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Jurisdiction of Justices of the Peace in Pennsylvania Over Actions for Personal Injuries

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appellate courts, if a case comes before them, may well follow *Commonwealth v. Painter*[19] and declare such plans to be forbidden lotteries.

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JURISDICTION OF JUSTICES OF THE PEACE IN PENNSYLVANIA OVER ACTIONS FOR PERSONAL INJURIES

The jurisdiction of justices of the peace in Pennsylvania relative to trespass has been defined and limited by two basic statutes, the Act of March 22, 1814, P.L. 190 and the Act of July 7, 1879, P.L. 194. Any authority of justices to hear and determine suits involving personal injuries must be traced to either one of these two statutes.[1]

The Act of 1814 states that the justices,

> ". . . . shall have jurisdiction . . . of actions of trespass brought for the recovery of damages for injury done or committed on real or personal estate in all cases where . . . damages alleged . . . shall not exceed $100."[2]

The fifth section of the same act specifically states,

> "nothing in this act shall be construed to extend to actions . . . for damages in personal assault and battery, wounding, or maiming."[3]

The language of this statute appears clearly to resist any interpretation that gives justices jurisdiction over actions for personal injuries. Injury to person is not injury to personal estate; and in construing the fifth section, there is the express exclusion of actions for damages in personal assault and battery.[4]

The second act, passed in 1879, states in its title that the purpose of the enactment is "To enlarge the jurisdiction of justices of the peace . . .".[5] The first section declares that,

> ". . . justices of the peace . . . shall have concurrent jurisdiction with the courts of common pleas . . . of all actions of trespass . . . wherein the sum demanded does not exceed three hundred dollars. . ."

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[19] *Supra.*

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[1] Murdy v. McCutcheon, 95 Pa. 435 (1880).

[2] Act of March 22, 1814, P.L. 190, 6 Sm.L. 182, section 1.

[3] Id., section 5.

[4] Donaldson v. Maginnes, 4 Yeates 127 (1804). This particular section was taken from a former act, that of March 1, 1799, 3 Sm.L. 354.

[5] Act of 1879, P.L. 194.

It specifically excepts cases of real contract when title to lands or tenements come into question, and actions upon the promise to marry.

There have been cases interpreting the purpose of this act to be solely that of increasing the jurisdictional amount for which suit could be brought.[6] In construing "all actions of trespass" the courts have held that this applies to actions vi et armis (similar to the nature of the trespass referred to in the Act of 1814, supra) as distinguished from actions of trespass on the case.[7] To be trespass vi et armis the injury must be by the direct act of the party, whether done wilfully or negligently. Force directly applied is the criterion.[8] The later Act of 1887[9] which abolished the distinction between trespass vi et armis and trespass on the case "so far as it relates to procedure" did not extend the jurisdiction of justices to causes of action not before embraced.[10]

The noticeable characteristics of the cases since the passage of the Act of 1879 until 1935 are that every reported case allowed recovery only for a trespass vi et armis and each suit was an action for damage only to real and personal estate In no case was there a suit involving personal injuries suffered through direct application of force.

A typical situation is the collision of two vehicles. In *Luce v. Matusek,*[11] the defendant drove a truck into the rear of plaintiff's sedan. Plaintiff sued for damages to car, medical expenses for two ladies in the back seat and also the price of two hats. Plaintiff was allowed to recover damages only to the car. The other injuries were consequential and remedial only in an action of trespass on the case.

We would gather from this that both the courts and the lawyers took for granted that trespass in the Act of 1879 was similar in every respect to trespass as limited in the Act of 1814. To give the justice jurisdiction there must be an injury suffered to real or personal property such as would constitute trespass vi et armis at common law.[12]

At least one case, however, raised and questioned a different interpretation of the Act of 1879. In *Myers v. Gillman,*[13] a Luzerne county case, it was argued that the Act of 1879 referring to all actions of trespass repealed the provisions of the Act of 1814 limiting the jurisdiction of justices to actions for damages

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[6]James v. Brezezinski, 23 Dist. 554 (1912); Ochall v. Dvorak, 13 D. & C. 19 (1929).

