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Practice-Jurisdiction of Justices of the Peace-Actions for Damages Brought Under Motor Vehicles Act

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but explanatory of the reason why this statute was not the subject of discussion either by the court below or the Supreme Court.

Under its provisions the construction to be given to gifts by remainder over to the testator's heirs or next of kin or the persons thereunto entitled under the intestate laws or other similar or equivalent phrase shall be construed as meaning the person or persons thereunto entitled at the time of the termination of the estate for years, for life or upon condition under the intestate laws of the commonwealth as they shall exist at the time of such termination, specifically stating furthermore, that such phrases shall not be construed as meaning such person or persons as were the heirs or next of kin at the time of the death of said testator, saving always, nevertheless, the right of testator to expressly state the construction to the contrary or where such construction may arise by necessary implication. Had this statute been applied in the instant case the result would have been the same for the estate of the widow would have had no semblance of claim to the fund to be distributed.

A. J. W. HUTTON.

PRACTICE—JURISDICTION OF JUSTICES OF THE PEACE—ACTIONS FOR DAMAGES BROUGHT UNDER MOTOR VEHICLE ACTS—The Act of June 30, 1919, P. L. 678, Section 36 provides:

> All civil actions for damages arising from the use and operation of any motor vehicle may, at the discretion of the plaintiff, be brought in the county wherein the alleged damages were sustained, and service of process may be made by the sheriff of the county wherein the defendant or his registered agent resides or where service may be had upon him under the existing laws of this Commonwealth, in like manner as process may now be served in the proper county.

This provision of the Act of 1919 is amended by Section 30 of the Act of June 14, 1923, P. L. 718, as follows:

> All civil actions for damages arising from the use and operation of any motor vehicle may, at the discretion of the plaintiff, be brought before any alderman, magistrate, or justice of the peace, in the county where the alleged damages were sustained, if the plaintiff has had said damages repaired, and shall produce

a receipted bill for the same properly sworn to by the party making such repairs or his agent, or said action may be brought in the court of common pleas of said county, and service of process, in either case, may be made by the sheriff of the county where the suit is brought deputizing the sheriff of the county wherein the defendant or his registered agent resides or where service may be had upon him under the existing laws of this Commonwealth, in like manner as process may now be served in the proper county: Provided, That no action involving more than one hundred ($100) dollars shall be brought before any alderman, magistrate, or justice of the peace.

Both of these Acts, parts of which are quoted, have been expressly repealed by the repealing clause of the Act of May 11, 1927, P. L. 886. Section 1212 of the Act of 1927, Supra, re-enacts in exact words Section 36 of the Act of 1919, as amended by the Act of 1923.

The great amount of litigation arising from the use and operation of motor vehicles upon the highways of this State makes it important that the above in part quoted Acts of Assembly should be construed and rendered certain in their application. The Appellate Courts have not as yet been called upon to construe them and the lower Courts are in more or less hopeless confusion in their interpretation of the legislative intent in enacting them.

The question of greatest difficulty seems to be as to the effect of the Act of 1923 upon the jurisdiction of the Justice of the Peace.

The civil jurisdiction of Justices of the Peace had no existence at common law. It has been conferred by statute. The statutes must be strictly construed and will not be extended by implication.

The Act of March 22, 1814, 6 Sm. L. 182, conferred upon Justices of the Peace jurisdiction over actions of trover and conversion and of trespass for the recovery of damages for injury to real and personal property where the value of the property claimed or the damages alleged to have been sustained shall not exceed One Hundred ($100.00) Dollars. The Act of July 7, 1879, P. L. 194, extended the jurisdiction of Justices of the Peace to cases of trover, conversion and trespass wherein the sum demanded does not exceed Three Hundred ($300.00) Dollars.

These Acts use the phrase "action of trespass". The action of trespass at the times when the Acts were passed was the common law action of trespass *vi et armis* and

used to redress an injury to the person, property or rights of another, which is the immediate result of some wrongful act committed with force actual or implied. The Act of May 25, 1887, P. L. 271, abolished the distinctions between actions *ex delicto* and provided that all damages, heretofore recoverable in trespass, trover or trespass on the case, shall be sued for and recovered in one form of action to be called action of trespass. This Act applies only to matters of procedure, however, and does not extend the jurisdiction of Justices of the Peace to causes of action not theretofore embraced therein.[1]

Force is an essential element of the trespass of which a Justice of the Peace has jurisdiction. Therefore where the injury is the immediate result of a force set in motion by the defendant the Justice of the Peace will have jurisdiction, but where the result is consequential the Justice of the Peace does not have jurisdiction. The terms immediate and consequential should be understood not in reference to the time which the act occupies, or the space through which it passes, or the place from which it is done, or the instrument or agent employed, or the lawfulness or unlawfulness of the act, but in reference to the progress and termination of the act, to its being done on the one hand and its having been done on the other. If the injury is inflicted by the act, at any moment of its progress from the commencement to the termination thereof, the injury is direct and immediate, but if it arises after the act has been completed, though occasioned by the act, then it is consequential or collateral, or, more exactly, a collateral consequence.[2] The distinction may be observed by answering the questions: Did the injury result from a force set in motion by the defendant? If so, did it result before that force came to rest? If these questions are answered in the affirmative the appropriate action would be trespass and not case.

