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**APPEAL FROM STATE INDUSTRIAL ACCIDENT
COMMISSION BY NON-APPEARING PARTY**

*Hathcock, et al., v. Loftin*¹
*Oxford Cabinet Co. v. Parks*²

Two cases, decided on the same day by the Court of Appeals, deal with the right of appeal from the State Industrial Accident Commission to the courts of record. In the first case, after the claimants had filed their petition before the Commission, the employer applied for a hear-

¹ 22 A. (2d) 479 (Md., 1942).

² 22 A. (2d) 481 (Md., 1942).

ing, specifying five questions for inquiry.³ The claimants failed to appear at the hearing, and ten days later the Commission passed an order disallowing their claim. The claimants appealed to the Baltimore City Court on the theory that their application before the Commission constituted prima facie proof of their claim, and that they were therefore entitled to an appeal with the privilege of adducing any other testimony in support of their petition. The Court of Appeals sustained the lower Court in dismissing the appeal, and thereby precluded a non-appearing claimant party before the Commission from the opportunity of giving proof to sustain his claim for the first time on appeal to the lower court.⁴

In the second case, a claim was filed before the Commission and notice thereof was sent to the employer. The employer failed either to request a hearing or to appear before the Commission, and subsequently, on proof offered by the claimant, an order was passed allowing compensation. From this order, the employer appealed to the Baltimore City Court. The Court of Appeals reversed the order of the lower court in dismissing the appeal, and thereby allowed the non-appearing defendant party the opportunity to prove his defense for the first time on the appeal from the Commission.

The seeming inconsistency of the two cases is reconciled by the Court of Appeals on the ground that in the *Hathcock* case a hearing was requested, which was not true in the *Parks* case, and that therefore proof in addition to the claim was necessary for the Commission to pass an order for compensation in the former case, but was not necessary in the latter. The fact remains, however, that under the two decisions, a non-appearing defendant may offer proof for the first time on his appeal to the law court to preclude recovery, but a non-appearing claimant may not offer such proof to obtain recovery on his appeal from the Commission to the lower court.

The instant cases, taken together, suggest the problem of the method of appeal from the State Industrial Accident

³ The questions included jurisdiction of the Commission, the inclusion of the injury and death under the compensation law, the dependency of claimants, and the amount of wages paid the deceased.

⁴ The Court said that in the absence of any application for a hearing the Commission might find the material submitted to it sufficient for a decision. But in this case it was doubtful whether this would be possible. By the defendant's request for a hearing, the Court reasoned that the claim was in controversy, and the claimants were put to their proof. If no proof was offered to support the claim, the court said the ground of appeal in the commission's determination of the facts was lacking.

Commission, primarily with reference to the extent to which the record before the Commission becomes the basis for appellate determination as to facts contained therein. Generally speaking, court review of fact findings of administrative bodies may be classified into three categories according to the extent of review made by the court. They might be designated as the law method, the equity method, and the justice of the peace method.⁵ Under the law method, the review is on the record as made by the Commission and the court must affirm the Commission's finding if there is substantial evidence to support it. Under the equity method, the record as made before the Commission is still the basis for appeal (that is, the court accepts no new evidence), but the court may weigh the evidence as it appears in the record and substitute its judgment for that of the Commission as to the findings of fact. Under the justice of the peace method, there is a complete trial *de novo* on appeal and the record comes in only, if at all, as evidence of the material contained therein, supplementing the other evidence which may be received for the first time on appeal. From the point of view of effective administration, the law method is deemed to be the most satisfactory form of fact review.

In Maryland, as is usual, appeals from the State Industrial Accident Commission are governed by statute.⁶ This section of the Code has been amended from time to time,⁷ and the result has been that at different periods during the history of the Commission provision has been made for modified versions of two of the above suggested methods: the equity method and the justice of the peace method of appeal. A grouping of these periods will show that from 1914 to 1931 the justice of the peace method of appeal was utilized,⁸ but from 1931 to 1935, the equity method was used.⁹ In 1935 however the statute was again changed and the 1914-1931 method was re-enacted.¹⁰ For the purposes of the instant note, these methods of appeal will be

⁵ For a similar classification, under different names, and more thoroughly justified, see Larson, *The Doctrine of "Constitutional Fact"* (1941) 15 Temple L. Q. 185, 199.

⁶ Md. Code (1939) Art. 101, Sec. 70.

⁷ During its history, Art. 101, Sec. 70, has been repealed and re-enacted five times.

⁸ Md. Laws 1914, Ch. 800, Sec. 56 continued in force until repealed by Md. Laws 1931, Ch. 406.

