48, §§ 172.1-172.35; Indiana: Ind. Stat. Ann. (Burns, Supp. 1943) §§ 40-2201-40-2204; Iowa: Iowa Code (1935) §§ 1361-1422; Massachusetts: Mass. Gen. Laws (1932) c. 152, § 26; Minnesota: Minn. Stat. (Mason, Supp. 1944) § 4326(h); Missouri: Mo. Rev. Stat. Ann. (1939) § 3695; Nebraska: Neb. Act 230 of 1943, c. 113, § 2; New York: N.Y. Workmen's Compensation Law § 3; North Dakota: N.D. Laws of 1935, c. 286, § 1; Ohio: Ohio Gen. Code (Page, Supp. 1942) § 1465-68a; Oregon: Ore. Laws of 1943, c. 442; Wisconsin: Wis. Stat. (1939) § 102.01.

18. Illinois and Indiana.

19. Calif. Stats. of 1917, c. 586, § 1(4).

20. Calif. Stats. of 1943, c. 255.

21. *Wentworth's Case*, 284 Mass. 479, 188 N.E. 237 (1933); *Robinson's Case*, 299 Mass. 499, 13 N.E.(2d) 392 (1938).

22. *Johnson v. London Guarantee & Accident Co., Ltd.*, 217 Mass. 388, 104 N.E. 735 (1914); *O'Donnell's Case*, 237 Mass. 164, 133 N.E. 621 (1921).

23. *In re Hurler*, 217 Mass. 223, 104 N.E. 336 (1914).

24. *Sullivan's Case*, 265 Mass. 497, 164 N.E. 457 (1929); *Fabrizio's Case*, 274 Mass. 352, 174 N.E. 702 (1931); *Langford's Case*, 278 Mass. 461, 180 N.E. 228 (1932); *De Filippo's Case*, 284 Mass. 531, 188 N.E. 245 (1933); *Gustafson's Case*, 303 Mass. 397, 21 N.E.(2d) 961 (1939).

25. *In re Maggelet*, 228 Mass. 57, 116 N.E. 972 (1917).

26. *Smith's Case*, 307 Mass. 516, 30 N.E.(2d) 536 (1940).

27. Mass. Acts of 1941, c. 437(7A).

Almquist v. Shenandoah Nurseries that the injury need not arise out of an accident.²⁸ It was said in that case that Iowa would follow the lead of Massachusetts and give a liberal interpretation to the act.

Silicosis is given special treatment in fourteen states.²⁹ This particular lung disease is contracted by breathing air containing silica dust in minute particles. The characteristic symptoms of silicosis and tuberculosis are very similar; victims of the former disease are peculiarly susceptible to the latter.³⁰ Perhaps the reason for special attention to silicosis is the difficulty of ascertaining how much of the disability may be attributable to other pulmonary ailments. A West Virginia statute, however, allows compensation for silicosis even if accompanied by tuberculosis.³¹ It is submitted that tuberculosis contracted in such manner could correctly be labelled an occupational disease. In some states it is required that an employee work in the same employment for a prescribed period before he can receive compensation for silicosis. This provision has been construed by the West Virginia court to mean the same type of employment, not necessarily under the same employer.³²

The statutes relating to silicosis present the courts with the problem of determining what is a disablement; also what is an exposure and when and where does it take place? In Indiana disablement has been defined by the courts as the incapacity to earn full wages in the work in which the employee was last exposed.³³ In that state an exposure of less than sixty days is not compensable.³⁴ In Illinois, which has a similar statute, it has been held that the employment must be sixty days but the employee need not have been actually exposed during all that time.³⁵ A dictum in an Illinois case was to the effect that when the employee

28. *Almquist v. Shenandoah Nurseries*, 218 Iowa 724, 254 N.W. 35 (1934). Accord: *Gay v. Hocking Coal Co.*, 184 Iowa 949, 169 N.W. 360 (1918); *Hughes v. Cudahy Packing Co.*, 192 Iowa 947, 185 N.W. 614 (1921); *Farrow v. What Cheer Clay Products Co.*, 198 Iowa 922, 200 N.W. 625 (1924); *Dille v. Plainview Coal Co.*, 217 Iowa 827, 250 N.W. 607 (1933).

