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Administrative Law—Workmen's Compensation—"Accidental Injury" as a Question of Fact

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case becomes much more like an election rather than an action to set aside an "illusory" transfer; it becomes an election in fact for most purposes. But even so, the widow remains excused from the procedural requirements of § 18, that is, from actually filing an election and doing so within six months of probate.

This decision may be termed just, considering the statute very generally. It should not be considered sound since it was made possible by a reading of the authorities, especially *Krause* v. *Krause,* so narrow as to vitiate their spirit. Further, the result was achieved at the expense of additional illogical inroads upon the statutory scheme of testamentary disposition, a course the courts would do well to avoid.

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ADMINISTRATIVE LAW — WORKMEN'S COMPENSATION — "ACCIDENTAL INJURY" AS A QUESTION OF FACT

Decedent steamfitter having a congenial aneurysm of a cerebral artery collapsed immediately after emerging from a boiler which he had been cleaning. The temperature inside the boiler was above normal and the working space limited; the work was such that it had to be performed in twenty to thirty minute relays. Death was caused by rupture of the defective artery and subsequent hemorrhage. The employer contended death was due to a condition, not an accident. *Held:* award of death benefits affirmed; whether an injury was accidental, and thus compensable within the meaning of § 2(7), N. Y. Workmen's Compensation Law, is a question of fact on which the decision of the Workmen's Compensation Board is conclusive. *Broderick* v. *Liebmann Breweries,* 277 App. Div. 422, 100 N. Y. S. 837 (Nov. 1950) [all compensation appeals are handled by the 3d Department.]

In determining the appropriate scope of review for a finding on a mixed issue of law and fact, the court here adopted a fresh approach to compensation appeals, one that emphasizes the administrative law aspect of compensation. Mixed issues have given the courts difficulty because the statutory directives regarding review are predicated on the traditional law/fact clasiification: fact findings of the Board are conclusive on review, but the courts are free to correct errors of law. N. Y. Work. Comp. Law, § 20, see BENJAMIN, ADMINISTRATIVE ADJUDICATION IN NEW YORK, first volume, p. 347. The substantial evidence test is applied to fact findings, however, so that they are conclusive only if there is substantial evidence to sustain them, and if that is determined the courts will not reweigh the evidence. *Matter of Helfrick* v. *Dahlstrom Metallic Door Co.,* 256 N. Y. 199, 176 N. E. 141 (1931), *aff'd,* 284 U. S. 594 (1931). The law versus fact distinction may be of little use however when the disputed issue is

mixed, i.e., when the Board in order to make a decision on a given fact situation must of necessity interpret the general terms used by the statute. The compensation law like most others requires much interstitial supplementation, a process which frequently becomes inmeshed with fact finding. The statute gives no directions regarding the handling of such issue or the proper scope of review. It has been urged that the courts would often do well to treat mixed issues *as if* they were merely factual, considering the "particularized conclusion" as largely conclusive in reliance on the special competency of the agency to perform what is essentially an administrative task. See Stern, *Review of Findings of Administrators, Judges and Juries; A Comparative Analysis,* 58 HARV. L. REV. 70, 93-109 (1945).

The disputed issue of the instant case is typical of the mixed type. The appellant contended that decedent's death was obviously due to a condition and disease, and was not accidental within the meaning of N. Y. Work. Comp. Law, §2(7), which defines compensable injuries as meaning only "accidental" injuries. Difficulty in applying this definition has occasioned the appeal of many cases in which there were not the usual trauma but rather disabilities resulting from heart strain, heat prostration and the like. One of the earliest decisions, *Uhl* v. *Guarantee Const. Co.,* 174 App. Div. 571, 161 N. Y. Supp. 659 (1916) (pre-existing heart condition, collapse in course of usual but strenuous work), expressly treated the issue as if it were factual; the court declined to determine for itself whether the injury was accidental and merely applied the substantial evidence rule. Such judicial restraint, however, became the exception rather than the rule, as over the years the courts usually treated the issue as one of law, relying on the many precedents to be found in an ever-growing body of case law. See Meriam and Thornton, *"Accidental Injury" in the Court of Appeals,* 16 BROOKLYN L. REV. 203-216 (April 1950), setting out the development by the courts of the substantive law on this issue using familiar common law techniques. The leading case is *Matter of Lerner* v. *Rump Bros.,* 241 N. Y. 153, 145 N. E. 334 (1925), wherein an accident was defined as something extraordinary or catastrophic, assignable to a determinate or single act, identified in space or time. This requirement was gradually relaxed, the courts sometimes treating the issue as if it were factual in order to facilitate a desired substantive change. See e.g., *Bohm* v. *L. R. S. & B. Realty Co.,* 264 App. Div. 962, 37 N. Y. S. 2d 173 (1942), *aff'd,* 289 N. Y. 808, 47 N. E. 2d 52 (1943). By 1950 the courts were stressing the element of causal relation rather than the necessity of meeting a particular legal definition of "accident." Merian and Thornton, *supra,* p. 205.

