NOTES

WORKMEN'S COMPENSATION ACT—COMPENSABLE "ACCIDENT" DEFINED.—There are many words which have vastly different meanings in the field of law from the meanings they convey in the layman's vocabulary. Perhaps no word illustrates this variance better than "accident".[1] To the layman it carries a more restricted meaning than it does to the lawyer and particularly is this true when the word is used in connection with a case involving the Workmen's Compensation Act.[2] In order to extend the benefits of such remedial legislation the courts have stretched the popular concept of "injury by accident" until it is extremely difficult t oapply any rule to a given set of facts. Some of the injuries held to be accidental include those arising from exposure to the elements,[3] heart ailments,[4] cancer through constant irritation,[5] strains,[6] nervous shock,[7] and eye injuries.[8]

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1. 1 C.J. 390 gives the following lengthy definition: "In its most commonly accepted meaning the word denotes an event that takes place without one's foresight or expectation; an event which proceeds from an unknown cause, or is an unusual effect of a known cause, and therefore not expected; chance, casualty, contingency, an event happening without any human agency, or, if happening through human agency, an event which under the circumstances is unusual and unexpected by the person to whom it happens; an event which, under the circumstances, is unusual and unexpected by the person to whom it happens; something unexpectedly taking place, not according to the usual course of things; an unusual or unexpected result attending the operation or performance of a usual or necessary act or event; something happening by chance or 'mishap'."

2. New Jersey Revised Statutes 34;15-1 to 34:15-120. See particularly R.S. 34:15-7.

3. Richter v. E. I. DuPont de Nemours & Co., 118 N.J.L. 404, 193 Atl. 194 (S. C., 1937), *aff'd*, 119 N.J.L. 427, 197 Atl. 276 (E. & A., 1938); Douglass v. Riggs Disler Co., 120 N.J.L. 583, 1 Atl. 2d 207 (S. C., 1938), *aff'd*, 122 N.J.L. 379, 5 Atl. 2d 873 (E. & A., 1939); Matthews v. Woodbridge Tp., 14 M. 143, 183 Atl. 150 (S. C., 1936), *aff'd*, 117 N.J.L. 146, 187 Atl. 374 (E. & A., 1936); George v. Edward M. Waldron, Inc., 111 N.J.L. 4, 166 Atl. 102 (E. & A., 1933).

4. Rother v. Merchants Refrigerating Co., 6 Atl. 2d 404 (S. C., 1939); Hentz v. Janssen Dairy Corp., 6 Atl. 2d 409 (E. & A., 1939), *reversing* 121 N.J.L. 160, 1 Atl. 2d 751 (S. C., 1938).

5. Bollinger v. Wagaraw Bldg. Supply Co., 6 Atl. 2d 396 (E. & A., 1939), *reversing* 121 N.J.L. 606, 3 Atl. 810 (S. C., 1939).

6. Van Meter v. E. R. Morehouse, Inc., 13 M. 558, 179 Atl. 678 (S. C., 1935); Matthews Const. Co. v. Ranallo, 13 M. 878, 181 Atl. 901 (S. C., 1935);

At the outset it is to be noted that it is not necessary that an accidental injury, in order to be compensable, be the result of traumatic force or any extraneous event or occurrence. In a recent case[9] the petitioner developed a cancer from getting sand and ashes into his shoes thereby irritating a mole on his instep. On a particular afternoon he felt pain in his foot and later in the day he found blood on his stocking. The lower courts[10] had denied compensation on the ground that no accidental injury at any time was established. The symptoms "were not accompanied with any fall, blow or other trauma". These holdings were completely reversed on appeal. The court of last resort went so far as to hold the words injury by accident exclude only injury by disease or injury by design.[11]

In some of the cases the test of whether an accident occurred is the ability to fix a specific time when "the accident" took place.[12] Where no specific time can be fixed there is no accident within the meaning of the act. This has been held to be "a sensible working rule, especially in view of the provisions of the statute requiring notice in certain cases within 14 days of the occurrence of the injury[13]—a provision which must point

Graves v. Burns, Lane & Richardson, 10 M. 667, 160 Atl. 399 (S. C., 1932), *aff'd*, 110 N.J.L. 607, 166 Atl. 166 (E. & A., 1933); Marotta v. Fabi, 13 M. 690, 180 Atl. 545 (S. C., 1935).

7. Hall v. Doremus, 114 N.J.L. 47, 175 Atl. 369 (S. C., 1934).

8. Campanile v. Asbury Park, 118 N.J.L. 480, 193 Atl. 819 (S. C., 1937).

9. Bollinger v. Wagaraw Bldg. Supply Co., 6 Atl. 2d 396 (E. & A., 1939) in which the Court of Errors and Appeals reversed the holdings of the Workmen's Compensation Bureau, Common Pleas Court and Supreme Court dismissing the petitioner's complaint.

