# University of Pennsylvania Law Review

## And American Law Register

FOUNDED 1852

Published Monthly, Except July, August and September, by the University of Pennsylvania Law School, at 236 Chestnut Street, Philadelphia, Pa., and 34th and Chestnut Streets, Philadelphia, Pa.

VOLUME 62 MARCH, 1914. NUMBER 5


## WHAT IS AN "INJURY" OR AN "ACCIDENTAL INJURY" WITHIN THE MEANING OF THE WORKMEN'S COMPENSATION ACTS?

The Solicitor of the Department of Commerce and Labor was required to consider seriously, and to render an opinion, not long ago, on the question as to whether the breaking of an artificial leg was such an injury, under the federal Workmen's Compensation Act, relating to certain government employees, as entitled the workman to compensation.[1] Under some of the State statutes claims were made for trivial damages to clothing, in the months immediately succeeding the taking effect of those statutes. These claims indicate the general misunderstanding in relation to workmen's compensation statutes, and the tendency to demand compensation under almost every conceivable circumstance.

The impression has been gained that these statutes entitle a workman to benefits for every injury which he receives at any time within the twenty-four hours of the day. Much of the difficulty in administering such statutes comes from the necessity of determining when a particular injury is one which comes from the employment itself, or, in other words, when it arises out of and in the course of the employment. Workmen who are pro-

[1] *Re* Eulogio Rodriquez, Op. Sol. Dep. C. & L., p. 189.

tected by such an act also receive injuries and become ill from causes wholly unconnected with their employment, while such statutes allow compensation only for injuries due to the employment. Again, the statutes themselves, in the majority of cases, allow compensation for such bodily injuries only as are usually termed "accidental," and do not allow benefits for diseases which result more or less directly from the nature of the employment.

In the law of negligence, as applicable to master and servant cases, and in the law in relation to accident insurance policies, we have become familiar with the term "accidental bodily injuries." This term has been construed, more or less generally, to mean an injury to the physical structure of the body through some untoward or unexpected event. But there have been cases, especially under accident insurance policies, where the contracting of a disease has been held to be an accidental bodily injury. These decisions, however, have not been uniform and the conflict has been very great at times. Thus it has been held in Massachusetts that the contracting of glanders from handling hides was an accidental injury.[2] Under the British Workmen's Compensation Act it has been held that a workman who contracted anthrax, by a germ settling on his eye, while he was sorting wool, had suffered an injury by an accident.[3] In an earlier case in New York it was held that the contracting of anthrax was a disease and not an accidental injury within the meaning of an accident insurance policy.[4]

Under the early British Workmen's Compensation Act it was held generally that the contracting of many of the so-called occupational diseases, such as lead poisoning, for example, did not constitute an injury by accident, and compensation in such cases was refused.[5] Subsequently, the British act was amended so as to include certain occupational diseases and power was

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[2] H. B. Hood & Son v. Maryland Casualty Co., 206 Mass. 223; 93 N. E. Rep. 329 (1910).

[3] Brintons, Limited v. Turvey (Eng. 1905), A. C. 230, 7 W. C. C. 1.

[4] Bacon v. United States Mutual Accident Ass'n, 123 N. Y. 304 (1890).

[5] Marshall v. East Holywell Coal Co. (Eng. 1905), 7 W. C. C. 19; Steel v. Cammell, Laird & Co. (Eng. 1905), 7 W. C. C. 9; Walker v. Hockney Bros. (Eng. 1909), 2 B. W. C. C. 20.

given to the Secretary of State to add other diseases, of a similar nature, by proclamation.

When the subject of workmen's compensation was taken up by the legislatures of the various States, apparently this topic was not particularly well understood; or if it was, no very serious effort was made to make the statutes plain and distinct in their meaning. Some of the statutes omitted the word "accident" entirely in the principal clause governing the injuries which were covered, while others included it. In some of the statutes the word "accident" was omitted in the principal clause, only to have it included in the subsidiary clauses, relating to reports and other matters concerning the administration of the statutes.