⁹ Md. Laws 1931, Ch. 406 continued in force until repealed by Md. Laws 1935, Ch. 545.

¹⁰ Md. Laws 1935, Ch. 545.

discussed in the following order; viz., first the equity, and second the justice of the peace method.

In 1931, the existing statute governing appeals from the Commission was repealed, and in its place was substituted a provision which called for an appeal "from the record made before the Commission".¹¹ The result was that the existing method of appeal was discarded and its place was taken by the equity procedure. In general, appeals were limited to the facts and testimony appearing on the record before the Commission.¹² It was impossible, therefore, after an appeal had been taken, to send the record back to the Commission for additional evidence.¹³ It was as equally impossible, after an appeal had been taken, to send the record back to the Commission to secure a different ruling by the board on additional evidence that might be taken.¹⁴ However, the court was not required before hearing an appeal from the Commission to adopt and declare issues of fact, when such appeal was without a jury.¹⁵ And it was well settled, that although review was confined to the record made before the Commission, this did not preclude the court from rejecting any extremely prejudicial evidence found in the record when a jury was resorted to for a decision on the facts.¹⁶ On the other hand, a party who failed to object to the admission of evidence before the Commission was precluded from initially objecting thereto on appeal to the law court.¹⁷

The method of appeal from 1931 to 1935 was, therefore, a clear cut example of the equity procedure. If a reversal was to be obtained, the mistake had to appear from the record. It was impossible to secure additional evidence on appeal, or in any way to have a trial *de novo*. However, this procedure is of little more than academic interest today. The reason is that the present appeal statute repealed the equity method, and substituted in its place the

¹¹ *Supra*, n. 9.

¹² *Thomas v. Pennsylvania Ry. Co.*, 162 Md. 509, 160 A. 793 (1932); *Celanese Corp. v. Lease*, 162 Md. 587, 160 A. 801 (1932); *Sinsko v. Weiskettel and Sons*, 163 Md. 614, 163 A. 693 (1932); *Federal Tin Co. v. Hoffman*, 164 Md. 431, 165 A. 323 (1933); *Coal Co. v. Chisholm*, 163 Md. 49, 161 A. 276 (1932).

¹³ *Monumental Printing Co. v. Edell*, 163 Md. 551, 164 A. 171 (1932).

¹⁴ *Ibid.* Although this question was not squarely before the Court, it was envisioned as a possibility in later litigation and was therefore answered by the court.

¹⁵ *Liberty Mutual Insurance Co. v. United States Fidelity and Guaranty Co.*, 164 Md. 117, 164 A. 179 (1932).

¹⁶ *Coal Co. v. Chisholm*, 163 Md. 49, 161 A. 276 (1932).

¹⁷ *Federal Tin Co. v. Hoffman*, 164 Md. 431, 165 A. 323 (1933).

original procedure under the act, i. e., the justice of the peace method.¹⁸

The present day appeal from the State Industrial Accident Commission to the law court may be described generally as an appeal de novo.¹⁹ A long line of cases may be cited to support this statement.²⁰ Before the Act was two years old, the question was squarely placed before the court of whether additional witnesses could be called and new and additional evidence taken on appeal. The court answered the question in the affirmative, and stated that the legislature intended to secure to the appellant in such cases all the benefits of the Constitutional guaranties of a jury trial in civil proceedings.²¹ As a result, a witness may be called to testify on appeal even although he has testified before the Commission.²² If the party so desires, testimony of a witness may be placed before the jury on appeal through the medium of the record, even though the witness is within the jurisdiction of the Court, and therefore could have been called to testify on appeal in person.²³ Where the testimony of a witness taken before the Commission is read to the jury, however, it is error to allow the same witness to repeat that testimony in person.²⁴

Cases have suggested that if a party takes a jury appeal the procedure will be in the nature of a trial de novo, but if the party takes a non-jury appeal, the case may be presented upon the record taken before the Commission. In *Harvey v. Roche & Son*, the Court said:²⁵

“Concerning proceeding on appeal, there is no requirement that the transcript of testimony taken before the Commission shall be read to the jury; there is

¹⁸ Md. Laws 1935, Ch. 545.

¹⁹ This exact language is not used in the statute, but it is submitted that the construction which it has received leads inevitably to this result.