10. 121 N.J.L. 606, 3 Atl. 2d 810 (S. C., 1939); 16 M. 375, 200 Atl. 744 (C. P., 1938).

11. This is perhaps the broadest language used in the courts of this state. Chief Justice Brogan further said: "We have long held the view that an accident is 'an unlooked for mishap or untoward event which is not expected or designed,' or 'an unintended or unexpected occurrence which produces hurt or loss'."

12. Liondale Bleach, Dye & Paint Works v. Riker, 85 N.J.L. 426, 89 Atl. 929 (S. C., 1914) which adoptes the rule of the English courts laid down in Fenton v. Thorley, 1903 A.C. 443; Smith v. International High Speed Steel Co., 98 N.J.L. 574, 120 Atl. 188 (E. & A., 1923); Szalkowski v. C. S. Osborne & Co., 9 M. 538, 154 Atl. 611 (C. C., 1931), *aff'd*, 116 N.J.L. 93, 182 Atl. 632 (E. & A., 1936).

13. R. S. 34:15-17.

to a specific time".[14] That it is no more than a working rule is evident since later cases stray from a strict application of it.[15] It has been applied in cases where employees breath in fine particles of steel dust or other substances over a period of time.[16] The exposure cases on the other hand lie outside the rule.[17]

As a corollary of the specific time rule is the proposition that an occupational disease is not an accident.[18] "An occupational disease is one that from common experience is visited upon persons engaged in a particular occupation, in the usual course of events. It is one that is incidental to the employment itself . . . "[19] The Workmen's Compensation Act sets forth certain specific occupational diseases[20] that are compensable thus clearly recognizing that such diseases although arising out of the employment are not "accidents".

There is a class of cases which stands quite apart from the popular concept of an "accident" in that no traumatic force is involved nor is there any specific time or occurrence upon which one may fix attention.

14. Liondale Bleach, Dye & Paint Works v. Riker, 85 N.J.L. 426, 89 Atl. 929 (S. C., 1914).

15. See the somewhat ambiguous language of Mr. Justice Bodine in Hentz v. Janssen Dairy Corp., 6 Atl. 2d 409 (E. & A., 1939): "The Supreme Court erroneously considered the circumstance that the heart had been weakened by the strain of work over a long period of time as excluding recovery, but this is a circumstance which under our cases and those decided in England, could make no difference where the accident arose out of and in the course of the employment."

16. Smith v. International High Speed Steel Co., 98 N.J.L. 574, 120 Atl. 188 (E. & A., 1923); Szalkowski v. C. S. Osborne & Co., 9 M. 538, 154 Atl. 611 (C. C., 1931), *aff'd*, 116 N.J.L. 93, 182 Atl. 632 (E. & A., 1936). "Compensation may be awarded for resulting conditions where you can put your finger on the accident from which they result; but the ground of the action fixed by the statute is the injury by accident, not the results of an indefinite thing which may not be an accident."

17. Bollinger v. Wagaraw Bldg. Supply Co., 16 M. 375, 200 Atl. 744 (C. P., 1938).

18. United States Radium Corp. v. Globe Indemnity Co., 13 M. 316, 178 Atl. 271 (S. C., 1935), *aff'd*, 116 N.J.L. 90, 182 Atl. 626 (E. & A., 1936). This is not a Workmen's Compensation Case but rather an action brought under certain accident insurance policies. The court said: " . . . the ground of an action under these policies must be bodily injury due to an accident, and not the result of an indefinite something which may not be an accident."

19. Bollinger v. Wagaraw Bldg. Supply Co., 6 Atl. 2d 396 (E. & A., 1939).

20. R.S. 34:15-31.

That class is governed by the rule that where the employee is exposed to unusual physical surroundings or is engaged in unusual work any resulting injury is a compensable accident. The test is whether or not the employee was exposed to a different risk than the general public.[21] However the conditions of general health and natural resistance of the employee also enter into the matter.[22] In order to give the employer some measure of protection, however, compnsation should not be awarded simply because of overwork. "Any hard worker may break down and develop a heart condition."[23]

Nervous shock producing physiological injury is considered an accident arising out of and in the course of the employment.[24] If the shock produces a mere emotional impulse however it is not a compensable injury.

