Buffalo Law Review

Volume 10 | Number 1 Article 89

10-1-1960

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data to verify his position. In addressing itself to this testimony the Court stated that "there must be some evidence of a basis for the opinion, and the acceptance in one case of 'possible' as meaning reasonable medical certainty does not justify treating every possibility as though it were enough to establish the facts sought to be proved."[73] The Court pointed out that to accept such a standard would overturn the rule established in *Stubbs v. City of Rochester*,[74] that the burden to prove causation is on the party asserting that a disease is based on actionable facts. The Court did not say that the mere use of such words as "could produce" or "it is possible" in and of themselves destroy probative force of testimony. However, the opinion evidence was not found "fortified by detailed explanation and other facts in the record which add to its reasonableness and correctness."[75]

It is established that a finding is supported by the evidence only when the evidence is so substantial that from it an inference of the existence of the fact may be reasonably found.[76] Mere proof of possibility, or even a preponderance of possibilities or a majority of chance, never can suffice alone to establish a proposition of fact.[77] It is only when there is no substantial evidence of a competent, probative force to sustain an administrative conclusion, that a court is warranted in setting aside the determination.[78]

TEST USED, EVEN THOUGH NOT THAT PRESCRIBED BY REGULATION, ADMISSIBLE IN EVIDENCE TO SHOW GUILT

The defendant in the case of *People v. Prince Jagendorff Greene Inc.*[79] was charged with violating the Rules and Regulations of the Department of Air Pollution Control adopted pursuant to Chapter 47 of the Administrative Code of the City of New York. The rules prohibited the sale or transportation of any solid fuel with a volatile content in excess of 24% on an ash-and-moisture-free basis for hand-firing equipment.[80]

Volatile matter was defined by the Department as "The gaseous constituent of fuels as determined by standards of the American Society for Testing Materials".[81] The American Society for Testing Materials procedure under this standard of testing provided for the taking of a gross sample of not less than 90 pounds, consisting of a minimum of nine increments, each increment weighing not less than 10 pounds.[82]

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73. Supra note 71 at 284, 204 N.Y.S.2d 134 (1960).
74. 226 N.Y. 516, 124 N.E. 137 (1919).
75. Zaepfel v. Du Pont de Nemours & Co., 284 App. Div. 693, 696, 134 N.Y.S.2d 377, 380 (3d Dep't 1954).
76. Holland v. Edwards, 307 N.Y. 38, 119 N.E.2d 581 (1954).
77. Erin Wine and Liquor Store v. O'Connell, 307 N.Y. 768, 112 N.E.2d 612 (1954).
78. Reynolds v. Triborough Bridge and Tunnel Authority, 276 App. Div. 388, 94 N.Y.S.2d 841 (1st Dep't 1950).
79. 7 N.Y.2d 42, 194 N.Y.S.2d 498 (1959).
80. Rules of Department of Air Polution Control, 14.3, 14.3.2, 14.4.
81. Rules and Regulations of the Department of Air Pollution Control, § 0.
82. American Society for Testing Material, designation D 980-53.

The Magistrates' Court found defendant guilty of such violation in that he sold bituminous coal having a volatile content of 31.44%. The evidence introduced showed that at least four increments of coal weighing between 8 to 15 pounds were taken from different parts of the batch in the truck. These in turn were pulverized and samples of 2 to 3 pounds were taken and placed in two wax containers. One container was given to the driver for the coal company and the other was delivered to the city's laboratory. The chemist for the city testified that when the sample was tested, it contained 31.44% volatile matter on an ash-and-moisture-free basis. The defendant rested without calling witnesses or offering proof to controvert the evidence submitted by the People. Instead, defendant made a motion to dismiss on the sole ground that the city had failed to follow the procedures for testing of the American Society for Testing Materials which was denied. On appeal, the Court of Special Sessions reversed the judgment holding that the sample of coal taken by the inspector for analysis by the city's chemist was, according to a specific standard which was allegedly prescribed by the department, too small to be representative of the bulk of the coal sold. The Court of Appeals reversed the Court of Special Sessions and ordered a new trial stating that the prosecution's showing that the coal sold by the defendant contained excessive volatile content made a prima facie case of violation of the regulation, even though the sample was not taken in accordance with the procedures of the American Society for Testing Materials, since there was no showing by the defendant that the procedure followed was inaccurate.[83]

The defendant's argument is predicated on the contention that the Department adopted a specified standard of testing when it included in its rules a definition of "Volatile matter" as "The gaseous constituent of fuels as determined by standards of the American Society of Testing Materials." Defendant argues that the Department was bound, under its rules, to use this standard to the exclusion of all other recognized accurate standards.

However, the use of the definition shows only an intent to adopt a standard of analysis, not a binding obligation to do so. The Department is not limited to the standards mentioned, but may introduce evidence of any tests shown to be accurate.[84] This is not a situation where the applicable statute or regulation specifically prescribes the analyzing process to be used. In these circumstances, courts have accepted evidence or reports of methods of testing made by recognized processes.[85] It is up to the defendant to show that such tests used are inaccurate.

83. Supra note 79.
84. See United States v. 100 Barrels of Vinegar, 188 F. 471 (D.C. Minn. 1911).
85. People v. Rickard, 48 App. Div. 408, 63 N.Y. Supp. 165 (3d Dep't 1900).