Maryland Law Review

Volume 21 | Issue 4 Article 9

Recent Decisions

Recent Decisions

Appeal — Voluntary Dismissal Of In Banc Proceeding Not An Election Precluding Appeal. *State Roads Commission of Maryland v. Smith,* 224 Md. 537, 168 A. 2d 705 (1961). The State Roads Commission, in a condemnation case, properly reserved points for the consideration of the court *in banc* and a bill of exceptions was filed in support thereof. Before the case came before the court *in banc,* the State Roads Commission obtained an order dismissing its bill of exceptions "without prejudice," and then filed an appeal to the Court of Appeals. The appellee contended that the invocation of procedure for the review of points by the court sitting *in banc* constituted an election of remedies and barred an appeal, notwithstanding the abandonment of the proceeding before any decision or hearing. The Court of Appeals *held* that the mere initiation of proceeding for review by a court *in banc* did not constitute such an election as to preclude an appeal.

Generally under Maryland's constitutionally provided *in banc* procedure a party against whom an adverse ruling is made during a term of the Circuit Court, may, in any of the counties, but not Baltimore City, upon motion, reserve questions for the consideration of three judges of the Circuit, who constitute a court *in banc.* MARYLAND CONSTITUTION, Art. IV, § 22. Although seldom used it has long been recognized that the *in banc* proceeding is a substitution for an appeal, and the decision of the judges sitting *in banc* is conclusive as against the party at whose direction the points were reserved. *Costigin v. Bond,* 65 Md. 122, 3 A. 285 (1886); *Board of Medical Examiners v. Steward,* 207 Md. 108, 113 A. 2d 426 (1955). The Court in the instant case pointed out that there is no provision in the State Constitution, nor any previous Maryland case law controlling the issue presented. However, as Maryland has adhered to the rules that the mere institution of suit, without going to judgment, does not preclude an alternate remedy, *Hamlin Mach. Co. v. Holtite Mfg. Co.,* 197 Md. 148, 78 A. 2d 450 (1951), the Court found that the appeal was not precluded in the instant case.

The few decisions found on the precise point presented in the instant case were pre-twentieth century cases which arrived at holdings contrary to the result reached by the

Maryland Court, *Field v. Great Western Elevator Co.*, 6 N.D. 424, 71 N.W. 135 (1897), but these decisions were not looked on by the Maryland Court as controlling its interpretation as applied to this rather unique appellate procedure (*Cf.* 18 Am. Jur. 149, Election of Remedies § 28, which the Court refused to follow). See, MD. RULES 520; 4 C.J.S. 119, Appeal and Error, § 27; 6 A.L.R. 2d 20 (1949); 7 M.L.E. 54, Courts, § 75.

Collateral Estoppel — Subsequent Perjury Conviction Not Precluded By Acquittal In Prior Criminal Trial. *Adams v. United States,* 287 F. 2d 701 (5th Cir. 1961). Defendants, who were criminally charged with possession of moonshine whiskey, gave testimony asserting their presence at a party 100 miles away from the scene of the crime. After the jury were charged that if they believed the alibi, they must acquit the defendants, and after they were given the usual directions to acquit unless they believed the government had proved its case beyond a reasonable doubt, the jury acquitted the defendants. The defendants' alibi testimony was the subject of the instant prosecution and conviction for perjury. On appeal, the defendants claimed that the prior acquittal on the substantive charge adjudicated the alibi issue in their favor and that res judicata or collateral estoppel precluded its relitigation at the perjury trial. The Fifth Circuit affirmed the perjury conviction after finding that the jury could have based its prior acquittal on the failure of the government to prove its case rather than on a belief in the alibi. The Court *held* that since the alibi issue was *not necessarily* determined in the prior trial, its subsequent reexamination in the instant case was not error.

While the great weight of authority applies res judicata principles to criminal proceedings, a former acquittal generally does not preclude a subsequent perjury prosecution. *United States v. Williams,* 341 U.S. 58 (1951); 147 A.L.R. 991 (1943). A statement in 2 FREEMAN, JUDGMENTS (5th ed. 1925) § 648, p. 1364, often quoted by courts in support of similar holdings, succinctly expresses the rule: "the previous judgment is conclusive only as to those matters which were in fact in issue and actually or necessarily adjudicated." In denying pleas of res judicata or collateral estoppel, the courts reason: (1) that public policy should discourage perjury by not immunizing defendants from subsequent prosecution; *Jay v. State,* 15 Ala. App.

