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"My keenest interest is excited, not by what are called great questions and great cases, but by little decisions which the common run of selectors would pass by because they did not deal with the Constitution, or a telephone company, yet which have in them the germ of some wider theory, and therefore of some profound interstitial change in the very tissue of the law."—Mr Justice Holmes, Collected Legal Essays, p. 269.

NOTES ON RECENT MISSOURI CASES

DECEIT—REPRESENTATION AS TO VALUE—STATEMENT OF FACT OR OPINION. *Jourdan v. Sheets.*[1]

In the case cited above, the plaintiff, who had a $1,400 "equity" in realty, traded it to the defendant for a jack and three mares. Discovering later that the jack was worthless, and that the mares were worth from thirty-five to fifty dollars apiece, he sought to rescind, but the defendant refused and the plaintiff brought this action based on fraud and deceit. It seems that the stock was on a farm about 100 miles distant from the plaintiff's residence, and the defendant knew that the plaintiff was in such circumstances that he could not investigate for himself. The plaintiff relied upon the defendant's statements as to the value of the stock, and that they were pedigreed animals worth $1,400. The defendant, in order to make plaintiff believe such statements of value, showed

1. (1923) 248 S. W. 641

the plaintiff a bill of sale evidencing that the defendant had recently purchased the stock for the same price.

The Kansas City Court of Appeals affirmed a judgment for the plaintiff. The point of view was that "a representation even as to the value may be the basis of an action, if it is made as a fact, and not as the mere expression of an opinion." The statement of the value was regarded as a "fact" in this instance because "the parties did not stand upon an equal footing, nor did plaintiff have opportunity to examine the property .... but would have to rely upon what the defendant said in that regard."[2]

It is stated to be a well-settled doctrine in this state "that fraud cannot be based upon mere statements of opinion as distinguished from representations of fact."[3]

The reasons laid down by some courts why statements which are mere matters of opinion are not actionable are: (1) "an assertation of value is, ordinarily, treated as not a fraudulent feature in the make up of a trade. It is a license each party takes, knowing that the other is not believing him"[4] .... (2) one must use ordinary caution to prevent deception;[5] (3) no special confidence is reposed in the representations.[6]

The following statements of value have been held to be mere statements of opinion, for which the speaker was held not liable: that bank stock now worth $82 would rise to $100;[7] that "the business would make a bushel of money a day and similar prophecies and puffs";[8] that a mine would prove equal in value to another mine of great value, the vendee knowing the mine as yet to be unopened, and its value yet to be ascertained;[9] that certain Alabama land "would produce corn, oats and cotton and almost all the products of land in the north";[10] what could be made out of a certain mine per week and per year;[11] statement of the

2. There were statements apparently as to the ages of the animals but the court concluded to attach no importance to them.

3. *Stacey v. Robinson* (1914) 184 Mo. App. l. c. 63, 168 S. W. 261; *Anderson v. McPike* (1885) 86 Mo. 293.

4. *Moody v. Baxter* (1912) 167 Mo. App. 521, 152 S. W. 117; *Franklin v. Holle* (1879) 7 Mo. App. 241.

5. *McCaw v. O'Malley* (1923) 249 S. W. 41.

6. *Langdon v. Green* (1872) 49 Mo. 363.

7. *Union National Bank v. Hunt* (1879) 7 Mo. App. 42.

8. *Black v. Epstein* (1902) 93 Mo. App. 459, 67 S. W. 736.

9. *Fisher v. Seitz* (1913) 172 Mo. App. 162, 157 S. W. 883. See, also, *Lovelace v. Suter* (1902) 93 Mo. App. 429, 67 S. W. 737 (a certain bond is just as good as another bond which was stated to be "A No. 1."; not actionable); *Sawyer v. Horne's etc. Co.* (1917) 195 S. W. 537 (certain fox puppies were the greatest bargain ever offered for $500.00; not actionable); *Viles v. Viles* (1916) 190 S. W. 41.

10. *Wilson v. Jackson* (1902) 167 Mo. 135, 66 S. W. 972.