Broderick v. *Liebmann Breweries,* the principal case, held that the issue as to whether there was an accident "almost invariably falls within the realm of fact, and if the facts and circumstances sustain, upon any reasonable hypothesis, the conclusion that an average man would view the event as acci-

dental, then the determination of the Board is final." The court concluded that this restricted type of review was required by a dictum in *Matter of Masse* v. *James H. Robinson Co.*, 301 N. Y. 34, 35, 92 N. E. 2d 56, 57 (April 1950), to the effect that, whether on event is to be found an industrial accident is not to be determined by any legal definition but by the common sense viewpoint of the average man. The Court of Appeals in the *Masse* case, reversing the Appellate Division to reinstate an award, characterized this dictum as the proper "basis for decision" on this issue. The *Broderick* holding in its interpretation of the *Masse* dictum squarely places the accident issue in the category of fact for review purposes. This decision accords proper respect to the expertness of the agency and to its position in dealing with claimants at first hand, factors especially deserving of consideration in compensation cases involving difficult medical questions. The substantial evidence test, with its inherent flexibility, will still allow the courts freedom enough to correct injustices and inadvertencies.

It should be noted that if mixed issues are treated as if factual the courts can not expect the Board's decisions to be consistent, as the very nature of fact finding precludes consistency. See the excellent discussion of this point in *McSweeney* v. *Hammerlund Mfg. Co.*, 275 App. Div. 447, 90 N. Y. S. 2d 347 (1949) (occupational disease case), and see, e. g., *Chiara* v. *Villa Charlotte Bronte,* 273 App. Div. 834, 76 N. Y. S. 2d 59, *aff'd,* 298 N. Y. 604, 81 N. E. 2d 332 (1948) (inconsistent denial of award by Board on "heart" case affirmed). Of course the strong and proper tendency of the Board to compensation disabled claimants whenever possible obviates much inconsistency in the way of denying awards.

The evidentiary facts in the *Broderick* case were not in dispute, only the proper inferences to be drawn therefrom. It has been said in compensation cases involving other mixed issues that where the facts are undisputed only questions of law remain. *Matter of Martin v. Plaut,* 293 N. Y. 617, 59 N. E. 2d 429 (1944) (whether injury arose out of and in course of employment); *Christiansen* v. *Hill Reproduction Co.*, 262 App. Div. 379, 29 N. Y. S. 2d 24 (1941), *aff'd,* 287 N. Y. 690, 39 N. E. 2d 300 (1942) (whether injury arose out of and in course of employment); *Bauss* v. *Consolidated Chimney Co.*, 270 App. Div. 70, 58 N. Y. S. 2d 717 (1945) (geographical jurisdiction question). An old "accident" case is directly contrary. *Campbell* v. *Clausen-Flanagan Brewery,* 183 App. Div. 499, 171 N. Y. Supp. 522 (1918). *But cf. Welz* v. *Markel Service,* 270 App. Div. 15, 17, 19, 58 N. Y. S. 2d 476, 478, 479 (1945), *aff'd,* 296 N. Y. 640, 69 N. E. 2d 682 (1946). To hold for review purposes that only questions of law remain when the facts are undisputed goes in the teeth of the judicial process exemplified by the instant case. The cases cited for this view are not authoritative, however, because they were concerned with other issues, ones susceptible to court intervention, i.e., issues where the

law factor of the mixed issue may be readily separable. In this light it is worth noting that in three of these cases the court was *reversing* the Board to find *for* the claimant; in the fourth (*Martin* v. *Plaut*) the Court of Appeals was faced with an affirmed finding from below so that only questions of law *could* be considered. And it is generally held in compensation that inferential facts are just as "factual" for review purposes as are evidentiary ones, E.g. *Gordon* v. *New York Life Ins. Co.*, 300 N. Y. 652, 90 N. E. 2d 898 (1950) (extreme case).

The bare result of the principal decision is not noteworthy, considering the prior "heart" cases, but the technique or review employed is significant, its express adoption being highlighted by the failure of the court to cite even one precedent for substantive authority. The courts are not thus abdicating their decisive role as regards legal questions; rather they are placing increased reliance on the agency, and properly so, considering the remedial and largely non-political nature of compensation and the record of honest administration achieved by the Board. Objectively considered, the decision means at least that *within* the substantive limits defined by existing case law the Board's conclusion on the "accident" issue will control; very likely it means that the same view will be taken when the Board ventures into uncharted areas *beyond* those limits, a result to be welcomed. The limited review applied here may be a concomitant of the emphasis on casual relation already noted. The decision is not surprising as there has been a growing tendency of the courts to discuss all types of compensation issues in "fact" terms. This case, however, presents the desirable review process in full form, worthy of careful consideration and wide application.

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TAXATION — FEDERAL INCOME TAX — INTEREST IN LAW PARTNERSHIP AS A CAPITAL ASSET

Max Swiren, member of a Chicago law firm, acquired by a series of purchases a 30% interest in the partnership for a net total outlay of some $18,000. In 1944 he valued the interest at about $43,000, of which $35,000 represented his allocable share of unpaid fees, billed and unbilled. Swiren sold his interest that year for $40,000. In filing his income tax return for 1944, on a cash receipt basis, he reported as capital gain the sale price less his investment. The Commissioner of Internal Revenue contended that the amount received was ordinary income. The Tax Court, after allowing taxpayer to recover his capital investment tax-free, held that so much of the remaining consideration as represented unpaid fees was ordinary income. On appeal, the United States Court of Appeals reversed (2-1), holding that the partnership interest was a capital asset and the gain a capital gain. *Swiren* v. *Commissioner*, 183 F. 2d 656 (7th Cir. July 1950), *cert. denied* 340 U. S. 912, 71 S. Ct. 293 (Jan. 1951).