29. Idaho, Illinois, Indiana, Maryland, Massachusetts, Michigan, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Washington, West Virginia, Wisconsin.

30. Sayers and Jones, *Silicosis and Dust Diseases, Medical Aspects and Control* (1936) 1, 2 (published by the Division of Industrial Hygiene, United States Public Health Service, No. B-1345).

31. W.Va. Code Ann. (Michie & Sublett, 1943) § 2545(10).

32. *Hodges v. Workmen's Compensation Com'r*, 123 W.Va. 563, 17 S.E.(2d) 450 (1941).

33. *In re Jeffries*, 14 N.E.(2d) 751 (Ind. App. 1938).

34. Ind. Stat. Ann. (Burns, Supp. 1943) § 40-2226.

35. *Morris Metal Products Co. v. Industrial Commission*, 370 Ill. 292, 18 N.E.(2d) 899 (1938).

leaves his work after sixty days to accept other employment, the first employer remains liable until there has been sufficient exposure to render the second employer liable.³⁶

One of the most difficult problems in the occupational disease states is the determination as to which of successive employers shall be held. Generally the last employer is responsible. Pennsylvania relieves him of some liability by establishing an "occupational disease fund."³⁷ The compensation for any occupational disease that develops after an exposure of five years or more is paid jointly by the commonwealth and the employer. The courts of California apportion the payment of compensation among the successive employers.³⁸ This would seem to be the most equitable solution. The apportioning of the loss should be made relative to the time each profited by the employee's service. Those who contribute to the exposure should contribute to the compensation. The problems of administration are many but they can be solved by legislatures and sympathetic courts.

The acts with scheduled lists probably offer the simpler problems. The chief fault with such acts is that no schedule covers all known occupational diseases, and newly discovered diseases cannot of course be enumerated.

States Which Have No Express Coverage for Occupational Disease

The states³⁹ that retain the terminology of the original English act place the courts in the position of having to refuse recovery for injuries that cannot be classed as "accidental." The term "by accident" is construed generally to mean an unexpected event happening suddenly. Included in that is the requirement that the injury be traceable to a definite occurrence at a specific time and place. Since industrial diseases are of slow growth, are expectable, and are not traceable to a definite event, it is difficult to bring them under this definition. As one court has said, "In occupational diseases it is drop by drop, it is little by little, day after day for weeks and months and finally enough is accumulated

36. *Morris Metal Products Co. v. Industrial Commission*, 370 Ill. 292, 297, 18 N.E.(2d) 899, 902 (1939).

37. Pa. Stat. Ann. (Purdon, Supp. 1943) § 1408.

38. *Blanchard v. Industrial Acc. Comm.*, 63 Cal. App. 65, 228 Pac. 359 (1924); *Associated Indemnity Corp. v. State Industrial Acc. Comm.*, 12 P.(2d) 1075 (Cal. App. 1932); *Limited Mutual Compensation Ins. Co. v. Industrial Acc. Commission*, 98 P.(2d) 827 (Cal. App. 1940).

39. Alabama, Colorado, Georgia, Kansas, Louisiana, Maine, Montana, Nevada, New Hampshire, New Mexico, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, and Wyoming.

to produce symptoms.'"⁴⁰ The courts' efforts to allow compensation whenever possible have led them to use very entangling language. They initiate their discussion with the statement that the statute does not allow compensation for "occupational disease." They then attempt to define this term so as to exclude the ailment for which compensation is claimed. A frequently quoted definition is the following which is found in an Iowa decision:

"An 'occupational disease' . . . as distinguished from a disease caused or superinduced by an actionable wrong or injury, is neither more nor less than a disease which is the usual incident or result of the particular employment in which the workman is engaged, as distinguished from one which is caused or brought about by the employer's failure in his duty to furnish him a safe place to work."⁴¹

The weakness in the above definition lies in the fact that a disease acquired over a period of years may be compensated for as an accidental injury if the employer has failed to exercise reasonable care;⁴² yet there would be no compensation for the same type of injury if the employer were not negligent.⁴³ Thus the element of negligence appears in the workmen's compensation cases where it has no place. A more concise definition is one from a Utah decision:

"if the illness is one commonly recognized as incident to the particular occupation, it is an occupational disease. The time taken for the effects of the occupation to become serious is not the governing factor. Some are less resistant to imperfect conditions than others."⁴⁴

Whether the respective courts formulate their own definitions or borrow from each other they find them difficult to apply. This situation works an injustice on both the court and the workmen seeking recovery.