11. *Kendrick v. Ryus* (1909) 225 Mo. 150, 123 S. W. 937.

money and rental value of certain property even though coupled with a statement of the price for which the property had previously sold.[12]

The following statements of value were held to be more than mere statements of opinion and they were therefore actionable: that the value of a certain quarter section of land was not less than three thousand dollars, that an offer of eighteen dollars per acre had been made for it, and that he never loaned money on land at over one-half its value but that he had loaned sixteen hundred dollars on this;[13] that certain bank stock was worth four hundred dollars a share coupled with misrepresentations as to the owner of the shares which plaintiff purchased and the alleged concealed assets of the bank;[14] statements of the value of land and the worth of a certain individual where "plaintiffs had no means of verifying the statement";[15] that a stock of groceries was worth eight hundred dollars where the parties were not on an equal footing;[16] that X-ray apparatus and business were worth $7,500 since they "are not things commonly used by people in general, and there is no evidence that the defendant by any reasonable investigation could have found out their value";[17] representation that land costing $100 per acre had been purchased for $200 per acre was a *fact* when the parties were entering into a joint enterprise;[18] statement of the value of bank stock where the information was not equally open to both parties;[19] various representations as to the value and productiveness of land where purchaser did

12. *Cornwall v. McFarland Real Estate Co.* (1899) 150 Mo. 377, 51 S. W. 736 (decision seems questionable; emphasis was placed on the fact that plaintiff could have examined the property and formed his own judgment); *Brownlow v. Wollard* (1894) 61 Mo. App. 124 (same idea); *McCaw v. O'Malley* (1923) 249 S. W. 41 (purchaser made examination and therefore could not complain of misrepresentations of value, quantity or previous cost; evidence of representations not clearly set out); *Langdon v. Green* (1872) 49 Mo. 363. See, also, *Totman v. Christopher* (1922) 237 S. W. 822. Compare *Flack v. Wahl* (1916) 197 Mo. App. 10, 193 S. W. 56 (misrepresentation as to rental value held actionable; purchaser not afforded an opportunity to investigate).

13. *McBeth v. Craddock* (1887) 28 Mo. App. 380, l. c. 397 (dictum; land happened to be located out of the state). See also *Sedgwick v. National Bank of Webb City* (1922) 243 S. W. 893 (dictum that where mortgagor and property are in another state "representations as to value are not regarded as expressions of opinion but of fact"); *Shinnabarger v. Shelton & Lane* (1890) 41 Mo. App. 147 (land located in another state); *Brownlee v. Hewitt* (1876) 1 Mo. App. 360.

14. *Davis v. Forman* (1910) 229 Mo. 27, 129 S. W. 213.

15. *Ruddy v. Gunby* (1915) 180 S. W. 1043 (similar to the principal case under review).

16. *Stones v. Richmond* (1886) 21 Mo. App. 17 (plaintiff inexperienced, defendant experienced in grocery business); see also *Cahn v. Reid & Bungardi* (1885) 18 Mo. App. 115 (plaintiff unacquainted with value of land in another state may recover even though he inquired of a real estate dealer as to the value of the land); *Chase v. Rusk* (1901) 90 Mo. App. 25 (same idea).

17. *Scheidel Western X-Ray Co. v. Bacon* (1918) 201 S. W. 916.

18. *Garrett v. Wannjried* (1896) 67 Mo. App. 437. See also *Hess v. Draffen & Co.* (1903) 99 Mo. App. 580.

19. *Snider v. McAtee* (1912) 165 Mo. App. 260, 147 S. W. 136, s. c. 178 S. W. 484.

not have a fair opportunity to examine for himself;[20] representations as to value and productiveness of land and the future life of a peach orchard.[21]

Analogous statements have been held sufficient to sustain a cause of action.[22]

In another instance the statement was held to be insufficient.[23]

Where is the line that divides the decisions? It is not satisfactory to state that a fraudulent statement of *fact* is actionable and that a fraudulent statement of *opinion* is not. Nor does it help to any great extent to say that a "mere" statement of opinion cannot be the foundation of an action even though it be fraudulent. There seems to be no satisfactory distinction between *fact* and *opinion*. Most utterances contain opinion if a fact is that which can be scientifically demonstrated to the satisfaction of all reasonable men.

The result is, therefore, that the true dividing line is not between *fact* and *opinion* but between *opinion* that is and is not actionable. This depends upon what is fraud which cannot be satisfactorily defined.