Roughly, it may be said, so far as these statutes have been construed by the courts, up to this time, that where the word "accident" has been omitted in the principal clause, the statute will be construed generally to cover occupational diseases. That this is not the universal rule can be demonstrated very easily. For example, the federal Compensation Act, which was passed in 1908, in relation to certain government employees, and which was subsequently extended to cover other workmen in the federal service, does not contain the word "accident" in the principal clause, but provides that compensation shall be granted if the employee is "injured in the course of such employment." Subsidiary clauses provide for the reporting of "accidents" and otherwise refer to "accidental" injuries.[6] In these respects the federal act is very much like the Michigan statute. The federal authorities have rendered conflicting opinions on the subject, but it has finally been decided by the Solicitor of the Department of Commerce and Labor and the Attorney General, that the federal act does not cover what is known generally as occupational diseases, but only such injuries as in general can be described as "accidental."[7] In Michigan it is held that lead poisoning, for example, is an injury which entitles the workmen to compensa-

[6] 35 Stat. 556.

[7] *Re* John Sheeran, 28 Op. Atty. Gen. 254; s. c. reported Op. Sol. Dep. C. & L., p. 169; *Re* C. L. Schroeder, Op. Sol. Dep. C. & L., p. 172; *Re* H. A. Ourand, Op. Sol. Dep. C. & L., p. 171.

tion.[8] The same rule has been established under the Massachusetts statute, in which, in the respects noted, somewhat similar language is found to that employed in the Michigan statute.[9] On the other hand, under the New Jersey statute, in which the word "accident" is used, it is held that copper poisoning, due to coming in contact with copper filings and inhaling of the dust by a workman engaged in grinding and polishing brass products, is not an accidental injury within the meaning of the statute.[10]

There are many other cases where the question arises as to whether the injury is such as is contemplated by a particular statute so as to entitle the employee to compensation. Thus it is usually held that where an injury is due to the gradual wearing, or the constant use, of a particular member, that this is not such an injury as entitles the workman to compensation.[11] On the other hand the California Industrial Accident Board made a ruling which was somewhat contrary to that established in the cases cited. Thus in the operation of pinning shirts, the continual pressure of the finger of the employee against the heads of the pins resulted in the finger becoming hard, a white spot appeared, and finally pus developed and the employee became disabled. The amount involved was very small but the Board awarded compensation.[12]

Usually it is held that where a germ or poison enters the system through a break in the skin that this is an injury by accident.[13] The American cases favor the rule that where skin af-

[8] Adams v. Acme White Lead and Color Works, Mich. Indus. Acc. Bd., Nov. 3, 1913; The Indicator, Nov. 5, 1913, p. 443.

[9] Johnson v. Wadsworth Co. and London Guar. & Acc. Co., Mass. Indus. Acc. Bd. (1913), Case No. 230, Report of Cases, p. 371; Baiona v. Employers' Liability Assur. Corp., Mass. Indus. Acc. Bd. (1913), Case No. 147, Report of Cases, p. 252.

[10] Hichens v. Magnus Metal Co., 35 N. J. Law J. 327 (1912).

[11] Marshall v. East Holywell Coal Co. (Eng. 1905), 7 W. C. C. 19; Walker v. Hockney Bros. (Eng. 1909), 2 B. W. C. C. 20; *Re* Andrew Wilkes, Op. Sol. Dep. C. & L., p. 175.

[12] Smith v. Munger Laundry Co., Cal. Indus. Acc. Bd., Nov. 19, 1913.

[13] Higgins v. Campbell and Harrison (Eng. 1905), A. C. 230, 7 W. C. C. 1; Stapleton v. Dinnington Mail Coal Co. (Eng. 1912), 5 B. W. C. C. 602; *Re* L. B. Green, Op. Sol. Dep. C. & L., p. 199; Miller v. California Stevedore & Ballast Co., Cal. Indus. Acc. Bd., Oct. 2, 1913; Nash v. General Petroleum Co., Cal. Indus. Acc. Bd., June 26, 1913; Walker v. Mullins (1908), 42 Ir. L. T. 168, 1 B. W. C. C. 211.

fections develop from coming in contact with acids and other irritants that this is an injury which entitles the workman to compensation.[14] On the other hand, it has been held that eczema, caused by the exposure to fumes or splashes from carbon bisulphide, in which the workman was required to dip certain articles, was not an accident.[15] Likewise that dermatitis brought on by washing out ink cans with a solution of caustic soda, without the use of proper gloves, was not an accident.[16] Where a workman had eczema and he contended that it had been aggravated by coming in contact with salt water, it was held, on conflicting evidence, that the eczema had not been aggravated as stated; but the inference to be drawn from the case is that had it been proved to the contrary compensation would have been awarded.[17]