40. *Adams v. Acme White Lead & Color Works*, 182 Mich. 157, 160, 148 N.W. 485, 486 (1914).

41. *Gay v. Hocking Coal Co.*, 184 Iowa 949, 956, 169 N.W. 360, 363 (1918). See *Seattle Can Co. v. Department of Labor and Industries of Washington*, 147 Wash. 303, 265 Pac. 739 (1928); *Polson Logging Co. v. Kelly*, 195 Wash. 167, 80 P.(2d) 412 (1938).

42. *McNeely v. Carolina Asbestos Co.*, 206 N.C. 568, 174 S.E. 509 (1934).

43. *Swink v. Carolina Asbestos Co.*, 210 N.C. 303, 186 S.E. 258 (1936). The effect of this case and the *McNeely* case (supra note 42) has been minimized by the inclusion of statutory coverage for occupational disease in North Carolina in 1935 [N.C. Code Ann. (Michie, 1935) § 8081(2)].

44. *Young v. Salt Lake City*, 97 Utah 123, 128, 90 P.(2d) 174, 176 (1939).

Compensation has been allowed for pneumonia where this disease resulted from a long continuous exposure to cold water,⁴⁵ inhalation of gas,⁴⁶ a series of sudden changes of temperature,⁴⁷ a damp basement,⁴⁸ heat exhaustion,⁴⁹ as well as to sudden unexpected exposure,⁵⁰ or a fall.⁵¹ But recovery has been refused where the disease was contracted because of ordinary exposure,⁵² changes in temperature,⁵³ or heat exhaustion.⁵⁴ In denying compensation to an employee for pneumonia the Kansas court said:

"Lowered vitality may also come from exhaustion from heavy work, from fatigue, from long hours of work and from a great variety of other causes which expose a workman to pneumonia and other diseases. The result is there is a twilight zone between clear personal injury by accident, which is covered by the Compensation Act and sickness which is not covered."⁵⁵

The Texas court spared no efforts to find that pneumonia was the result of an accident. The workman had been continuously exposed to sulfur dioxide which so weakened the lungs that pneumonia developed.⁵⁶ Such an infection, reasoned the court, naturally developed from a physical injury to the lungs. The inhalation of the gas in presence of moisture contained in the lungs became sulphuric acid which destroyed the membrane. Such an infection was considered analogous to the infection of an external wound by other noxious germs. The courts of New Mexico and Colorado give "accident" a similar construction. In *Stevenson v. Lee Moor Contracting Company*,⁵⁷ a recent case, the

45. *Pow v. Southern Construction Co.*, 235 Ala. 580, 180 So. 288 (1938). See *New River Coal Co. v. Files*, 215 Ala. 64, 109 So. 360 (1926); *Gulf States Creosoting Co. v. Walker*, 224 Ala. 104, 139 So. 261 (1932).

46. *Columbine Laundry Co. v. Industrial Commission*, 73 Colo. 397, 215 Pac. 870 (1923).

47. *Johnson v. Industrial Commission*, 63 Ohio App. 544, 27 N.E.(2d) 418 (1939).

48. *Roth v. Locust Mountain State Hospital*, 130 Pa. Sup. 1, 196 Atl. 924 (1938).

49. *Dupre v. Atlantic Ref. Co.*, 98 Conn. 646, 120 Atl. 288 (1923).

50. *Industrial Commission of Colorado v. Swanson*, 93 Colo. 354, 26 P.(2d) 107 (1933).

51. *A. Breslauer Co. v. Industrial Commission of Wisconsin*, 167 Wis. 202, 167 N.W. 256 (1918).