The result of the attempt to maintain a distinction between *fact* and *opinion* leads the courts to holding that a fraudulent statement of opinion is actionable if the parties are not on an equal footing, or if one party did not have an opportunity to investigate. Other exceptions of a similar nature are made. Under such circumstances the courts are prone to say that the statement is one of fact and not of opinion. But it would seem to be obvious that if a statement is one of opinion it is not any less so because the parties are not on an equal footing or because one does not have an opportunity to investigate.

20. *Stonemets v. Head* (1913) 248 Mo. 243, 154 S. W. 108 (inimitable opinion by Lamm, J., taking a liberal and sensible point of view).

21. *Wendell v. Ozark Orchard Co.* (1918) 200 S. W. 747.

22. *Kerwin v. Friedman* (1907) 127 Mo. App. 519, 105 S. W. 1102 (a positive assurance that title to land in another state was good an actionable statement of fact and not a mere expression of opinion); *Rabenau v. Harrell* (1919) 278 Mo. 247, 213 S. W. 92 (that an irrigating system was sufficient to furnish an adequate amount of water was an actionable statement of fact); *Leicher v. Keeney* (1902) 98 Mo. App. 394, 72 S. W. 145, s. c. 110 Mo. App. 292 (statement of quantity of land in certain tract); *Williamson v. Harris* (1912) 167 Mo. App. 347, 151 S. W. 500 (soil productive without use of commercial fertilizer where purchaser was unfamiliar with land and seller had used fertilizer for Mo. App. 595, 152 S. W. 96 (exchange of several years); *Pope v. Florea* (1912) 167 property to an old and feeble woman with poor eyesight); *Hardwood Lumber Co. v. Dent* (1906) 121 Mo. App. 108, 98 S. W. 814 (statements of market prices of hardwood lumber treated as assertions of fact if made to a person wholly ignorant of the market value who relied on the speaker's expert knowledge); *Judd v. Walker* (1908) 215 Mo. 312 (deception as to number of acres in irregular tract).

23. *Stacey v. Robinson* (1914) 184 Mo. App. 168 (statement that a certain title was good because a certain person "wouldn't have taken it unless it was good").

It would seem that the futility of distinguishing between *fact* and *opinion* was fully recognized by Lamm, J., in his excellent opinion in *Stonemets v. Head*.[24] There he wrote: "What is fact and what is mere opinion is often a close question. The one easily shades off into the other or is handmaiden to the other . . . ". He also quoted from Judge Story to this effect: "It has been suggested at the bar that fraud cannot be predicated of belief, but only of facts. But this distinction is quite to subtle and refined."[25]

In this line of cases one frequently meets with the declaration that a statement in order to be actionable must be one that would have deceived a person of ordinary prudence and caution. It is submitted that this doctrine is undesirable. No doubt the courts cannot afford to waste their time in aiding a person who has relied on absurd and ridiculous statements. But if the action of deceit is for the relief of only those who have exhibited ordinary prudence and caution it would not be invoked very often. Mr. Stonemets[26] was a naive sort of person who exercised poor judgment, but he is the type of person who is most in need of protection from the courts. Lamm, J., has refuted the soundness of this unfortunate declaration.[27]

The result of the opinion under review is sound but it seems to be an unnecessary labor to attempt to demonstrate that the statement was made "as a fact and not as the mere expression of an opinion."

A. N.

24. (1913) 248 Mo. 243, 154 S. W. 108. See also two good notes in 17 Harv. L. R. 193 and 25 Harv. L. R. 472.

25. *Stebbins v. Eddy* (1827) 4 Mason, l. c. 423. Compare *Greenfield v. People* (1881) 85 N. Y. 74, l. c. 82 where ordinary witnesses were permitted to testify that certain spots were of blood because their testimony was fact and not opinion.

26. *Stonemets v. Head, supra.*

27. *Judd v. Walker* (1908) 215 Mo. l. c. 337.

"It has sometimes been loosely said that the *negligence* of the vendee will prevent recovery for the fraud of the vendor. The word "negligence", used in that connection, as we understand its meaning in the law of negligence, is an unhappy expression. Fraud is a wilful, malevolent act directed to perpetrating a wrong to the rights of another. That such an act in a vendor should not be actionable because of the mere negligence or inadvertence of the vendee in preventing the fraud, ought to be neither good ethics nor good law. If one voluntarily shuts his eyes when to open them is to see, such a one is guilty of an act of folly (in dealing at arm's length with another) to his own injury, and the affairs of men could not go on if courts were being called upon to rip up transactions of that sort."

