

the decision of the Commission shall be *prima facie* correct and the burden of proof shall be upon the party attacking the same.

Under this section and sec. 63, principal contractor and its insurer entitled to participate in appeal by sub-contractor, in order to protect rights under sec. 62; better practice to petition for amendment of titling. *Core Contracting 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).

Though witnesses in jurisdiction of court, testimony from record before commission may be read; error, however—though not prejudicial in this case—for counsel of claimant to read jury evidence introduced by employer and insurer. *Savage Mfg. Co. v. Magne*, 154 Md. 51.

Conclusion of commission that injury arose out of employment places burden upon party appealing of proving contrary; when only trial court may withdraw case from jury. *Todd v. Furniture Co.*, 147 Md. 354 (decided prior to act 1927, ch. 587).

In view of this section, court may not on appeal from commission, where there is conflict of evidence, decide as matter of law that finding by commission of permanent partial disability was error. *Bottling Works v. Lilly*, 154 Md. 244.

Failure to accept medical attention. When granting of erroneous issue and refusal of proper one not prejudicial; prayers—burden of proof. See notes to sec. 42. *McCulloh & Co. v. Restivo*, 152 Md. 68 (decided prior to act 1927, ch. 587).

Decision of commission on question of wilful misconduct *prima facie* correct. Court of Appeals does not review questions of fact, but of law only; burden of proof. *Harris v. Dobson & Co.*, 150 Md. 75 (decided prior to act 1927, ch. 587).

Where contract is indefinite or evidence conflicting, question as to whether one is independent contractor or employee is for jury; facts undisputed; question of law; erroneous prayers. *Bogatsky v. Swerdlin*, 152 Md. 22; *Hygeia Ice, etc., Co. v. Schaeffer*, 152 Md. 235 (decided prior to act 1927, ch. 587).

Amendment by adding wife and next friend as appellant, proper; no exception. *Bramble v. Shields*, 146 Md. 507.

This section referred to in construing sec. 58—see notes thereto. *Md. Casualty Co. v. Elec. Mfg. Co.*, 145 Md. 652.

See notes to secs. 10 and 65.

57.

See notes to sec. 14.

Miscellaneous.

58.

This section does not create new liability, but designates manner of enforcing liability theretofore existing and changes parties benefited. Not necessary to make state legal plaintiff in case suit is brought by dependents of deceased employee; jury may apportion verdict among dependents, after awarding insurer amount paid by latter. Fall of scantling—presumption of negligence. *Clough & Molloy v. Shilling*, 149 Md. 192.

Injured employee or dependents not entitled to damages recovered from "other person" until employer is reimbursed for all payments under award, including court costs; counsel of widow of employee in suit against *tort-feasor* not entitled to compensation from insurer. Widow not statutory agent of insurer. *Barrett v. Indemnity Co.*, 152 Md. 259.

In suit by injured employee against person other than employer, not necessary for jury to find no action by employer or insurer was brought, if this is conceded. Entry to use of employer or insurer; apportionment of verdict. *Stark v. Gripp*, 150 Md. 657.