[7]Gingrich v. Sheaffer, 16 Pa. Super. 229 (1901); Sprout v. Kirk, 80 Pa. Super. 514 (1923); Sharp v. Boyer, 6 D. & C. 597 (1924); See also 29 Dick. L. Rev. 201, "The Justice of the Peace and Trespass," by Robert L. Myers, Jr., in which the topic of trespass vi et armis is taken up in more detail.

[8]Strohl v. Levan, 39 Pa. 177 (1861).

[9]Act of May 25, 1887, P.L. 271.

[10]Sprout v. Kirk, 80 Pa. Super. 514 (1923).

[11]22 D. & C. 335 (1934).

[12]Gingrich v. Sheaffer, 16 Pa. Super. 229 (1901).

[13]5 Kulp 209, Luzerne Legal Register Reports (1889).

to real and personal estate and its provisions expressly excepting actions for damages in personal assault and battery. The court said, "It was a question worthy of consideration, whether, construing the two acts as in pari materia, there is any repeal by necessary implication of the provisions above referred to."[14] The court, however, decided the case on other grounds and left the question of any possible jurisdiction over personal injuries undecided.

Not until 1935 was this question faced directly and answered. Judge Keller in the case of *Knautt v. Massinger*[15] stated the question to be whether a justice of the peace has jurisdiction in an action of trespass vi et armis to recover damages for personal injuries where the amount claimed is less than $300. He said, "We see no reason for limiting the plain language of the Act of 1879—'all actions of trespass'—so as to give it less effect than the words naturally mean. The act . . . contains no limitation that the actions of trespass over which the justice shall have jurisdiction shall be restricted to those brought for the recovery of damages for injury done or committed on real or personal estate, or excluding actions for trespass for personal assault and battery."[16]

Judge Keller summarizes by stating that "since the Act of 1879, a justice of the peace has jurisdiction in all actions of trespass, where the injury is direct and immediate (as opposed to consequential damages) wherein the sum demanded does not exceed three hundred dollars; and that this includes actions for the recovery of damages for direct and immediate injury done to the person."[17]

Why Pennsylvania courts for fifty-six years placed a limited interpretation on the statute is difficult to understand. Probably the fact that the legislators had separately and distinctly specified only the enlarged pecuniary limit made the lawyers hesitate to take any other meaning from the Act than was taken. On the other hand to assert that the words "trespass . . . for injury done to or committed on real and personal estate" as found in the Act of 1814 and the words of the Act of 1879, "all actions of trespass," are phrases whose meaning and interpretation are identical, would seem to be an absurdity.

In considering jurisdiction of a Pennsylvania justice over actions for personal injuries the recent enactments of the Motor Vehicle Code should be examined.

The Motor Vehicle Code of 1929,[18] section 1208[19] reads:

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[14]Id., p. 210.

[15]116 Pa. Super. 286. The facts were that plaintiff was walking on a public highway, off the concrete paving, when he was struck by a car operated by defendant. Plaintiff sues for damages because of personal injuries.

[16]Id., p. 289.

[17]Id., pp. 289, 290.

[18]Act of May 1, 1929, P.L. 905, at 997.

[19]This section is amended by Act of June 22, 1931, P.L. 751, section 1208, by placing "said" before "party making such repairs."

> "All civil actions for damages, arising from the use and operation of any vehicle, may, at the discretion of the plaintiff, be brought before any magistrate, alderman or justice of the peace, in the county wherein the alleged damages were sustained, if the plaintiff has had said damage repaired, and shall produce a receipted bill for the same, properly sworn to by the party making such repairs or his agent; . . . no action involving more than one hundred ($100) dollars shall be brought before any magistrate, alderman or justice of the peace."[20]

It also allows service to be made on the defendant in any other county of the state by deputizing the sheriff of such other county.

The cases since the passage of this Act and its parent statute, the Act of June 14, 1923, P.L. 718, section 30, have been in conflict. Questions have arisen as to the scope of the words "all civil actions for damages." Does this give a justice jurisdiction over actions for personal injuries resulting from automobile accidents? Does this include, also, actions of trespass on the case? Or will the justices' jurisdiction remain as formerly interpreted and the act be held important only for its other clauses regulating procedure?