See also Sturgis, P. J., in *Wendell v. Ozark Orchard Co.* (1918) 200 S. W. 747. "To say that the ignorant and imprudent must always act with reasonable prudence is requiring the impossible."

EVIDENCE—ADMINISTRATIVE BODIES. *State Ex Rel Johnson v. Clarke.*[1]

The high degree of industrialization which our country has attained in the last few decades has caused a removal of the regulation of many classes of business and professions from the courts to administrative bodies, acting in a quasi-judicial capacity. Although these commissions have now assumed a very important role in administration, the rules governing their procedure and the reception of evidence are as yet but little developed.

One of the few cases in Missouri on this subject is that of *State ex rel Johnson v. Clarke, supra.* There the State Board of Health had suspended the license of Dr. Johnson for the commission of an abortion, the chief evidence being the testimony of a witness that the victim told him that Johnson had committed the deed. The board had also permitted witnesses to testify as to the reputation of Dr. Johnson for committing abortions. It was contended before the Supreme Court of Missouri that, since the board was merely an administrative body it might entertain evidence inadmissible in a law court. But that court, influenced by the value of the right to practice medicine, and what were thought to be the penal characteristics of the statute,[2] declared that jury trial rules of evidence should have been followed.

It seems that the court had two ideas: (1) that even a ministerial body must observe rules of evidence which prevail with the common law jury trial, and (2) that the evidence in the proceedings under consideration was not sufficient to justify the action taken by the State Board of Health.[3]

These are distinct problems and should not be confused. A court may or may not compel an administrative body to follow jury trial rules of procedure and evidence.[4] Either way it might still quash the judg-

1. (1921) 288 Mo. 659, 232 S. W. 1031.

2. Revised Statutes of Mo. 1919 Sec. 7336.

3. The opinion even has this declaration: "To render a conviction bottomed upon the veracity and competency of persons other than witnesses testifying under oath, which the record here would alone seem to warrant, would be contrary to the established principles of *all* law". (Italics supplied)

This statement ignores the fact that in the most formal and rigid jury trial court a person could be "convicted" where hearsay testimony was admitted. There are many exceptions to the hearsay rule. It seems safe to say that there are a dozen of them.

Also the statement places undue emphasis on an "oath". Certainly the declarations of Edna Boothby (the victim) would not have satisfied the jury-trial rules of evidence even though they were in the form of an affidavit.

Furthermore, the statement completely ignores the well known fact that hearsay testimony is acceptable under those systems of law which have their heritage in the Roman system of jurisprudence.

4. Another distinction is necessary at this point. A court might not require an administrative body to employ jury-trial rules of evidence and procedure and yet insist that orderly rules be observed in order that the action taken come witin the due process clause.

ment of an administrative body as being arbitrary. Also it might hold that the judgment was a final and conclusive determination of the facts, without regard to the procedure or rules of evidence observed by the administrative tribunal in arriving at its judgment.

The statute regulating the conduct of the State Board of Health in revoking licenses makes no provision with regard to the rules of evidence to be observed by it. It does provide that if the person under investigation fails to appear the board may act "after receiving satisfactory evidence of the truth of the charges". There is also a provision that in proceedings before the board depositions may be taken under the rules as observed in "civil cases".

Nearly twenty years ago the Supreme Court of Missouri delivered an opinion[5] that gave fair promise of a liberal attitude toward administrative tribunals. There Valliant, J., with concurrence of all the judges except Marshall, J., (who concurred in the result) argued as follows: "The State Board of Health is not a court, is not a judicial tribunal; it can issue no writ, it can try no case, render no judgment; it is merely a governmental agency, exercising ministerial functions; it may investigate and satisfy itself from such sources of information as may be attainable as to the truth or falsity of charges of misconduct against one holding one of its certificates, but its investigation does not take on the form or character of a judicial trial. The law does not contemplate that the technical rules of evidence applicable to a judicial trial will be strictly followed or that compulsory attendance of witnesses will be made. It contemplates that a plain, honest, common sense investigation shall be made, with good faith and as thorough as may be with the light of such evidence on either side as is obtainable without process and with the means at hand; much like the investigation that fair-minded intelligent men would make in their own business concerning the alleged misconduct of one of their employees, with this difference only, that the board cannot revoke the license except for cause and after the accused has had an opportunity to be heard."