52. *Joyce v. Luse-Stevenson Co.*, 346 Mo. 58, 139 S.W.(2d) 918 (1940).

53. *Lux v. Western Casualty Co.*, 107 F.(2d) 1002 (C.C.A. 5th, 1939).

54. *Maryland Casualty Co. v. Clark*, 140 S.W.(2d) 890 (Tex. Civ. App. 1940).

55. *Hoag v. Kansas Independent Laundry*, 113 Kan. 513, 516, 215 Pac. 295, 296 (1923).

56. *Maryland Casualty Co. v. Broadway*, 110 F.(2d) 357 (C.C.A. 5th, 1940). See also *Hartford Accident & Indemnity Co. v. Jones*, 80 F.(2d) 680 (C.C.A. 5th, 1935).

57. 45 N.M. 354, 115 P.(2d) 342 (1941).

New Mexico court stated that it was unnecessary that the injury should result momentarily in order to be accidental. "It may be the result of hours, even a day, or longer, of breathing or inhaling gases, depending upon the facts of the case."⁵⁸ The workman in that case had developed pneumonia traceable to seven hours of dusty truck driving. In other states with statutes substantially like New Mexico there is a marked tendency to construe accident as referring to the injury and not to the cause of the injury.⁵⁹ That is, an employee is entitled to compensation when the injury was unexpected though the event that caused it may have been normal. The Arizona courts however adopt the contrary view and hold that the event causing the injury must be undesigned, sudden and unexpected.⁶⁰ Since pneumonia is apt to be contracted under ordinary circumstances recovery is usually denied.

In Oklahoma the court distinguishes accident from disease on the ground that the former arises by reason of some definite event, the date of which can be fixed with certainty.⁶¹ In allowing compensation for injuries resulting from inhaling gases it said: "Under the evidence, the condition of claimant was probably progressively brought about by the inhalation of gas fumes and dust for a period of time, but on a definite and specified date he went to work as usual and after working a short time became suddenly ill and was unable to work further. The evidence is that on this certain date he had reached his limit and that the breathing of the gas fumes and coke dust on this particular occasion was the existing cause of his present condition."⁶² It is not believed that the courts of Arizona under the above definition established in that state would have reached the same conclusion. Under the Oklahoma rule recovery could be had for almost any occupational disease. The Colorado statute has received a similar construction. Compensation has been allowed to workmen who were poisoned by dope used to spray airplanes,⁶³ who were blinded while working near welding operations,⁶⁴ or who were

58. 45 N.M. 354, 367, 115 P.(2d) 342, 350. See also *Webb v. New Mexico Publishing Co.*, 47 N.M. 279, 141 P.(2d) 333 (1943) (used injurious soap six months; held series of traumatic injuries).

59. Georgia, Maine, South Carolina, Tennessee, Wyoming, and Utah.

60. *Pierce v. Phelps Dodge Corp.*, 42 Ariz. 436, 26 P.(2d) 1017 (1933).

61. *F. A. Gillespie & Sons Co. v. Johnson*, 160 Okla. 222, 16 P.(2d) 870 (1932); *Johnson Oil Ref. Co. v. Guthrie*, 167 Okla. 83, 27 P.(2d) 814 (1933).

62. *Johnson Oil Ref. Co. v. Guthrie*, 167 Okla. 83, 84, 27 P.(2d) 814, 816 (1933).

63. *Industrial Commission of Colorado v. Ule*, 97 Colo. 253, 48 P.(2d) 803 (1935).

64. *Great American Indemnity Co. v. State Compensation Ins. Fund*, 108 Colo. 323, 116 P.(2d) 919 (1941).

injured from flying dust.⁶⁵ In this last instance recovery was allowed even though the complainant, a warehouseman, was scraping dirt off equipment where continuous exposure to grit was characteristic of his employment. This follows the courts' frequent statement that workmen's compensation statutes are to be liberally construed so as to accomplish their beneficent purpose.⁶⁶

