

Practice, evidence, prayers.

The grant of a motion to dismiss an appeal from the Commission will be considered as confirmation of Commission's decision, but correct procedure of confirming, reversing or modifying Commission's decision should be followed. *Dashell v. Candy Shops*, 171 Md. 76.

Ch. 545, 1935, restored to litigants the right on appeal to have some witnesses give oral testimony and to have testimony of others read from the transcript made before the Commission. *Baltimore v. Perticone*, 171 Md. 273.

On appeal from Commission, it was proper for Court to submit to jury question whether claimant was resident of Baltimore City, so as to confer jurisdiction on that Court. *Board of Education v. Reynolds*, 171 Md. 454.

Right of appeal is to protect parties from errors of Commission in deciding issues of facts or errors of Commission or of Court on matters of law; provision that decision of Commission shall be "*prima facie* correct" and burden of proof upon party attacking does not mean that if insufficient facts are presented to support the decision, the burden of factual proof is on person attacking it; question whether evidence is legally sufficient to support decision of Commission is necessarily matter of law to be decided by Court; where question of conflicting evidence of essential facts. Prayers bad in form. *Moore v. Clarke*, 171 Md. 39.

Under this section, where interest of party appealing is affected, it is duty of Court to hear appeal and either to confirm, modify or reverse order of the Commission. *Victory, etc., Co. v. Saxton*, 170 Md. 446.

Widow claiming compensation on account of husband's death and appealing within 30 days after award of Commission, entitled to have judicial determination of question whether husband's average weekly earnings were properly computed. *Stevenson v. Hill*, 170 Md. 676.

On appeal, under Ch. 406, 1931, the Court may decide not only whether the Commission misconstrued the facts, but also how it should have construed them; any question of fact disclosed by the record may be submitted to a jury. *Bethlehem Steel Co. v. Mayo*, 168 Md. 410.

Failure of Commission to find accidental cause of employee's death to support claim places burden upon claimant to prove it was result of accident. *Robertson v. Refractories Co.*, 169 Md. 187.

When salesman was killed in automobile collision while driving home at noon after performing duties as such, held that he was killed in course of his employment; admissibility of testimony as to his usual routine and telephoning possible customers from his home. *Greenwald, Inc. v. Powdermaker*, 170 Md. 173.

This section, as amended by Ch. 545, Acts of 1935, restores the former law which had been construed that questions asked witnesses before Industrial Accident Commission can be objected to for the first time on appeal. *Spence v. Steel Co.*, 173 Md. 539.

Ch. 545, Acts of 1935, restoring Ch. 587 of 1927, restored the rule that objections to questions can be made in trial court on appeal from Commission, though not made before the Commission. *Coal Co. v. Balchumas*, 174 Md. 453.

This section cited in construing Federal Longshoremen's and Harbor Workmen's Compensation Act. *Ayers v. Parker*, 15 F. Supp. 447.

Under this section and sec. 78, principal contractor and its insurer entitled to participate in appeal by sub-contractor, in order to protect rights under sec. 77; better practice to petition for amendment of titling. *Core Constructing Co. v. Schaeffer*, 151 Md. 502 (decided prior to act 1927, ch 587).

Where testimony of witnesses before commission is read to jury, court properly refused to allow same witnesses repeat testimony to jury. Case may be tried before court without jury. *Harvey v. Roche & Son*, 148 Md. 366 (decided prior to act 1927, ch. 587).

Proceedings before commission, and upon appeal are "informal and summary" and formal pleadings have no place in them; issues properly rejected. Prayers: "Arising out of and in course of employment." *Owners' Realty Co. v. Bailey*, 153 Md. 278 (decided June 9, 1927).

Cited in *Parks & Hull Appliance Corp. v. Reimsnyder*, Daily Record, Jan. 6, 1940.

There is nothing in this section which attempts to confine trial (on appeal) to testimony taken before commission. A jury trial implies the right of either party to call witnesses; party attacking decision of commission may upon appeal introduce any proper oral evidence. The legislature intended to secure to appellants benefit of art. 15, sec. 6, of the Constitution. *Frazier v. Leas*, 127 Md. 575. And see *American Ice Co. v. Fitzhugh*, 128 Md. 385; *Bethlehem Corp. v. Simmons*, 143 Md. 509.

The practice under the clause of this section requiring the submission to jury of questions of fact considered. The issues should be analogous to those sent from orphans' court or from courts of equity, and should be confined to ultimate issues involved in finding of commission. *Hernia. Evidence of medical experts. Prayers. Schiller v. B. & O. R. R. Co.*, 137 Md. 240. And see *Bethlehem Corp. v. Simmons*, 143 Md. 510.

This section does not revive practice that grew up under act of 1894, ch. 185 (repealed by act of 1900, ch. 641), authorizing special findings of fact by jury. Refusal of question of fact which presents only real issue in case not ground for reversal. Proper