There is much conflict as to whether a tubercular condition, due to traumatism, is such an injury as entitles the workman to compensation. The conflict appears to be due to the question of fact as to whether or not the injury actually produces the tuberculosis. The general rule appears to be that if it can be shown that the tubercular condition is due to the traumatism that compensation will be awarded.[18] But in most of the cases under this head compensation has been denied because of the failure to prove that the tubercular condition was due to the injury received.[19]

If a workman falls by reason of what is usually known as a "fit" or vertigo, or other like cause, and he happens to be in such a place that he is injured because of the fall, compensation is awarded; whereas, if he is merely incapacitated by reason of the

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[14] Riker v. Liondale Bleach Dye & Print. Works, 36 N. J. Law J. 305 (1913); *Re* F. J. Cournoyer, Op. Sol. Dep. C. & L., p. 582; Dotzauer v. Strand Palace Hotel (Eng. 1910), 3 B. W. C. C. 387.

[15] Evans v. Dodd (Eng. 1912), 5 B. W. C. C. 305.

[16] Cheek v. Harmsworth Bros. (Eng. 1901), 4 W. C. C. 3.

[17] *Re* C. B. Scanlon, Op. Sol. Dep. C. & L., p. 590.

[18] Black v. Travelers Insurance Co., Mass. Indus. Acc. Bd. (1913), Case No. 191, Report of Cases, p. 319.

[19] *Re* Richard Hicks, Op. Sol. Dep. C. & L., p. 179; Feldman v. Westinghouse Elec. & Min. Co., 36 N. J. Law J. 48 (1913); Pendo v. Mammoth Copper Min. Co., Cal. Indus. Acc. Bd., May 20, 1913; Giandini v. General Construction Co., Cal. Indus. Acc. Bd., May 17, 1913.

"fit," or vertigo, and sustains no additional injury from the fall, then compensation is denied.[20]

Apoplexy which is brought on by over-exertion, is such an accidental injury as entitles the workman to compensation, but not if there has been no over-exertion, and it appears that the workman might have died at home as well as while employed in his work.[21] A similar rule has been established in relation to heart diseases.[22]

As a rule, sprains, strains and ruptures (hernia) are such injuries as entitle a workman to compensation, as it is held that there is "no sound distinction between torn muscles or ruptured fibres and fractured bones."[23]

In the case of inhalation of noxious gases the general rule established by the cases is that if the injury is caused immediately by a gas which is virulently poison, it is such an injury as entitles the workman to compensation; while if the poisoning is gradual, extending over a considerable period of time, that it is not an accidental injury, although the question is not entirely settled.[24]

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[20] *Re* Washington Ellmore, Op. Sol. Dep. C. & L., p. 207; *Re* E. B. Clements, Op. Sol. Dep. C. & L., p. 190; Wilkes v. Dowell & Co. (Eng. 1905), 2 K. B. Div. 225, 7 W. C. C. 14; Driscoll v. Employers' Liability Assur. Corp., Mass. Indus. Acc. Bd. (1913), Case No. 73, Report of Cases, p. 125; Rodger v. Paisley School Board (1912), 49 Sc. L. R. 413, 5 B. W. C. C. 547; Brown v. Kidman (Eng. 1911), 4 B. W. C. C. 199; Lewis v. Globe Indem. Co., Mass. Indus. Acc. Bd. (1912), Case No. 38, Report of Cases, p. 48.

[21] M'Innes v. Dunsmuir and Jackson (1908), 45 Sc. L. R. 804, 1 B. W. C. C. 226; Barnabas v. Bersham Colliery Co. (Eng. 1910), 4 B. W. C. C. 119.