The cases dealing with injuries from inhalation of gas seem to depend upon whether or not asphyxiation can be attributed to a single incident. In one case a miner was making an opening into a room where workmen had been blasting. Due to insufficient ventilation the current containing the gas passed through the opening. The resultant injury was accidental.⁶⁷ In the same state an employee had on several occasions worked in an unventilated room containing gas, and the injury was regarded as an occupational disease.⁶⁸ Disablement of an electric refrigerator repairman by methyl chloride gas was similarly treated.⁶⁹

In the majority of the non-occupational disease states the courts designate lead poisoning as a disease. Prior to the adoption of an occupational disease statute in 1943 the courts of Oregon denied compensation for a severe case of lead poisoning which developed over a period of seven weeks.⁷⁰ Utah considered a fifteen day period sufficient to make lead poisoning occupational.⁷¹ However, in an interesting case where an employee had used "litharge"⁷² over a period of four years, the Idaho court called the resulting disease an accident.⁷³ The decision was based on a previous case which had held that lead poisoning acquired by the complainant after three weeks as a lead burner was not an occupational disease.⁷⁴ In that case the plaintiff was a carpen-

65. *Hallenbeck v. Butler*, 101 Colo. 486, 74 P.(2d) 708 (1937).

66. *Industrial Commission of Colorado v. Aetna Life Ins. Co.*, 64 Colo. 480, 174 Pac. 589 (1918).

67. *New River Coal Co. v. Files*, 215 Ala. 64, 109 So. 360 (1926).

68. *Gentry v. Swann Chemical Co.*, 234 Ala. 313, 174 So. 530 (1937). (This case came under Alabama's Employers' Liability Act. [Ala. Code Ann. (1940) c. 6, tit. 26, § 326]. The act makes the employer liable for personal injuries due to defects in ways, works, machinery or plant. Other states have compensated for injuries resulting from poisonous gases: *Jackson v. Euclid-Pine Inv. Co.*, 233 Mo. App. 805, 22 S.W.(2d) 849 (1930); *Leilich v. Chevrolet Motor Co.*, 328 Mo. 112, 40 S.W.(2d) 601 (1931); *Amalgamated Sugar Co. v. Industrial Commission of Utah*, 56 Utah 80, 139 Pac. 69 (1920).

69. *Birmingham Electric Co. v. Meacham*, 27 Ala. App. 471, 175 So. 316 (1937), affirmed in 234 Ala. 506, 175 So. 322 (1937).

70. *Iwanicki v. State Industrial Acc. Commission*, 104 Ore. 650, 205 Pac. 990 (1922).

71. *Young v. Salt Lake City*, 97 Utah 123, 90 P.(2d) 174 (1939).

72. Lead Protoxide—PbO.

73. *Wozniak v. Stoner Meat Co.*, 57 Idaho 439, 65 P.(2d) 768 (1937).

74. *Ramsay v. Sullivan Mining Co.*, 512 Idaho 366, 6 P.(2d) 856 (1931).

ter and the court said a disease to be occupational must result from a person's occupation or "calling." The Maryland courts had departed from the general rule that poisonings by lead and similar substances were occupational diseases until the difficulty was obviated by a special statute. In *Victory Sparkler & Specialty Company v. Francks*,⁷⁵ it was held that exposure to phosphorus poisoning while making fireworks was an accidental injury. In that decision it was said:

"It was by chance that the employer did not use due care, and by chance the vapor of phosphorus was where its noxious foreign particles could be inhaled by the girl. It was by chance that the inspired air carried these particles into her system, sickening her, . . . after fortuitously finding a lesion."⁷⁶

In Virginia the contrary conclusion has been reached.⁷⁷ In a case where an employee inhaled gas causing tuberculosis the Virginia court said, "It is enough that the employee contract an occupational disease . . . but the disease must result naturally and unavoidably from an accident."⁷⁸ The act of that state was modelled after the original Indiana act. This latter has already been amended to cover occupational diseases.

Louisiana

The Louisiana act⁷⁹ excludes occupational disease. There must be a personal injury by accident, which is defined as follows:

"The word 'accident,' as used in this act shall . . . mean an unexpected or unforeseen event happening suddenly or violently, with or without human fault and producing at the time objective symptoms of an injury. The terms 'injury' and 'personal injuries' shall include only injuries by violence to the physical structure of the body and such disease or infection as naturally result therefrom. The said terms shall in no case be construed to include any other form of disease or derangement, howsoever caused or contracted."⁸⁰

75. 147 Md. 368, 128 Atl. 635 (1925).