255, 73 So. 137 (1916), *cert. den.* 73 So. 1000 (1916); and (2) that criminal acquittals often do not necessarily determine precise facts. 2 FREEMAN, JUDGMENTS (5th ed. 1925) § 649, p. 1367; *State v. Coblentz,* 169 Md. 159, 167, 180 A. 266 (1935). While the Maryland Court of Appeals in dicta has recognized that in some sense res judicata is a defense in successive criminal prosecutions, it has held that the plea is only available where the essential elementary proof in both offenses are similar. *State v. Coblentz, supra; Scarlett v. State,* 201 Md. 310, 93 A. 2d 753 (1953). Cases are collected in Annot. 95 L. Ed. 755 (1951), 147 A.L.R. 991 (1943), and 37 A.L.R. 1290 (1925). See also Gershenson, *Res Judicata in Successive Criminal Prosecutions,* 24 Brooklyn L. Rev. 12 (1957).

Constitutional Law — Motor Vehicle Financial Responsibility Law Declared Unconstitutional. *People v. Nothaus,* ..... Colo. ....., 363 P. 2d 180 (1961). Defendant while driving his automobile collided with a horse. The accident was reported to the Motor Vehicle Division of the Department of Revenue. Since the defendant was not within one of the exceptions to the Colorado Financial Responsibility Act (2 C.R.S. (1953) 13-7-7), the Director of Revenue, pursuant to the Act, sent the defendant a notice informing him that he must deposit security in an amount which was sufficient in the Director's estimation to satisfy any judgment which might be obtained against him as a result of the accident, or in the alternative face summary suspension of his driver's license. The defendant failed to comply with the notice, and as required by the Act his license was summarily suspended. Defendant was subsequently tried and convicted by a Justice of the Peace for driving while under the suspension order. He appealed to a county court, and his conviction was reversed on the grounds that 2 C.R.S. (1953) 13-7-7 was unconstitutional in violation of the Due Process Clause, which reversed was affirmed by the Supreme Court of Colorado in an 5-2 decision. The majority found that ownership of an automobile was an inalienable property right, which included the use of the state's public highways, and that while this right could be reasonably restricted within the state's police power, it could not be revoked without providing the motorist-owner with an opportunity for judicial determination of whether sufficient grounds existed for revocation. The dissent pointed out that the statute was within the state's

police power since it attempted to make certain that a motorist would not become involved in two accidents and be financially irresponsible in both.

The majority of states have enacted financial responsibility acts, with many of these state acts containing sections identical to the statute attacked in the instant case. 35 A.L.R. 1011 (1954). In construing these statutes courts have consistently held that the suspension of an automobile license without a hearing does not violate due process, since the right to a license and to its continued enjoyment after issuance is merely a privilege extended by the state. *Hadden v. Aitken,* 156 Neb. 215, 55 N.W. 2d 620, 35 A.L.R. 2d 1003 (1952); *Rosenblum v. Griffin,* 89 N.H. 314, 197 A. 701 (1938). While Maryland has a statute similar to the one at issue in the instant case (6 MD. CODE (1957) Art. 66½, § 122), no Maryland case has been found wherein this statute's constitutionality has been challenged. For further reference see: 3 M.L.E. 326, Automobiles, § 75; 115 A.L.R. 1376 (1938); Comment, *Survey of Financial Responsibility Laws,* 20 N.C.L. Rev. 198 (1942); and in general, 1 DAVIS, ADMINISTRATIVE LAW TREATISE (1958) ch. 7, §§ 7.08-7.12, 7.18-7.20.

Contracts — Rescission Of Government Surplus Sale Denied Where Mistake Went To The Description, Not To The Identity Of Goods. *Dadourian Export Corporation v. United States,* 291 F. 2d 178 (2d Cir. 1961). The plaintiff bid on government surplus described in an invitation to bid as "Nets, Cargo, . . . Manila rope." The invitation urged all bidders to inspect the property prior to submitting bids and warned that, "In no case will failure to inspect constitute grounds for a claim or for the withdrawal of a bid after opening." Under the general sale terms and conditions which accompanied the invitation the goods were offered on an "as is and where is" basis, the invitation stating, that "The description is based on the best available information, but the Government makes no guaranty, warranty, or representation, expressed or implied, as to quantity, kind, character, quality . . . or description." Although the goods were available for inspection, the plaintiff did not inspect. After his bid was accepted, it was discovered that the nets were "saveall" rather than "cargo" and that a substantial number of them were not made of manila, but of an inferior quality rope. Having lost his appeal to the Armed Services Board of Contract Ap-

