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Evidence--Jury Trial Rules of Evidence as Applicable to Administrative Tribunals

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cite any authority for the proposition evidently accepted.[7]

The difficulty of reasonable enforcement of the rule thus necessarily implied becomes manifest when one considers that the letter might have been temporarily mislaid in transit, and perhaps not have been delivered for eight months. *Quaere*: would the offeree have eight days from the receipt of the offer after the expiration of eight months in which to accept, despite the date upon the letter and its obvious limitation?[8] And, if not, just where would the line be drawn?

—SIDNEY J. KWASS.

EVIDENCE—JURY TRIAL RULES OF EVIDENCE AS APPLICABLE TO ADMINISTRATIVE TRIBUNALS.—In the case of *Machala v. State Compensation Commissioner*, the question involved was what caused the employee's death.[1] The evidence relied upon consisted chiefly of statements of the deceased, clearly hearsay testimony. In addition to this, there was competent legal evidence regarding some vital surrounding circumstances. The court, in allowing the claim, held that under our statute, an award may not be based entirely upon hearsay, which would be inadmissible by jury-trial rules, but that such evidence may be considered in connection with competent and sufficient corroborating evidence.[2]

This decision appears to be an adoption of the New York "*residuum rule*," that is, the rule that the administrative tribunal

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mitted that the brief of appellant led the Court into the erroneous assumption noted, as that brief, in citing authority for its contention that the limitation period ran from the date the letter was received, cited cases dealing with acceptance, and with the proposition that an offer is not made until it reaches the offeree, two entirely different propositions. See: 13 C. J. 300; 6 R. C. L. 600; Lucas v. Western Union Co., 131 Iowa 669, 109 N. W. 191, 6 L. R. A. (N. S.) 1018 (1906); and Campbell v. Beard, 57 W. Va. 501, 50 S. E. 747 (1905); which are cited by appellant's counsel, and are not in point.

The court also seems to place great reliance on Adams v. Lindsell, 1 B. & Ald. 681 (1818), an English case dealing with the mode of acceptance of an offer, rather than with a time limitation contained in an offer, the latter being the true issue in the case under discussion.

[8] To hold that the offeree would have eight days from that time would be against the present rule. See: 1 WILLISTON, CONTRACTS (1920) 112, § 63; and § 51 of the American Law Institutes' Restatement of the Law of Contracts; which are to the effect that if the offer is delayed, even if through the fault of the offeror, and the offeree knows or has reason to know of the delay, the period of acceptance is not thereby extended. See also WILLISTON, *op. cit.* §§ 50 and 53.

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[1] 155 S. E. 169 (W. Va. 1930); see also 108 W. Va. 391.

[2] W. VA. REV. CODE (1931), c. 23, art. 1, § 15.

in its inquiries, need not be limited by jury-trial rules. However, there must somewhere be found, in the mass of evidence accepted, sufficient evidence legally acceptable by jury-trial rules to sustain the finding.[3] This rule is followed by several courts and it promises to become even more widely accepted.[4]

Professor Wigmore, generally recognized as the authority in the field of evidence, thinks that this is an unsatisfactory rule. It still virtually requires the tribunal to test its proceedings by the jury-trial rules, throwing itself open to the order of technicalities of trial tactics. "The requirement of a 'residuum of legal evidence' rests on the assumption that the legal evidence is always credible and sufficient, while the illegal evidence is never credible nor sufficient."[5]

Our statute provides that the commission shall not be bound by the usual common law or statutory rules of evidence. It seems that this statute could be properly interpreted so as to allow the commission greater latitude in regard to the use of evidence in proceedings before it, and we would doubtless be justified in trusting to its expert judgment and good faith.[6] To permit such liberality seems to be consonant with the purpose and spirit of legislation in this field.

—JOHN K. CHASE.

INSURANCE—EFFECT OF CLAUSE IN AUTO LIABILITY POLICY EXCEPTING RISKS OF OPERATION BY INFANTS.—The plaintiff in the case of *Raptis v. United States Fidelity and Guaranty Company*[1] had what is commonly known as an automobile liability insurance policy with the defendant, which policy contained a provision exempting the defendant from liability in case the car was operated by a person under the age of sixteen years. The defendant hired one Farris to operate the truck and one McClain as helper. Farris having left the truck with McClain in it for some moments to make a delivery, a traffic jam occurred and McClain in attempting to

[3] Carroll v. Knickerbocker Ice Co., 218 N. Y. 435, 113 N. E. 507 (1916).
[4] See collection of cases in (1923) 36 HARV. L. REV. 263.
[5] 1 WIGMORE ON EVIDENCE (2d ed. 1923) § 4C.
[6] Poccardi v. Public Service Commission, 75 W. Va. 542, 546, 84 S. E. 242 (1915); Caldwell v. Compensation Commissioner, 106 W. Va. 14, 16, 144 S. E. 568 (1928).

[1] 156 S. E. 53 (1930).