76. 147 Md. 368, 379, 128 Atl. 635, 639 (1925).

77. *Turner v. Virginia Fireworks Co.*, 149 Va. 371, 141 S.E. 142 (1928).

78. *Clinchfield Carbocoal Corp. v. Kiser*, 139 Va. 451, 124 S.E. 271 (1924).

79. La. Act 20 of 1914, § 43 [Dart's Stats. (1939) §§ 4391-4432].

80. La. Act 20 of 1914, § 38, as amended by La. Act 38 of 1918, § 1 [Dart's Stats. (1939) § 4427].

The courts tend to adopt a liberal construction of the above statute. The cases indicate two distinct methods of attack by the courts in fixing the area of overlap between injury and occupational disease. One determination frequently called for is whether the disease was contracted suddenly or accumulated over a long period of time. This does not necessarily mean that a plaintiff who has been exposed over a long period of time will be denied recovery. The suddenness of the attack is the determining factor. The other common determination is whether the disease is *usual* to the employment in which the complainant was working when he sustained the injury. Thus even where the disease is brought on gradually, if it is not usual to the employment, compensation may still be allowed. The statutory authority for this latter distinction is not clear.

The first occasion for passing on the issue of occupational disease was presented in *Cannella v. Gulf Refining Company of Louisiana*.⁸¹ In that case compensation was allowed for lead poisoning. Although the plaintiff had previously worked for several years painting trucks without injury, he was suddenly stricken on one occasion. The court distinguished between lead poisoning gradually accumulating and acute lead poisoning. Medical testimony showed that in acute cases the patient is normal until a few hours or days of contact with the paint makes him deathly ill. The court said:

"There is no doubt that the acute lead poisoning from which the plaintiff suffered was unexpected. . . . Surely there was enough evidence of violent injury to the physical structure of the body and by no process of logical or fair reasoning can it be said that a person who is suffering from acute poisoning is afflicted with a disease."⁸²

The opinion quoted at length from *Sullivan Mining Company v. Aschenbach*.⁸³ The quoted case recognized the contrariety of the holdings on the subject and adopted the more liberal view. In a case where compensation was sought for dermatitis recovery was denied. The petitioner had worked four years in a cement dust filled room and the resulting dermatitis was held to be an occupational disease.⁸⁴ The same conclusion was reached where a

81. 154 So. 406 (La. App. 1934).

82. *Cannella v. Gulf Refining Co. of La.*, 154 So. 406, 414 (La. App. 1934).

83. 33 F.(2d) 1 (C.C.A. 9th, 1929); writ refused 280 U.S. 586, 50 S.Ct. 35, 74 L.Ed. 635 (1929).

84. *Freiss v. Lone Star Cement Co.*, 161 So. 209 (La. App. 1935).

workman fired furnaces for four years whereby his eyesight was impaired.⁸⁵ The court indicated that if there had been proof that the furnaces produced an unusual glare on the final day when the ailment culminated it would have allowed compensation.

The liberality of the courts' attitude toward recovery for occupational disease is well illustrated by the line of cases which allow recovery for any disease which is not peculiar to the employment of the plaintiff. The same year in which the Louisiana court decided the *Cannella* case it sustained a petition which alleged that the plaintiff's injuries were due to breathing paint fumes.⁸⁶ It was stated in the opinion that although occupational diseases are not compensable, the petitioner's allegation did not positively characterize the injury as being usual to the occupation of painting automobiles. A similar attitude has been manifested on other occasions. It has been held that a callous which later became cancerous was not usual to the occupation of a linesman.⁸⁷ The callous had formed as a result of several years of continuous climbing. The court said: "An occupational disease is one which is not only incident to an occupation, but the natural, usual, and ordinary result thereof."⁸⁸ In another decision abscessed callouses on a woodcutter's hand were considered usual to his calling and therefore were not compensable.⁸⁹ Although the main reason for allowing recovery in *Glover v. Fidelity & Casualty Company*⁹⁰ was the suddenness of the complication, an added factor was that the court did not regard the ailment as being usual to the occupation of a carpenter. The plaintiff had worked four days in a dust filled room which caused an eye injury to develop into "shingles" (Herpes Zoster). In reaching its conclusion the court said: "If the conditions under which he [an employee] is required to work are so injurious to health as to produce symptoms . . . on the second day it [the disease] cannot be classed as occupational."⁹¹