peals, plaintiff sued in the District Court under 28 U.S.C.A. § 1346(a)(2) (1950) for rescission or a price adjustment. The Government counterclaimed for monies due, and on cross-motions for summary judgment, the plaintiff's complaint was dismissed and the Government awarded its counterclaim. The plaintiff appealed, contending that there was a mutual mistake of fact as to the identity of the subject matter. In a 2-1 decision the Second Circuit denied rescission and a price adjustment, holding that the mistake was merely descriptive, not going to the identity of the subject matter, and that the disclaimer of warranty covered this type of discrepancy.

Since the government's general sale terms and conditions expressly waive warranties as to kind, character, quality or description, such sales contracts have been interpreted to compel the bidder to adequately inspect at his peril. *Paxton-Mitchell Company v. United States,* 172 F. Supp. 463 (Ct. of Cl. 1959); *Maguire & Co. v. United States,* 273 U.S. 67 (1927). Courts, in dictum, have stated that a purchaser who buys from the government on these terms is not required to accept oranges when he bid on apples, *United States v. Silverton,* 200 F. 2d 824 (1st Cir. 1952); *Standard Magnesium Corporation v. United States,* 241 F. 2d 677 (10th Cir. 1957). Reasoning from this analogy, the Board of Contract Appeals has awarded a purchaser a price adjustment where the Government offered "cushion, leatherette" and tendered padded plywood seats, holding that the discrepancy went to the identity, not merely to the description of the subject matter. *Tulsa Army & Navy Store,* 1960, A.S.B.C.A. No. 6449, 60-2 B.C.A. (CCH) ¶ 2785. See also: *Krupp v. Federal Housing Administration,* 285 F. 2d 833 (1st Cir. 1961). For general reference see: 1 WILLISTON, CONTRACTS (Rev. Ed. 1936) § 95; 17 C.J.S. 497, Contracts, § 144; 5 M.L.E. 410, Contracts, § 75.

Criminal Law — Signing One's Own Name May Constitute Forgery. *Nelson v. State,* 224 Md. 374, 167 A. 2d 871 (1961). The defendant did business as an individual in Baltimore under the trade name of The Nelson Company. Over a five month period the defendant received seven checks, totaling approximately thirty-six thousand dollars from the Glenn L. Martin Co. These checks, while intended for another Baltimore company by the same name, had been addressed and sent through error to the defendant's company. Although realizing that these checks were not

intended for him, the checks were endorsed at the defendant's direction with his firm's rubber stamp and deposited in his account, providing funds which he later drew upon to pay his creditors. Defendant was convicted in the trial court on counts of forgery and larceny. On appeal the Court of Appeals found it necessary to consider only the forgery conviction and in rejecting defendant's contention that he could not be guilty since he had signed his own name, *held* that the writing of his own name with intent to defraud constituted forgery.

Subject to statutory variations, to constitute forgery there must be a "fraudulent making of a false writing having apparent legal significance." (378); PERKINS, CRIMINAL LAW (1957) 291. Several people may have the same name. A writing if made to appear the product of one of these, when really it is the product of another, is false although the words themselves may be words appropriate to describe the true signer as well. Therefore it is generally held that one may commit forgery by using his own name with the intent to deceive. *Parvin v. State,* 132 Tex. Cr. R. 172, 103 S.W. 2d 773 (1937); *Thurm v. Schupper,* 204 N.Y.S. 2d 537 (1960). In *Lyman v. State,* 136 Md. 40, 109 A. 548 (1920), the Maryland Court of Appeals affirmed defendant's conviction of forgery for signing a fictitious name to a check, reasoning that since the signing was made with the intent to defraud, the crime of forgery had been committed even though the name was fictitious. For further reference see: 3 MD. CODE (1957) Art. 27, § 44; 37 C.J.S. 38, Forgery, § 9; 2 WHARTON, CRIMINAL LAW (12th ed. 1932) § 864; CLARK AND MARSHALL, CRIMES (6th ed. 1958) § 12.34; 10 L.R.A. 779 (1891).