[22] Hawkins v. Powell's Tillery Steam Coal Co. (Eng. 1911), 4 B. W. C. C. 178; Powers v. Smith (Eng. 1910), 3 B. W. C. C. 470; Coe v. Fife Coal Co. (1909), 46 Sc. L. R. 325, 2 B. W. C. C. 8; O'Hara v. Hayes (1910), 44 Ir. L. T. 71, 3 B. W. C. C. 586; Clover, Clayton & Co. v. Hughes (Eng. 1910), A. C. 242; Milliken v. U. S. Fidelity & Guaranty Co., Mass. Indus. Acc. Bd. (1913), Case No. 107, Report of Cases, p. 187; Welch v. Employers' Liability Assur. Corp., Mass. Indus. Acc. Bd. (1913), Case No. 99, Report of Cases, p. 173.

[23] Purse v. Hayward (Eng. 1908), 1 B. W. C. C. 216; Boardman v. Scott and Whitworth (Eng. 1901), 85 L. T. 502, 4 W. C. C. 1; Timmins v. Leeds Forge Co., 2 W. C. C. 10; McGuigan v. Maryland Casualty Co., Mass. Indus. Acc. Bd. (1913), Case No. 261, Report of Cases, p. 420; Gross v. Marshall Butters Co., Mich. Indus. Acc. Bd., Oct. 15, 1913; The Indicator, Oct. 20, 1913, p. 417; Borland v. Watson, Gow & Co. (1911), 49 Sc. L. R. 10, 5 B. W. C. C. 514; Fenton v. Thorley & Co. (Eng. 1903), A. C. 443, 5 W. C. C. 1.

[24] Hurle v. American Mutual Liability Ins. Co., Mass. Indus. Acc. Bd.; Kelly v. Auchenlea Coal Co. (1911), 48 Sc. L. R. 768, 4 B. W. C. C. 417;

Under the federal act it has been held that pneumonia, caused by exposure while over-heated, was not an injury which entitled the workman to compensation.[25] But under the Massachusetts statute it was held that where a workman got his feet wet in a leaky boat and he later developed pneumonia and subsequently died, that this was such an injury as entitled his widow to compensation.[26] In another case it was held that death caused by pneumonia due to cold and exposure entitled the widow to compensation. In the latter case an appeal is now pending to the Supreme Judicial Court of Massachusetts.[27] If pneumonia is due to traumatism it has been held that this is such an injury as entitles the dependents to compensation.[28] But in such a case the burden is on the person claiming compensation to show that the traumatism caused the pneumonia.[29]

Much conflict has developed as to the right of a workman to compensation for injuries due to what is usually termed "sun-stroke" or "heat-stroke," and "frost-bite." In the older cases, what is known as "sun-stroke" was classed as a disease, but the later decisions seem to indicate that it will be considered as an injury entitling the workmen to compensation.[30] In one case the British courts made a distinction, where a man of impaired vitality was at work laying a pipe in a trench in a road and during the excessive summer heat he suffered from "sun-stroke." It was held that this workman was not exposed to any peculiar danger and that therefore this was not an accidental injury entitling him

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Broderick v. London County Council (Eng. 1908), 1 B. W. C. C. 219; Eke v. Dyke (Eng. 1910), 3 B. W. C. C. 482; Dean v. London and Northwestern Ry. Co. (Eng. 1910), 3 B. W. C. C. 351.

[25] *Re* John Sheeran, 28 Op. Atty. Gen., p. 254; s. c. Op. Sol. Dep. C. & L., p. 169.

[26] Stone v. Travelers Insurance Co., Mass. Indus. Acc. Bd. (1913), Case No. 342, Report of Cases, p. 470.

[27] Milliken v. Travelers Ins. Co., Mass. Indus. Acc. Bd. (1913), Case No. 93, Report of Cases, p. 162.

[28] Lovelady v. Berrie (Eng. 1909), 2 B. W. C. C. 62.

[29] Langley v. Reeve (Eng. 1910), 3 B. W. C. C. 175.