Under the present workmen's compensation statute of Louisiana, a more liberal construction on the part of the courts is hardly to be expected. The existing limitations of the act simply make further expansion impossible. A broader legislative outlook has been suggested by the workmen's compensation acts of those

85. *Jackson v. Southern Kraft Corp.*, 183 So. 135 (La. App. 1938).

86. *Faulkner v. Milner-Fuller, Inc.*, 154 So. 507 (La. App. 1934).

87. *Harris v. Southern Carbon Co., Inc.*, 162 So. 430 (La. App. 1935).

88. 162 So. 430, 434 (La. App. 1935).

89. *Robichaux v. Realty Operators, Inc.*, 191 So. 326 (La. App. 1939).

90. 10 So.(2d) 255 (La. App. 1942).

91. 10 So.(2d) 255, 258 (La. App. 1942).

states in which the lawmakers have frankly faced the problem of occupational disease and have met the need by comprehensive coverage, or at least have permitted recovery for those diseases which are most obviously attributable to the employment.

EVYLEN PRITCHARD COLE

DONATIONS OMNIUM BONORUM
ARTICLE 1497

WHO MAY OBJECT TO SUCH DONATIONS?

Article 1497 provides that: "The donation inter vivos shall in no case divest the donor of all his property; he must reserve for himself enough for subsistence; if he does not do it, the donation is null for the whole." This article was adopted from the Spanish law. The Spanish commentator Febrero states that the *raison d'être* was public consideration.¹ The article did not appear in the Louisiana Civil Code of 1808, but was adopted in 1825. In reflecting upon the significance of the article at the time of its adoption the redactors of the Louisiana Civil Code of 1825 said: "We propose to re-establish this wise disposition which before existed and which the code had abolished, wherefore we have not learned," thus indicating that the article had been adopted for the protection of the public.²

Louisiana jurisprudence instances a various application of this article. Insofar as the donor is concerned, his right to annul such a donation has repeatedly been recognized.³ Furthermore,

1. II Febrero Novisimo (ed. by Tapia 1837) tit. IV, c. XXII, p. 462. ("*La razón es porque además de quedarse el donante sin lo necesario para su manutención, se priva del derecho de testar, y se puede dar ocasión al donatario para que maquine la muerte del donante con el fin de apoderarse prontamente de sus bienes. Fuera de esto, y además del perjuicio que se causa á las costumbres, no conviene en el orden público que los hombres sean prodígos.*") The reason is because, besides the fact that the donor remains without the necessary means for his subsistence, he deprives himself of the right of making a will and an occasion may be given to the donee to procure the death of the donor in order to take possession of the estate. Besides this, and besides the prejudice it causes to the mores, it is not convenient to the public order that men be prodigious.

2. I Projet of the Civil Code of 1825 (1937) 207. ("*Nous proposons de rétablir cette sage disposition, que existait ci-devant, et que le code avait abolie, on ne voit pas pourquoi.*")

3. Lagrange v. Barre, 11 Rob. 302 (La. 1845); Beaulieu v. Monin, 50 La. Ann. 732, 23 So. 937 (1898); Harris v. Wafer, 113 La. 822, 37 So. 768 (1904); Nunge v. Cegretto, 3 Orl. App. 39 (La. App. 1905); Rocques v. Freeman, 125 La. 60, 51 So. 68 (1909); Jaco v. Jaco, 129 La. 621, 56 So. 615 (1911); Succession of Suarez, 131 La. 500, 59 So. 916 (1912); Kelly v. Kelly, 131 La. 1024, 60 So. 671 (1913); Tucker v. Angell, 1 La. App. 577 (1925); Armand v. Armand, 8 La. App.