Husband And Wife — Interspousal Immunity Held Not To Bar Tort Suit By Surviving Widow Against Husband's Estate. *Long v. Landy,* ..... N.J. ....., 171 A. 2d 1 (1961). Decedent husband was driving, with his wife as a passenger, when their automobile collided with another vehicle. As a result of the collision the husband died and the wife was rendered mentally incompetent. The wife's guardian *ad litem* brought a negligence action against the husband's estate, and after the administrator's motion for summary judgment on the ground of interspousal immunity was denied in a prior appeal, the jury found for the surviving widow. The administrator appealed to the Appellate Division, and the Supreme Court of New Jersey certi-

fied the instant appeal on its own motion. The Supreme Court found that while New Jersey had adopted the common-law doctrine of interspousal immunity by statute, this doctrine merely barred suit for negligent injury between spouses and did not deny the existence of a right of action. In affirming the trial court, the Supreme Court *held* that the immunity doctrine did not preclude the wife's action in the instant case, since the public policy considerations underlying the doctrine ceased to exist upon the death of one spouse. The Court reasoned that after such termination of the marital relation, there was no fear of collusion between the parties or of marital disharmony.

The majority of jurisdictions, including Maryland, have held that the Married Women's Property Acts have not abrogated the common-law rule that one spouse may not recover damages for negligent personal injuries against the other. 43 A.L.R. 2d 632 (1955); *Furstenburg v. Furstenburg,* 152 Md. 247, 136 A. 534 (1927). Where, as in the instant case, one spouse is deceased, an increasing number of courts have allowed tort actions by or against the deceased's estate. *Johnson v. People's First National Bank & Trust Co.,* 394 Pa. 116, 145 A. 2d 716 (1958); 28 A.L.R. 2d 662 (1953). Maryland, however, has adhered to the common-law rule, *Ennis v. Donovan,* 222 Md. 536, 161 A. 2d 698 (1960), where the decedent wife's administrator in a wrongful death action was denied contribution from the surviving husband based on interspousal immunity. The Court of Appeals, as contrasted with the court in the instant case, reasoned that the immunity doctrine denied the existence of any right of action during the marriage or following the death of one spouse and that if any such right of action were to exist, it must be created by the legislature. See: PROSSER, TORTS (2d ed. 1955) § 101; 130 A.L.R. 889 (1941); McCurdy, *Torts Between Persons in Domestic Relation,* 43 Harv. L. Rev. 1030 (1930); 12 M.L.E. 79, 146, Husband & Wife, §§ 55, 143.

Mandamus — Writ Lies To Vacate Acquittal Where Court Terminated Government Case In Mid-Course. *In Re United States,* 286 F. 2d 556 (1st Cir. 1961). Defendants were charged with conspiring to falsify tests of equipment being manufactured for the government. The second witness for the government was asked as many questions by the trial judge as by his counsel. The third witness while

still on direct examination conferred with the U.S. Attorney during overnight recess. The trial Judge after stating that this conference was a deprivation of defendants' civil rights, and declaring the two witnesses' testimony unworthy of belief, responded to motions for acquittal and directed the jury to return verdicts of not guilty. The U.S. petitioned for a writ of mandamus to set aside the judgment alleging that the trial judge had exceeded his power in preventing the presentation of material evidence. The Court of Appeals, recognizing that no appeal lay from the criminal acquittal and that mandamus could not be substituted for appeal, nevertheless *held* that as the judge was without jurisdiction (power) to terminate the presentation by the United States of its case in mid-course, mandamus lay to correct the error. The Court noted that while the writ was not proper to correct mere error in judicial discretion, it was available to correct usurpation of power, *DeBeers Mines v. United States,* 325 U.S. 212, 217 (1945).

Although mandamus is a discretionary writ, the Supreme Court has been consistent in issuing it where it is clear that a lower court had no power either in doing what it did, *Ex Parte United States,* 242 U.S. 27 (1916), or in failing to do that which it was required to do, *Virginia v. Rives,* 100 U.S. 313 (1880). While it is settled that the writ will not lie to control a discretionary power conferred on a lower tribunal, *Ex Parte Newman,* 14 Wall. (U.S.) 152, 166 (1872), *Ex Parte Denver & Rio Grande R. Co.,* 101 U.S. 711, 720 (1880), the Supreme Court has also found mandamus proper when such discretion was abused. *Maryland v. Soper,* 270 U.S. 9 (1926). The Maryland Court of Appeals in *Miles v. Stevenson,* 80 Md. 358, 365, 30 A. 646 (1894) held that mandamus was proper where a lower tribunal had acted in excess of its power, and further stated in dictum that while the writ is not a remedy to correct an exercise of discretion, it could lie to rectify a manifest abuse thereof. In the instant case the court preferred to rest its decision on a finding that the trial judge had no power to act as he did, rather than finding that he had abused his judicial discretion. See 35 Am. Jur. 31, Mandamus, §§ 259, 260; 82 A.L.R. 1163 (1933); 14 M.L.E. 475, Mandamus § 23; Sloss, *Mandamus in the Supreme Court Since the Judiciary Act of 1925,* 46 Harv. L. Rev. 91 (1932). *Cf.* 3 DAVIS, ADMINISTRATIVE LAW TREATISE (1958) ch. 23, §§ 23.09-23.12.