[30] *Re* J. J. Walsh, Op. Sol. Dep. C. & L., p. 193; Ismay-Imrie & Co. v. Williamson (Eng. 1908), 1 B. W. C. C. 232; Morgan v. Owners of S. S. "Zenaida" (Eng. 1909), 2 B. W. C. C. 19; Johnson v. Owners of S. S. "Torrington" (Eng. 1909), 3 B. W. C. C. 68; Davies v. Gillespie (Eng. 1911), 5 B. W. C. C. 64.

to compensation.[31] The principle seems to run through the British cases that in order to permit a workman to successfully demand compensation for injuries due to "sun-stroke" it must appear that he has been placed in a position which is of peculiar danger, and that in the absence of such a showing compensation will be denied. The question does not seem to have been determined under any of the American compensation acts. In one case in the federal Circuit Court for Missouri it was held under an accident insurance policy that "sun-stroke" or "heat prostration" contracted by a decedent in the course of his ordinary duty as a supervising architect, was a disease, and did not come within the terms of a policy insuring against bodily injuries sustained through external, violent and accidental means.[32]

Somewhat the same principle has been adopted by the British courts in relation to "frost-bite." Thus those courts have sustained the doctrine that unless the workman can show that he has been subjected to some peculiar danger he cannot recover compensation for injuries due to "frost-bite."[33] On the other hand, it has been held usually in the American States that "frost-bite" is an injury which entitles the workman to compensation.[34]

It seems to be established by the weight of authority that a mental condition which incapacitates a man from doing his ordinary work, is such an injury as entitles him to compensation, even though this condition may not be due to a direct physical injury. Thus a miner, while at work, heard an outcry from an adjacent chamber. He went to the place from which the cry came and found another miner so severely injured that he subsequently died. The sight of the injured miner caused him such a mental and nervous shock that he was unable to return to work

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[31] Robson-Eckford & Co. v. Blakey (1911), 49 Sc. L. R. 254, 5 B. W. C. C. 536.

[32] Dozier v. Fidelity & Casualty Co., 46 Fed. Rep. 446 (1891).

[33] Warner v. Couchman (Eng. 1911), 5 B. W. C. C. 177; Karemaker v. Owners of S. S. "Corsican" (Eng. 1911), 4 B. W. C. C. 295.

[34] *Re* T. F. Luttrell, Op. Sol. Dep. C. & L., p. 181; *Re* A. M. Rockwell, Op. Sol. Dep. C. & L., p. 242; Young v. Northern Cal. Power Co., Cal. Indus. Acc. Bd., June 2, 1913. The Industrial Commission of Wisconsin has also declared that "frost-bite" is an accidental injury, but this declaration was not made in a litigated case.

and it was found that this was an injury by accident entitling the workman to compensation.[35] A number of cases have arisen where the workmen were physically injured and subsequently developed such a nervous condition that they were unable to work and compensation has been awarded.[36] But compensation was denied to a railway conductor who contended that he had suffered a nervous breakdown as a result of his employment in the service of the company.[37] It is also held that although nervousness may be the result of an accident if it is such as an average man could reasonably overcome, it is not sufficient ground for compensation.[38]

It is held that where insanity results from the injury compensation must be paid.[39] But where an employee sustained an injury resulting in temporary total disability, and before recovery from the injury he became insane and was committed to an asylum, and there was nothing to indicate that the insanity resulted from the wound, compensation was denied for the disability due to the insanity.[40]

There are a large number of cases holding that where a pre-existing disease has been accelerated or aggravated by an injury occurring in the course of the employment, that compensation must be paid, even though the disability would not have been so protracted, or might not have been brought about at all, had it not been for the pre-existing condition.[41] The cases hold that an

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[35] Yates v. South Kirby F. & H. Collieries (Eng. 1910), 103 L. T. 170, 3 B. W. C. C. 418.

[36] Lata v. American Mutual Liability Ins. Co., Mass. Indus. Acc. Bd. (1913), Case No. 168, Report of Cases, p. 283; Santini v. Mammoth Copper Min. Co., Cal. Indus. Acc. Bd., Oct. 14, 1913; Eaves v. Blaenclydach Colliery Co. (Eng. 1909), 2 B. W. C. C. 329.

[37] Campbell v. Detroit United Ry., Mich. Indus. Acc. Bd., Oct. 15, 1913; The Indicator, Oct. 21, 1913, p. 417.

[38] Turner v. Brooks & Doxey (Eng. 1909), 3 B. W. C. C. 22; Pimms v. Pearson (Eng. 1909), 2 B. W. C. C. 489.

[39] Mitchell v. Grant and Aldcroft (Eng. 1905), 7 W. C. C. 113; Malone v. Cayzer, Irvine & Co. (1908), 45 Sc. L. R. 351, 1 B. W. C. C. 27.