Since that opinion was delivered the attitude of the Missouri Supreme Court has been distinctly illiberal. In *State ex rel. v. Robinson*[6] it was held that hearsay testimony "ought not to have been admitted or considered" by the State Board of Health which was held to have improperly suspended for one year a doctor who offered to commit an abortion. This by crabbed reasoning was held not to be "unprofessional or dishonorable conduct" under a statute.

5. *State ex rel. v. Goodier* (1906) 195 Mo. 551, 93 S. W. 928. See *State Board v. Jordan* (1916) 92 Wash. 234, 158 Pac. 982.

6. (1913) 253 Mo. 271, 161 S. W. 1169. See for same sort of reasoning Board of *Medical Examiners v. Eiten* (1912) 61 Ore. 492, 123 Pac. 52.

After this decision, the one under review brings forth no particular surprise. Nevertheless, it is worthy of note that two judges dissented and that Mr. Wigmore is of the opinion that the decision is unsound. The dissenting judges probably would have rendered a distinct service if they had announced the reasons for their views.

In so far as the majority opinion announces that administrative tribunals must follow jury trial rules of evidence[7] it seems unfortunate. Half or more of the peoples of the earth administer justice as well as we do without the restrictions of such rules. Trained lawyers seem to have indifferent success in following our complicated rules of evidence. How can a tribunal composed of doctors be expected to follow them? If the tribunal is composed of lawyers they know how to weigh evidence without the restrictions that surround a jury. The jury trial rules of evidence came into existence to control an inexperienced body of men of average or less than average intelligence. Administrative tribunals are composed of men of more than average intelligence. They are not casual bodies. Rather do they function from day to day and they are experienced usually in the exercise of their judgment upon their problems. It would seem then that the courts should leave them free to follow their own methods and only check them when their action is arbitrary or irrational as it occasionally will be.[8]

It is possible that the opinion under review may be justified as being an arbitrary conclusion without any satisfactory evidence. However, this does not seem to be true to the writer. The declaration of Edna Boothby was just as convincing as it would have been if it had been made in a way to have precisely justified its admission before a jury under an exception to the hearsay rule for dying declarations. As a mere favor to a defendant in a criminal trial the prosecution cannot bring forth reputation testimony of his character as an abortionist, for instance. But it is conceded that hearsay testimony of this sort is admissible before a jury if the defendant offers reputation testimony of his good character.[9] Therefore, the testimony is pertinent and worthy of consideration by a body that is not apt to misuse it. In the case under review the State Board of Health had both the declaration of Edna Boothby and the reputation testimony concerning Dr. Johnson. A judgment based on this does not seem to be irrational or arbitrary.

The various courts do not agree on the problems discussed above.[10] It seems desirable here to call attention to some decisions which have the same liberal point of view as appears in *State ex rel. v. Goodier, supra.*

7. Apparently the opinion would apply as well to jury-trial rules of practice and procedure.

8. See an excellent opinion by Mason, J., in *Richardson v. Simpson* (1913) 88 Kan. 684, 129 Pac. 1128, 43 L. R. A. (N. S.) 911.

9. 1 Wigmore, Evidence (2nd Ed.) secs. 55-58.

10. 17 Ill. L. R. 263; 1 Wigmore, Evidence (2nd Ed.) secs. 4a-4c.

Meffert v. Medical Board[11] is in point. There the Supreme Court of Kansas made the following observations:

"It is contended that the procedure before the board in the admission and rejection of the evidence was violative of the rights of Meffert, in that the evidence received and acted upon was made up largely of unsupported accusations, hearsay and street rumor, and was not sufficient to sustain the findings. The provisions of the act creating the board plainly indicate that such investigation was not intended to be carried on in observance of the technical rules adopted by the courts of law. The act provides that the board shall be composed of seven physicians. These men are not learned in the science of law, and to require of a board thus composed that its investigations be conducted in conformity to the technical rules of a common-law court would at once disqualify it from making any investigation. It is subversive of the morals of the people and degrading to the medical profession for the state to clothe a grossly immoral man with authority to enter the homes of her citizens in the capacity of a physician. It was the intention of the legislature to adopt a summary proceeding by which the morals of the people and the dignity of the profession might be protected against such a possibility without being embarrassed by the technical rules of proceedings at law."