Negligence — Doctrine Of Governmental Immunity Judicially Abolished. *Muskopf v. Corning Hospital District,* 11 Cal. Rptr. 89, 359 P. 2d 457 (1961). Plaintiff's declaration alleged that she was a paying patient being treated at a state district hospital and that she sustained injury due to the staff's negligent performance of its ministerial duties. The trial court sustained the defendant's demurrer on the ground that the defendant hospital, as a state agency, performing a governmental function, was immune from tort liability. On appeal, the California Supreme Court in a 5-2 decision reversed and *held* that this state district hospital was not immune for torts for which its agents were liable. Noting that the court had been expending the area of the state's proprietary activities and the legislature had from time to time waived immunity in certain specific areas, the court, after a re-evaluation of the history and basis for the rule, concluded that the whole rule of governmental immunity from tort liability "must be discarded as mistaken and unjust". Though faced with its own recent decision exactly on point and *contra* to the holding in the instant case, *Talley v. Northern San Diego County Hospital Dist.,* 41 Cal. 2d 33, 257 P. 2d 22 (1953), the Court nevertheless reasoned that as the government's immunity had been judicially created, it could be judicially destroyed. A vigorous dissent pointed out that the majority was usurping the legislative function and ignoring stare decisis.

The abolishment of governmental immunity, as applied to a political subdivision of a state, has traditionally been considered a question for the legislature. E.g., *Kilbourn v. City of Seattle,* 43 Wash. 2d 373, 261 P. 2d 407 (1953); *Hayes v. Town of Cedar Grove,* 126 W. Va. 828, 30 S.E. 2d 726 (1944). But see, *Hargrove v. Town of Cocoa Beach,* 96 So. 2d 130, 60 A.L.R. 2d 1193 (Fla. 1957). The Maryland Court of Appeals appears to be in accord with the majority view. In *State v. Baltimore County,* 218 Md. 271, 146 A. 2d 28 (1958), a wrongful death action was instituted to recover damages for the slaying of the deceased by a policeman employed by the defendant, Baltimore County. After the trial court sustained defendant's demurrer without leave to amend, the plaintiff appealed. The Court of Appeals unanimously affirmed the lower Court's action and said, "If as the appellants argue, the rule [of immunity] ought to be changed so as to enlarge the liability of municipal corporations, it must be done by the Legislature

and not by this Court." (273) For further analysis see: Borchard, *Government Liability in Tort*, 34 Yale L. J. 1 (1924); 60 A.L.R. 2d 1198 (1958); 120 A.L.R. 1376 (1939); Note, *Liability of Municipal Corporations Under the State's Statutory Waiver of Tort Immunity*, 20 Md. L. Rev. 353 (1960).

Res Judicata — Wrongful Death Suit Bars Beneficiary's Later Suit. *Brinkman v. Baltimore and Ohio Railroad Co., 111 Ohio App. 317, 172 N.E. 2d 154 (1960).* Plaintiff and her mother were passengers in an automobile which was struck by defendant's train. The mother was killed. The mother's administrator brought suit under the Ohio Wrongful Death Statute on behalf of plaintiff and other designated beneficiaries, but failed to recover as defendant was found not to have been negligent. Plaintiff later brought a separate suit for her personal injuries resulting from the accident and defendant pleaded *res judicata.* Plaintiff contended that *res judicata* was not applicable because there was not such an identity of parties in the two suits that would bring into operation the principle of *res judicata* to bar recovery. The Court of Appeals of Ohio *held* for defendant, stating that plaintiff, in addition to the other beneficiaries, was the real party in interest in the wrongful death action, thereby creating an identity of parties in both suits sufficient to preclude recovery.

