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come should not be pyramided into the year of change inasmuch as it is income attributable to other accounting periods.

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Workmen's Compensation—"Accidental" Injury—an Anachronism

A 1953 Mississippi decision has added one more drop to the ocean of confusion concerning the legal meaning of the word "accident." There a baker contracted a skin allergy from the use of a baker's pad in handling hot pans of bread. After testimony by a dermatologist to the effect that the employee was allergic to some material or chemical in the pad, the attorney-referee awarded compensation on the basis of "accidental" injury and the entire Commission affirmed. On appeal the Mississippi Supreme Court refused to overturn the finding, agreeing that this was an "accidental" injury within the purview of the Mississippi statute.

To understand the decision, it is first necessary to briefly examine the theory underlying Workmen's Compensation. In an economic society containing as one of its basic essentials a large group of laborers, it is desirable for the well being of all integrated society to protect this group from industrial accidents which seem inevitable in the industrial machine. To accomplish this end the economic burden is placed upon industry rather than upon workers and their dependents, who might otherwise well become wards of the State. And since this benefit is directly for the laborer and only indirectly for the society, Workmen's Compensation Acts should be construed liberally in favor of the employee.

1. Hardin's Bakeries, Inc. v. Ranager, 64 So. 2d 705 (Miss. 1953).
2. Under Mississippi procedure, hearings may be conducted by a Commissioner or a representative of the Commission, who grants or denies compensation and then files his decision with the Commission. This decision is final unless within twenty days a request or petition for review by the full Commission is made. Appeal may be made from the Commission's finding within thirty days to the Circuit Court of the county in which the injury occurred, this appeal being based only upon the record as made before the Commission. Finally, appeal may be taken to the Supreme Court of Mississippi. Miss. Laws 1948, c. 354, §§ 18, 20.
But even liberality must have its boundaries, if law is truly to produce justice. Thus, we find irritated Justinians admonishing: "(The court) may not add to, nor detract from, the statute. The court must take the statute as it is, not as it may think it should be."7 Again: "We cannot reconstruct the act, we can only interpret it."8 Or even further: "The statute should be given a liberal interpretation, but liberality should not be stretched into extravagance."9

What then has been the occasion for this controversy? Basically it would seem to be a conflict between a liberal construction in order to effectuate the purpose of the Acts and common law notions of legal liability. To go into all the possible ramifications of this conflict is not the purpose here.10 Rather we seek to examine one of the most controversial areas—what constitutes an "accident" as referred to in the statutes and as related to the principal case.

Under most Workmen's Compensation Acts,11 not only must the injury arise out of and in the course of the employment,12 but in the majority of the Acts it must also be accidental.18 Some courts have interpreted "accident" as an unlooked for and untoward event, not expected or designed;14 it has been called a "fortuitous" event;15 or "a quality or condition . . . of happening, coming by chance or without design, or taking place unexpectedly or unintentionally";16 often, but

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8 Paterno's Case, 266 Mass. 323, 327, 165 N.E. 391, 392 (1929).
10 For a comprehensive study of accidental injury, see 1 Larson, Workmen's Compensation Law §§ 37.00-42.24 (1st ed. 1952).
11 For a compilation of all Workmen's Compensation statutes, see Schneider, Workmen's Compensation Statutes, 6 vols. (Perm. ed. 1939-1949).
15 Benjamin F. Shaw Co. v. Musgrave, 189 Tenn. 1, 222 S.W. 2d 22 (1949); Zappala v. Ind. Ins. Comm., 82 Wash. 314, 144 Pac. 54 (1914).
not necessarily, accompanied by a manifestation of force. Other courts have added as a valuable ingredient a definite time, place, and occasion. Or it may simply be interpreted as an “accident” in the popular sense of the word.

How do these definitions apply to the principal case? Certainly the allergy was unexpected, undesigned, untoward, unintentional, and fortuitous. No definite time can be ascertained, but courts vary as to what constitutes a definite time and place. Some say an accident does not happen over an entire day, others hold that it may require six months for an accident to culminate. "No stated period can be given... as applied to each case, each must naturally depend on its own circumstances."

But what of the requirement of the ordinary, popular sense of the word? Justice Cardozo once dealt with the problem in Connally v. Hunt Furniture Co., where an embalmer’s helper was infected by poison entering an abrasion on his hand while working on a corpse. In the majority opinion, affirming an award, Cardozo wrote:

“Germs may indeed be inhaled through the nose or mouth, or absorbed into the system through normal channels of entry. In such cases their inroads will seldom, if ever, be assignable to a determinate or single act, identified in space or time... For this, as well as for the reason that the absorption is incidental to a bodily process both natural and normal, their action presents itself to the mind as a disease, and not as an accident (italics added). Our mental attitude is different when the channel of infection is abnormal or traumatic, a lesion or cut.”