[40] *Re* Charles Edner, Claim No. 1320, Ohio St. Lia. Bd. Awards, 1913.

[41] Willoughby v. Great Western Ry. Co. (Eng. 1904), 6 W. C. C. 28; Lloyd v. Sugg. & Co. (Eng. 1900), 2 W. C. C. 5; Ystradowen Colliery Co. v. Griffiths (Eng. 1909), 2 B. W. C. C. 357; Freeman v. Mercantile Mutual Acc. Assn., 156 Mass. 351 (1892); Hooper v. Standard Accident Ins. Co., 148 S. W. Rep. 116 (Mo. 1912); *Re* Philip Jarvis, Op. Sol. Dep. C. & L., p. 181.

employee takes with him in his employment any physical infirmities which he may possess at the time of entering such employment, and that where the injury aggravates or accelerates a pre-existing condition that he is entitled to compensation for the full period of disability.[42] But where there is such a pre-existing condition it must be shown that there has been some subsequent injury to aggravate or accelerate the condition, and in the absence of such a showing compensation will be denied.[43]

In some instances where ailments have been contracted because of lowered vitality, due to previous injuries, and disability has resulted, it was held that this was a proper basis for compensation.[44]

As a general rule disability due to medical treatment, following an injury received in the course of the employment, is a proper ground for compensation.[45]

Where an employee, obeying orders of his superior, was vaccinated, and although this operation was ordinarily harmless, it resulted in disability for a number of weeks, it was held that the employee was entitled to compensation.[46] It is also held that where an empolyee is in a hospital after receiving an accidental injury, and there contracts a disease that compensation is payable by reason of the disability or death caused by the disease.[47]

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[42] Yenne v. Standard Oil Co., Cal. Indus. Acc. Bd., July 28, 1913; Leavenworth v. Ransome Concrete Co., Cal. Indus. Acc. Bd., May 6, 1913; *Re* J. S. K. Wite, Op. Sol. Dep. C. & L., p. 183; *Re* August Pohl, Op. Sol. Dep. C. & L., p. 185; *Re* William Bunce, Op. Sol. Dep. C. & L., p. 186; *Re* Augustine Miro, Op. Sol. Dep. C. & L., p. 594.

[43] Noden v. Galloways (Eng. 1911), 5 B. W. C. C. 7; Spence v. W. Baird & Co. (1912), 49 Sc. L. R. 278, 5 B. W. C. C. 542; Beaumont v. Underground Elec. Ry. Co. (Eng. 1912), 5 B. W. C. C. 247; Perry v. Ocean Coal Co. (Eng. 1912), 5 B. W. C. C. 421; *Re* C. R. Ensey, Op. Sol. Dep. C. & L., p. 592.

[44] Thoburn v. Bedlington Coal Co. (Eng. 1911), 5 B. W. C. C. 128; *Re* L. F. Perron, Op. Sol. Dep. C. & L., p. 579; Groves v. Burroughes and Watts (Eng. 1911), 4 B. W. C. C. 185; *Re* J. B. Atkinson, Op. Sol. Dep. C. & L., p. 197.

[45] Beadle v. Milton (Eng. 1903), 5 W. C. C. 55; Shirt v. Calico Printers' Association (Eng. 1909), 2 B. W. C. C. 342; Raymond v. United States Casualty Co., Mass. Indus. Acc. Bd. (1913), Case No. 164, Report of Cases, p. 277.

[46] *Re* C. B. Flora, Op. Sol. Dep. C. & L., p. 188.

[47] Keehan v. City of Milwaukee, Wis. Indus. Acc. Bd., Sept. 6, 1912.

This somewhat brief review of the principal cases arising under this feature of the compensation statutes clearly indicates how important it is that the statutes themselves should state with very great clearness just what injuries are covered. If it is the intent to pay compensation for what are generally called occupational diseases, the statute should so provide plainly and clearly. If, on the other hand, such diseases are to be excluded this also should appear from the statute itself. It is perfectly obvious that it is unsafe to leave the question to construction, by putting in or taking out the word "accident," in connection with "personal injuries." Workmen, employers and everyone who has anything whatsoever to do with the compensation acts will be relieved of much worry and uncertainty if the acts in this respect are made as clearly definite as it is possible for language to make them.

*Harry B. Bradbury.*

*New York.*