The weight of authority is that a matter is not *res judicata* if there is no identity of persons and parties in the respective actions. *Garrison v. Bonham,* 207 Okla. 599, 251 P. 2d 790 (1952); *Keith v. Willers Truck Service,* 64 S.D. 274, 266 N.W. 256 (1936). In *Gleaton v. Southern Ry. Co.,* 212 S.C. 186, 46 S.E. 2d 879 (1948), a case dealing with a prior survival action as distinguished from a prior action for wrongful death, plaintiff sued defendant railroad for damages to her car resulting from a collision at a train crossing, in which plaintiff's husband was killed. The court, in granting plaintiff a right to bring suit, said that she was not barred from re-litigating the issue of defendant's negligence, although in a prior action under the *survival* statute brought by the executor of decedent's estate, defendant was found not negligent. The court reasoned that plaintiff was not a real party in interest to the survival action, in as much as the proceeds of any recovery in such a suit would go, under the applicable law, to the estate of decedent to pay claims and other expenses, with only the surplus, if any, distributed to the legatees, including plaintiff.

The Maryland Wrongful Death Statute, 6 MD. CODE (1957) Art. 67, § 4 states: "Every such action shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused. . . ." *Res judicata* in Maryland applies where there is identity of parties or their privies, the latter including all those who have a direct interest in the subject matter of the suit. *Ugast v. La Fontaine,* 189 Md. 227, 55 A. 2d 705 (1947). See also *State, Use of Boshe v. Boyce,* 72 Md. 140, 19 A. 366 (1890); *Deford v. State, Use of Keyser,* 30 Md. 179 (1869). Cases are collected in 125 A.L.R. 908 (1940). See RESTATEMENT, JUDGMENTS (1942) 402, § 85.

Workmen's Compensation — Aggravation Of Non-Occupational Disease Must Be By An Occupational Disease To Be Compensable. *Blake v. Bethlehem Steel Company,* ..... Md. ....., 170 A. 2d 204 (1961). Claimant had a history of bronchitis prior to his employment by the respondent. While employed by the respondent, the claimant worked as a pipe fitter in the area of an open hearth furnace where he was subjected to extreme changes in temperature and a certain amount of dust in the air. Now totally disabled by a bronchial lung disease, claimant asserted that twenty five per cent of his disability was compensable, basing his claim on the section of the Maryland statute which allows compensation for that part of a disability caused by an "occupational disease aggravating other infirmity or contributing to disability or death." 8 MD. CODE (1957) Art. 101, § 22(c). Under the statute an occupational disease must be "due to the nature of an employment in which the hazards of such disease actually exist [and] are characteristic of and peculiar to the trade, occupation, process, or employment, and is actually incurred in his employment." 8 MD. CODE (1957) Art. 101, § 23(c). An award by the Workmen's Compensation Commission was reversed by the trial court, and on appeal the claimant contended that his pre-existing susceptibility had become "occupational" where it was aggravated by his occupational environment. Since the evidence failed to show that chronic bronchitis was characteristic of the respondent's industry, and because the alleged aggravation did not of itself amount to an occupational disease, the Court of Appeals rejected the claimant's argument and in affirming the trial court, *held* that the resulting condition was not compensable.

There is a split of authority among the states where, as in the instant case, a pre-existing weakness is aggravated by the conditions of employment, and the resultant disease is not one peculiar to the employment. Cases allowing compensation in such instances do so on the basis of liberal construction of statutory definitions of occupational disease, which provide compensation for diseases "arising out of employment"; *Giambattista v. Thomas A. Edison, Inc.*, 32 N.J. Super. 103, 107 A. 2d 801 (1954); *LeLenko v. Wilson H. Lee Co.*, 128 Conn. 499, 24 A. 2d 253 (1942); *Zallea Brothers v. Cooper*, 166 A. 2d 723 (Del. 1960). Denial of compensation has been based on more restrictive statutory definitions of occupational disease, which require a recognizable link between the disease and some distinctive feature of the claimant's employment. *Detenbeck v. General Motors Corporation*, 309 N.Y. 558, 132 N.E. 2d 840 (1956). The Maryland Court, while aware of the trend towards greater liberality in employee coverage, reasoned that any change must be the result of legislative action. See 1 LARSON, WORKMEN'S COMPENSATION LAW (1952) §§ 41.60-41.62; 3 SCHNEIDER, WORKMEN'S COMPENSATION (1943) § 924; Cohen, *Aggravation of Pre-existing conditions in Workmen's Compensation Cases*, 20 J.B.A. Kan. 343 (1952); 60 A.L.R. 1299 (1929).