In *Orlosky v. Haskell*[21] the court decided that the Vehicle Code, section 1208, referred to suits not only for damages to property but also to the person. When the suit is brought in the justice's court there must be a sworn-to receipted bill. The latter requisite is not necessary if suit originates in the Court of Common Pleas.

Justice Maxey, however, who wrote the opinion of the Supreme Court, did not stop with the decision but added by way of dictum, "It (Act of 1929) was not intended to limit the word 'damage' to property damages but to confer upon alderman, magistrates and justices of the peace jurisdiction of actions for damages arising from operation of vehicles when the amount involved was not more than $100 and when a sworn-to receipted bill for damages could be produced."[22]

It is believed that the clause inserted requiring a receipted bill for damages when suit is before a justice was the result of legislative interpretation of the Act of 1879. The legislature, just as the courts had done, considered the jurisdiction

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[20]This section was a literal enactment of Act of June 14, 1923, P.L. 718, section 30, amending section 36 of Act of June 30, 1919, P.L. 678 which latter section was a close duplicate of section 24 of Act of April 27, 1909, P.L. 265.

[21]304 Pa. 57 (1931). Facts were that plaintiff's husband came to his death as a result of injuries inflicted on him by negligent operation of a car driven by defendant, a resident of Clarion county. Plaintiff sued in Clearfield county, Court of Common Pleas, under the Act of 1929. The lower court held that the restrictive clause requiring the production of a receipted bill for damages repaired could only be construed to confine the permissible action thereunder to one for damages to property.

[22]Id. at p. 65.

of the justice limited to actions for injuries to personal and real estate and thus capable of being receipted for, after repaired.

By giving the Act of 1929 a broader interpretation, however, in order to include actions for personal injuries the Court raised a very difficult question. When suing for personal injuries is it possible always to produce an accurate receipted bill for all damages suffered? Certainly it is possible to include a doctor's bill and hospital expenses, but it would be impossible to produce a receipted bill for damages incurred through mental pain and suffering.[23] The court did not answer the problem. It did not go so far as to separate (if there can be a separation) the damages to the person capable of being receipted and those not capable of being receipted. Moreover the act calls for a receipt "by the party making such *repairs* . . .". Can doctors' services be properly called "repairs"? A reasonable interpretation of the act would seem to exclude personal injuries from its purview.

The *Orlosky* case is the only Supreme Court decision on this point. There is a possibility, in the light of *Knautt v. Massinger,* supra, coming four years later and giving justices general jurisdiction over personal injuries, that these cases would indicate a trend of the courts sufficient to concede justices jurisdiction over personal injuries in any case of trespass vi et armis and put an end to any dispute on the matter.

Another interpretation has been given section 1208 of the Act of 1929, going further than the above construction. Many courts have held that this section allows justices jurisdiction over actions of trespass on the case arising from the use and operation of motor vehicles, although on this point there are contrary decisions.

One of the first cases, *Campbell v. Krautheim,*[24] stated that the jurisdiction of the justice had been enlarged by the act so as to include trespass on the case. Without any hesitancy the court held that when the legislature said "all civil actions for damages arising from the use and operation of any motor vehicle," it meant "all civil actions," whether the automobile of the defendant was operated by himself or by an employee. The reason given for so interpreting the Act was induced from considerations of convenience and justice.

The latest case agreeing with the *Campbell* case is that of *Walsh v. Martin*[25] decided in Lancaster county. The court called attention to the great conflict of authority even in the same county courts, but held in the instant case that an action of trespass on the case brought under section 1208 of the Motor Vehicle Code would be allowed before a justice of peace, if, of course, the amount in-

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[23]We are assuming that this type of injury must be the direct, necessary consequence of physical injury. Linn v. Duquesne Borough, 204 Pa. 551 (1903).

[24]4 D. & C. 577 (1924).