²⁰ See *Frazier v. Leas*, 127 Md. 572, 96 A. 764 (1916); *Savage Mfg. Co. v. Magne*, 154 Md. 46, 139 A. 570 (1927); *Glass Equipment Corp. v. Baldwin*, 152 Md. 321, 136 A. 644 (1927); *Standard Oil Co. v. Mealey*, 147 Md. 249, 127 A. 850 (1925); *Bethlehem Steel Co. v. Traylor*, 153 Md. 116, 148 A. 246 (1929); *Harvey v. Roche and Son*, 148 Md. 363, 129 A. 359 (1925); *Baltimore v. Perticone*, 171 Md. 268, 188 A. 797 (1937); *Spence v. Steel Co.*, 173 Md. 539, 197 A. 302 (1937); *Coal Co. v. Balchumas*, 174 Md. 453, 199 A. 534 (1938).

²¹ *Frazier v. Leas*, 127 Md. 572, 96 A. 764 (1916).

²² *Ibid.*; *Harvey v. Roche and Sons*, 148 Md. 363, 129 A. 359 (1925).

²³ *Savage Mfg. Co. v. Magne*, 154 Md. 46, 139 A. 570 (1927).

²⁴ *Harvey v. Roche and Sons*, 148 Md. 366, 129 A. 359 (1925).

²⁵ *Ibid.* It is to be observed that the language quoted indicates that the non-jury appeal “may be . . . upon proceedings taken before the Commission.” This leaves room for speculation as to whether in such case it must be reviewed upon the record alone.

no mention of that testimony. The Act evidently contemplates that the case may be presented to the Court, without a jury, upon proceedings taken before the Commission. But nothing in it requires that the record of those proceedings and that testimony be submitted to the jury when a jury trial is had on its facts. The jury trial provided for would seem to be, not a review of the decision of the Commission, but an original trial on the question of fact submitted, in which the evidence is to be presented as in any other trial."

In an appeal from the Commission, there is no objection to a party presenting part of his case through the medium of the transcript taken before the Commission and partly by calling additional witnesses.²⁶ Moreover, objections to questions asked before the Commission may be made for the first time on appeal.²⁷ Rules of evidence, however, are affected to some degree because the law court is sitting in an appellate capacity from the Commission. It has been held in such cases that the law court may adapt itself somewhat to the increased latitude allowed to the Commission in admitting evidence open to technical legal objections.²⁸ This does not mean, however, that the rules of evidence are to be abandoned in the law court. If testimony is clearly prejudicial, it may be excluded on appeal although it had been admitted before the Commission.²⁹

The result of this investigation is that, in general, the appeal from the State Industrial Accident Commission to the law court is in the nature of a trial de novo. And it is upon this background that both the *Hathcock* case and the *Parks* case should be examined. If the technical rules of a trial de novo are applied, it would seem that the *Hathcock* case, in refusing to allow the claimant to make his proof for the first time in the law court, is inconsistent with those rules and the cases that support them. At the same time, it would seem that the *Parks* case, in allowing the defendant to make proof of his defense for the first time in the law court, is consistent with the principles of a trial de novo.

A more expeditious way of viewing the problem, however, is to say that while the *Parks* case is consistent with the ordinary concepts of a trial de novo, the *Hathcock* case

²⁶ *Baltimore v. Perticone*, 171 Md. 268, 188 A. 797 (1937).

²⁷ *Spence v. Steel Co.*, 173 Md. 539, 197 A. 302 (1937); *Coal Co. v. Balchunas*, 174 Md. 453, 199 A. 534 (1938).

²⁸ *Standard Oil Co. v. Mealey*, 147 Md. 249, 127 A. 850 (1925).

²⁹ *Ibid.* *Gas Equipment Corp. v. Baldwin*, 152 Md. 321, 136 A. 644 (1927).

engrafts upon those concepts a socially desirable exception. That it is undoubtedly true that a party should not be allowed to disregard the Commission, and place his case for the first time before the law court cannot be doubted. Such a procedure would negative the reason for the existence of the Commission. Parties should be required to submit all of their available evidence in the first instance to the Administrative Board which has been created for the purpose of hearing such evidence. The Board is thereby given an opportunity to function on the case before the party appeals for a determination as to whether it has decided the issues correctly, a procedure which would be consistent with the general *intendment* of the Workmen's Compensation Act. In other jurisdictions the findings of Industrial Accident Commissions are given the same weight as that accorded to the verdict of a jury or the findings of a trial court.³⁰ A provision for a trial *de novo* from such Commissions is therefore not the generally accepted rule. Any decision that reduces the broad scope of the Maryland rule, and vests in the Commission more power to function as an ordinary administrative board is desirable. It is believed that the *Hathcock* case produces in part the result to be obtained.

³⁰ Comment, *Review of Facts Found by Industrial Commissions* (1938) 14 *Corn. L. Q.* 250-251.