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# Agency

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which is arbitrary and definitely unreasonable is not in accordance with law.

In reviewing the orders of the Public Utilities Commission, the Supreme Court has stated that an order of the Commission will be sustained if the record fails to disclose that the orders are unlawful or unreasonable.<sup>26</sup> However, when the record contains both competent and incompetent evidence, and it is impossible to determine to what extent the order is based on competent evidence, the order of the Commission will be reversed.<sup>27</sup>

The Supreme Court opinion indicates that it will pass on the issue of adequate evidence in such a situation only where the findings of the Commission reveal that they are based on evidence received under established and recognized rules for the production of evidence.

MAURICE S. CULP

## AGENCY

### *Authority of An Agent*

A buyer contracted with a seller to purchase land, \$250 down, \$250 at the time of closing and the balance by mortgage. The agreement provided that the down payment of \$250 was to be paid to a real estate broker, the agent of the seller. The broker collected both \$250 payments and became insolvent before remitting to his principal. In *Kobne v. Wood* the court of appeals held that where the contract of purchase was rescinded, the purchaser could recover both payments from the seller.<sup>1</sup> The normal rule is that a broker has no implied or apparent authority to receive payment. Here the broker had express authority to receive the first payment, and the court held that authority to receive one payment creates apparent authority to receive the second. The decision seems clearly wrong, especially where the payments were a month apart.

### *Existence of the Master-Servant Relation*

A car owner delivered his car to a service station for lubrication and asked one of the service station employees to ride home with him and then return the car to the station. This was done and on the way back to the station the driver injured the plaintiff. Both lower courts held the owner liable for the negligence of the driver on the ground of respondeat superior.

<sup>26</sup> *New York Central R. Co. v. Public Utilities Commission*, 163 Ohio St. 250, 126 N.E.2d 320 (1955).

<sup>27</sup> *Chesapeake & Ohio Ry. Co. v. Public Utilities Commission*, 163 Ohio St. 252, 126 N.E.2d 314 (1955).