[25]21 D. & C. 98 (1933).

volved is under $100. The opinion of the judge stated that the constant tendency is to make litigation less cumbersome and to make legal remedies more readily available, and for this reason "the jurisdiction conferred by the plain language of the Code, section 1208, should not be changed by judicial interpretation."[26]

In spite of these decisions; the majority of the courts have followed the old interpretation of the jurisdiction of the justices of the peace and have limited it to cases of trespass vi et armis.[27]

Another interpretation of this section of the Motor Code precludes any question of extending justices' jurisdiction. *Sharp v. Boyer*[28] states that neither the Act of 1923 nor the Act of 1919[29] which is amended by the Act of 1923, expressly repealed the Act of 1879 which confers jurisdiction upon alderman, magistrates, and justices of the peace in actions of trespass. Judge Stotz says the manifest intention of section 30 of the Act of 1923 was only "designed to give a simple, inexpensive and expeditious remedy where the injury was comparatively slight and the defendant had his domicile in a distant part of the state."[30] The former decision of *Campbell v. Krautheim*[31] was not referred to by the court.

In view of the fact that the statute of 1929 refers to "all civil actions for damages" we fail to understand how there can be any justification for limiting this phrase. The words of the statute could be no clearer. When the legislature intended to limit these civil actions, they expressly said so. They qualified the bringing of all civil actions by requiring that a sworn-to receipted bill be produced, that the sum involved be not over $100 and that the defendant be not a resident of the same county as the plaintiff, in which case plaintiff can sue in the county where the injuries were sustained. These were the only restrictions in the statute to limit the general words "all civil actions for damages."

The reason for permitting suit where the injury occurred was to avoid the hardship placed on the plaintiff of following defendant to the latter's jurisdiction to sue him there, especially when so little money was involved.[32] It would be arbitrary to allow this procedural remedy only in cases of trespass vi et armis. The fact that the injury is consequential does not lessen the hardship on either party.

As to the other limitations, by compelling the plaintiff to file a sworn-to receipted bill it will prevent the plaintiff from alleging trifling sums which many

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[26]Id. at p. 100.

[27]Great American Tea Co. v. Levine, 15 D. & C. 74 (1930); Hanlen v. Burns, 15 D. & C. 814 (1930); Cochran v. Gall, 17 D. & C. 329 (1931); Fillman v. Messner, 17 D. & C. 717 (1931).

[28]6 D. & C. 597 (1924).

[29]Act of June 30, 1919, P.L. 678 at 699.

[30]6 D. & C. 597 at page 599.

[31]4 D. & C. 577 (1924).

[32]Harden v. Scherb, 11 D. & C. 231 at page 233.

times will not be litigated by the plaintiff, thus opening the door to petty extortion.[33] The type of civil action for damages would have no effect on the relevancy of these reasons.

The conflict in the cases, nevertheless, leaves the question still open. It is submitted that section 1208 of the Motor Vehicle Code should be reasonably interpreted and give the justice of the peace jurisdiction in *all* actions arising from the use and operation of any vehicle, if

1. the action involves a sum no greater than $100;
2. the plaintiff produces a receipted bill, properly sworn to by said party making such repairs;
3. the defendant is not a resident of the same county as the plaintiff.

Any other limitations would be judicial legislation, and would preclude the effectiveness of the Act.

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CONSTRUCTION OF THE WORD "SURVIVING" IN WILLS IN PENNSYLVANIA

In a recent decision by the Pennsylvania Supreme Court, the opinion being written by Chief Justice Kephart, an ancient and peculiar rule of Pennsylvania once more is enunciated and applied.[1] The rule is that where the word "surviving" is used in a will, the survivorship refers to the time of the death of the testator unless a contrary intention appears in the will.[2] The facts in the case at hand were that the testator left part of his property to trustees in trust for his daughters for life and on the death of any of them, their share was to go to the child or children of the deceased daughter. The will then provided, "In case of the decease of my said daughters or either of them without leaving lawful issue, then and in such case I give, devise and bequeath the said part or share hereinbefore given, unto my surviving child or children absolutely and forever." At the time of the testator's death, there were four children living but at the time of the decease of one of the daughters without issue, there was but one child of the testator living, although there were lineal descendants living of the two remaining children. The court applying the rule previously discussed, said that the

[33]Orlosky v. Haskell, 304 Pa. 57 (1931).

[1]In Re Nass's Estate, 182 At. 401 (1936).

[2]Johnson v. Morton, 10 Pa. 245 (1849); Woelpper's Appeal, 126 Pa. 562, 17 At. 870 (1889); Black v. Woods, 213 Pa. 583, 63 At. 129 (1906); Kohl v. Keppler, 266 Pa. 522, 110 At. 239 (1920).