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21. George v. Edward M. Waldron, Inc., 111 N.J.L. 4, 166 Atl. 102 (E. & A., 1933), sunstroke; Kauffeld v. G. F. Pfund & Sons, 97 N.J.L. 335, 116 Atl. 487 (E. & A., 1922), sunstroke; Bernstein Furniture Co., v. Kelly, 114 N.J.L. 500, 177 Atl. 554 (S. C., 1935), *aff'd,* 115 N.J.L. 500, 180 Atl. 832 (E. & A., 1935), overheating; Matthews v. Woodbridge Tp., 14 M. 143, 183 Atl. 150 (S. C., 1936), *aff'd,* 117 N.J.L. 146, 187 Atl. 374 (E. & A., 1936), frostbite; Richter v. E. I. DuPont de Nemours & Co., 118 N.J.L. 404, 193 Atl. 194 (S. C., 1937), *aff'd,* 119 N.J.L. 427, 197 Atl. 276 (E. & A., 1938), pneumonia; Ciocca v. National Sugar Refining Co. of N. J., 122 N.J.L. 165, 4 Atl. 2d 397 (S. C., 1939), overheating.

22. Rother v. Merchants Refrigerating Co., 6 Atl. 2d 404 (S. C., 1939), where employee, who had been afflicted with heart trouble for several years, died during his first hour of work unloading freight car. Court held there was unusual effort and unusual exertion which aggravated pre-existing condition. See also Schneider v. F. & C. Hoerter, 119 N.J.L. 548, 197 Atl. 281 (S. C., 1938); Richter v. E. I. DuPont de Nemours & Co., 118 N.J.L. 404, 193 Atl. 194 (S. C., 1937), *Aff'd,* 119 N.J.L. 427, 197 Atl. 276 (E. & A., 1938); Mong v. Samuel Dolinsky & Co., 119 N.J.L. 547, 197 Atl 735 (S. C., 1938); Douglass v. Riggs Disler co., 120 N.J.L. 583, 1 Atl. 2d 207 (S. C., 1938), *aff'd,* 122 N.J.L. 379, 5 Atl. 2d 873 (E. & A., 1939).

23. Hentz v. Janssen Dairy Corp., 121 N.J.L. 160, 1 Atl. 2d 751 (S. C., 1938). A milkman while ascending a hill one snowy morning felt a sharp pain in his side. He suffered coronary thrombosis and shortly died. The Supreme Court denied compensation but its holding was reversed on appeal. 6 Atl. 2d 409 (E. & A., 1939). It would seem that the employer is thereby denied even this modicum of protection.

24. Hall v. Doremus, 114 N.J.L. 47, 175 Atl. 369 (S. C., 1934). Court adopted English rule laid down in Yates v. South Kirkby, Featherstone and Hernsworth Collieries Ltd., (1910) 2 K.B. 538, 3 N.C.C.A. 225, 3 B.W.C.C. 418.

The courts of this state have drawn a distinction between accidents arising through "ordinary means".[25] Accidental means arise where in the act preceding the injury something unforeseen, unexpected, or unusual occurs which produces the injury. It is extremely difficult to apply this definition to factual situations. One case[26] holds that an injury to the back of one pitching quoits occurred through ordinary means, voluntarily employed in a not unusual or unexpected way. Another[27] holds that a back sprain suffered by a farm laborer while clearing a field by pulling weeds and bushes was caused by something unforseen, unexpected, or unusual. *Query*—is the injury from quoit pitching any more voluntarily inflicted than that from weed pulling?

In summary then it can be said that the term "accident" which at first meant a specific unexpected extraneous event taking place at a specific time has come to mean, when used in connection with an injury, something quite different. Any injury not the result of disease or design is the result of an accident. Thus by judicial legislation the scope of the Workmen's Compensation Act has been greatly extended.

DISABILITY OF THE TESTAMENTARY FIDUCIARY TO PURCHASE PROPERTY UPON FORECLOSURE, EXECUTION OR THE EXERCISE OF A POWER OF SALE.—A trustee, while engaged as such, is obliged to conduct himself in a manner conducive to promotion of the interests of the corpus estate and to furthering the welfare of his cestui.[1] The nullifica-

25. Lower v. Metropolitan Life Ins. Co., 111 N.J.L. 426, 168 Atl. 592 (E. & A., 1933); Lawrence v. Mass. Bonding & Ins. Co., 113 N.J.L. 265, 174 Atl. 226 (S. C., 1934). These are not Workmen's Compensation cases but cases arising under accident insurance policies. The problem is the same, however.

26. Lawrence v. Mass. Bonding & Ins. Co., 113 N.J.L. 265, 174 Atl. 226 (S. C., 1934).

27. Van Meter v. E. R. Morehouse, Inc., 13 M. 558, 179 Atl. 678 (S. C., 1935).

1. *In re* Westhall, 125 N.J.Eq. 551 5 Atl. (2nd) 757 (E. & A. 1939) Marshall v. Carson, 38 N.J.Eq. 250 (E. & A. 1884); Staats v. Bergen, 17 N.J.Eq. 554 (E. & A. 1867).