In *Lanterman v. Anderson*[12] a California court of appeals refused to hold that the board of medical examiners was bound to observe statutory rules of pleading and evidence before it could revoke a license. Its reason was that the proceedings was not a criminal one.

The Iowa Supreme Court[13] in the case of a policeman who had been discharged for burglary declared:

"Whether it could be competent in any case for a civil service commission to sustain a discharge wholly upon hearsay evidence, we shall have no occasion to determine. Nor do we have any doubt that hearsay evidence may be admissible before such commission. The tribunal is an administrative one. In an appeal to the commission from an order of discharge by the chief of police, it is permissible to, if not incumbent upon, the chief of police to disclose the grounds upon which he acted. This would ordinarily involve information received by him. Credible information received by the chief of police, implicating members of the force in improper conduct, imposes upon the chief the duty of investigation and of action. It is not requisite that he should have be-

11. (1903) 66 Kan. 710, 72 Pac. 247. See also *Traer v. State Board* (1898) 106 Iowa, 559, 76 N. W. 833 (uncertain); *Munk v. Frink* (1908) 81 Neb. 631, 116 N. W. 525, 17 L. R. A. (N. S.) 439; *Freeman v. State Board* (1915) 54 Okla. 531, 154 Pac. 56, L. R. A. 1918D. 436.

12. (1918) 36 Cal. App. 472, 172 Pac. 625. Compare *Dyment v. Board* (1922) 57 Cal. App. 260, 207 Pac. 409. See *Suckow. v. Alderson* (1920) 182 Cal. 247, 187 Pac. 965.

13. *Fronsdahl v. Civil Serv. Com.* (1920) 189 Iowa, 1344, 179 N. W. 874. Contrast *People ex rel. v. Riley* (1922) 232 N. Y. 283, 133 N. E. 891.

fore him competent evidence, in a technical sense, of the criminal guilt of a policeman, in order to justify an order of removal. The good of the public service is the criterion, and this may be seriously impaired by the conduct less than crime, and such conduct may be proved by evidence insufficient to convict of crime . . . . . .

"The hearsay evidence herein set forth disclosed information which the chief of police had no right to ignore, or to conceal from the civil service commission. This information and the sources of it were of such a nature as to call for a denial or an explanation from the plaintiff. He chose to stand silent. We think this was a circumstance that required consideration by the commission, and that it was permissible to give to it the force of substantive evidence. The criminal statute which not only lays upon the State the burden of proof, but forbids consideration by the jury of the silence of the defendant, is not applicable, if for no other reason than that the finding of the commission did not purport to declare the plaintiff guilty of any crime. Nor was it incumbent upon the commission to so find."

In *State ex rel. v. Truax*[14] the Supreme Court of Minnesota held that a board of county commissioners in a proceeding to establish a ditch was not required to place the witnesses under oath:

"The functions of the county board in a ditch proceeding are primarily legislative and only quasi-judicial. The county board is not a court. Its proceedings are not proceedings in court. They are necessarily informal. The members are usually not lawyers. They are not governed by legal rules of evidence. The witnesses are usually for the most part officials, such as engineers and viewers, or parties to the proceeding. Parties appear usually without attorneys. Their contribution to the proceeding will, in practice, be found to be partly argument and partly statement of fact. Unless there is some requirement in the statute to that effect, we think county boards are not required to put under oath those who appear before them."

This point of view is well stated by a writer in the Harvard Law Review:[15]

"The elimination of the jury from many judicial proceedings calls for a readjustment in the law of evidence to meet the modern exigencies of justice. A pressure for less technical methods of proof is especially felt in proceedings before administrative tribunals. Coming in response to an urgent need for a more speedy and efficient administration of justice, composed of members whose opinions are tempered by the

14. (1918) 139 Minn. 313, 166 N. W. 339. See also *Hopson's Appeal* (1894) 65 Conn. 140, 31 Atlantic 531.

15. 36 Harvard Law Review 79. See also 36 id. 193, 407, 585.

constant stream of cases which come before them, these tribunals may with safety be entrusted with wider discretion as to the mechanics of the hearing. Their action should be governed, not by rules, but by a standard of reasonableness, and the admission of any relevant evidence of sufficiently probative value, not particularly untrustworthy should be upheld."

R. C. C.