Several early cases have also applied such a distinction. Thus compensation was denied where infection followed from an employee’s dipping his hand into a staining solution, there being no evidence of a scratch or abrasion; where a plumber contracted an infection of the eye from a particle falling into it, or by wiping his face with an infected towel—again no prior abrasion; where infection resulted from use of a chemical solution in developing photographic plates; and where

18 Liberty Mut. Ins. Co. v. Thompson, 171 F. 2d 723 (5th Cir. 1948); Great Atlantic and Pacific Tea Co. v. Sexton, 242 Ky. 266, 46 S.W. 2d 87 (1932).
20 A. Schneider, Workmen’s Compensation 387 (Perm. ed. 1945).
24 Voelz v. Industrial Comm., 161 Wis. 240, 152 N.W. 830 (1915).
dermatitis resulted from washing out ink cans with a solution of caustic soda.27

Several later cases have turned on similar grounds. In 1936, the Ohio Supreme Court refused compensation from irritations to an employee's face caused by peach stains in a towel on the basis of a lack of causal relation, but by way of dictum stated that even were the causal relation present, there was no accident, for the unusual or exceptional physical condition of the employee was not a legal trauma.28 A 1944 Florida decision refused compensation where a bakery employee developed knots in her wrists from mixing dough, baking bread, and scrubbing pans. The court based its finding on the lack of an unexpected, or unusual, sudden injury, as the Act required.29 In a 1952 Missouri case, an employee sustained injuries to his face, right side, and ear by dust and dirty cotton lodgin to which he was exposed in a cotton warehouse. In denying recovery, the court said there was no impact, and that the exposure was usual.30

However, Cardozo's distinction between the normal and the abnormal channels as a guide to the common meaning of "accident" has, for the most part, given way to other legal interpretations, with the real question centering around causal connection. Thus lung cancer from inhaling dust,31 back injury where the strain was usual,32 cerebral hemorrhage from excitement33 or exertion,34 coronary thrombosis caused by nervousness while driving at night in a dense fog,35 skin disease from exposure to the sun,36 coughs spreading germs,37 and sunstroke38

27 Cheek v. Harmsworth Brothers, 4 W. C. C. 3 (Eng. 1901).
29 FLA. STAT. ANN. § 440.02 (1952); S. H. Kress and Co. v. Burkes, 153 Fla. 868, 16 So. 2d 105 (1944). The Florida Court on the same grounds refused compensation in Travelers Ins. Co. v. Shepard, 20 So. 2d 903 (Fla. 1945) (dermatitis from packing oranges); City of Tallahassee v. Roberts, 21 So. 2d 712 (Fla. 1945) (injured vertebra). But see Meehan v. Crowder, 28 So. 2d 435, 437 (Fla. 1946), where compensation was granted for an injury over a three day period, the court saying: "The event here is the sudden entry of the poisonous fumes into Crowder's body."
30 Rogers v. Sikeston Compress and Warehouse Co., 248 S.W. 2d 672 (Mo. 1952).
37 McRae v. Unemployment Compens. Comm., 217 N. C. 769, 9 S.E. 2d 595 (1940), commented on in 39 Mi. C. L. Rev. 834 (1941). In view of this case it would seem that the North Carolina Court takes a liberal view as to what constitutes an "accident" as applied to Workmen's Compensation, for the Court there found a cough which spread disease germs to be an "accident." Whether the same liberality would be evidenced on the facts of the principal case is open to conjecture. But the step from a cough to wearing gloves is not a large one,
are but a few of the recently classified “accidents,” when all, or certainly most, would not be so classified in common parlance.

Thus, it is seen that in the application of the word “accident” there has grown up in the courts a legal and judicial meaning far different from the layman’s definition and understanding, which the legislatures probably intended in first using the term. The principal case is but one more example of this. To the layman, the baker’s injury would not be an accident, nor would it be an occupational disease, as it is not peculiar to bakers or to their working environment—it would simply be what it was, a skin disease caused by the employment. For if this were an accident, then almost any action, even a prolonged one, with an unfortunate result could logically be deemed the same. However, where there is a causal connection between the employment and the injury, the legal trend is unmistakably toward such a result; to refuse to recognize this or to advocate reversal is to play the role of the ostrich and the sand.

The effect then is to render the word “accident” practically useless in compensation cases, except as rationale to circumvent a statute saying such is necessary. Courts responding to economic, political, and social trends of the past thirty years have to that effect legislated. And though, as Justice Cardozo wrote, there are “interstitial” areas where judicial legislation becomes desirable, there is a constant danger of judicial legislation being substituted for judicial interpretation.

In light of the aforementioned trend, the principal case reaches a sound result. In actuality it carries rationalization one step further to reach a desired result. It would be far more desirable if Workmen’s Compensation Acts did not include the element of accident (as some do not), for it presents a roadblock to the sociological purpose of the Acts, which is becoming less effective with more liberal interpretations, but which, at the same time, has created an unhealthy trend toward

for allergy from pads is far less common and unexpected than disease spread by coughs. For a compilation of North Carolina cases on accidental injury, see N. C. W. C. A. ANN. § 97.2 (F) (1952).


legal rationalization which may become infectious and spread to other areas of the law.

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Some courts are more pointed: "It (the injury) cannot be attributed to the occupation because it is not a disease which men in that occupation are subject to contract; it is not a disease known to be incidental to that particular employment. Then it is the result of the accident or else we have a situation under the Workmen's Compensation Act where an employee contracts a disease out of and in the course of his employment, and, yet not compensable (italics added). Vogt v. Ford Motor Co., 138 S.W. 2d 684, 687 (Mo. App. 1940)."