The courts of Pennsylvania have accordingly held that trespass is proper where the injury is by direct act of the party, whether done wilfully or negligently. So that if the act was in law the act of the defendant, he is liable in trespass, whether it resulted from wilfulness or negligence.[3] Justices of the Peace have therefore assumed

[1]Conaghan v. Rudolph, 6 D. R. 225.

[2]Jordan v. Wyatt, 4 Grat. (45 Va.) 151.

[3]Sprout v. Kirk, 80 Pa. Super. Ct. 514; Gingrich v. Shaffer, 16 Pa. Super. Ct. 299; Birkhead v. Ward, 35 Pa. Super. Ct. 235; Stohl v. Levan, 39 Pa. 177.

jurisdiction under the Acts of 1814 and 1879. Supra, over actions arising out of automobile collisions where the sum demanded does not exceed Three Hundred ($300.00)Dollars. The higher courts have confirmed this jurisdiction.[4]

The question now arises as to what effect the Act of 1923, above quoted, had upon the jurisdiction of the Justices of the Peace.

In the case of *Campbell v. Krautheim, 4 D. & C. 577*, the Court held: "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 Court was of the opinion that Legislature intended by these acts to enlarge the jurisdiction of the Justices of the Peace so as to include all actions arising out of the use and operation of motor vehicles whether the injury was direct or consequential. The car of the defendant in the case at issue had been driven by the defendant's servant. The injury, therefore, would be clearly indirect so far as the defendant was concerned and unless the jurisdiction of the justices were extended beyond that conferred by the Acts of 1814 and 1879, Supra, the justices would have had no jurisdiction. See, however, *Harden v. Scheib et al.*[5]

Section 36 of the Act of 1923, concludes with the proviso "that no action involving more than One Hundred ($100.00) Dollars shall be brought before any alderman, magistrate or Justice of the Peace". It has been held that this provision limits the jurisdiction of Justices of the Peace in actions for damages arising from the operation of automobiles to One Hundred ($100.00) Dollars.[6] This view seemed to be entertained by the Court in the case of *Smith v. Sechrist*.[7] A more sound rule seems to be that expressed in a number of cases to the effect that neither the Act of 1923, nor the Act of 1919, which it amended, repealed the Act of July 7, 1879 P. L. 194, which increased the jurisdictional limit of the amount to be demanded before a Justice of the Peace to Three Hundred ($300.00) Dollars.[8] The limitation of the amount of the claim seems to be applicable only to cases where the suit is brought

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[4]Sprout v. Kirk, Supra.

[5]11 D. & C. 231.

[6]Felmly v. Michael et al., 6 D. & C. 52.

[7]11 D. C. 101.

[8]Wenger v. Dull, 10 D. & C. 163.

under the act against non-residents who cannot be served in the county where the injury was sustained.[9]

Probally the most satisfying case on this subject is that of *Sharp v. Boyer*.[10] In this case the injury was sustained in Northampton County, where the suit was brought against the defendant before a Justice of the Peace of that county. On appeal from the judgment for the plaintiff for Two Hundred Ninety-one Dollars and Two Cents ($291.02) the defendant contends that Sec. 36 of the Act of 1923, Supra, limits the jurisdiction of a Justice of the Peace in cases of this kind to One Hundred ($100.00) Dollars. The court after showing that before the Act of 1923, became effective a Justice of the Peace had jurisdiction in such case up to Three Hundred ($300.00) Dollars, says:

> Neither the Act of 1923 nor the Act of June 30, 1919, P. L. 678, which is amended by the Act of 1923, expressly repeals the Act of July 7, 1879, P. L. 194, which confers jurisdiction upon aldermen, magistrates and justices of the peace in actions of trespass wherein the sum demanded does not exceed $300. The manifest intention of this section of the Act of 1923 was not to modify the jurisdiction of aldermen generally in trespass cases, as previously given them by existing law, or even in cases arising out of the operation of motor vehicles, but it was 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. It amounts to no more than an exception to the rule as to where suit must be brought, provided that if suit, as thus allowed, be brought before an alderman or justice of the peace, the amount involved must not be more than $100, with the further provision that the plaintiff must exhibit a receipted bill for the repairs, properly sworn to. The act applies only when the circumstances specified in this section of it exist. Under the Act of 1919, all civil actions for damages arising from the use and operation of any motor-vehicle could be brought in the county wherein the damages were sustained, presumably either in the Common Pleas or before an alderman. If before an alderman, the jurisdiction as to the amount involved was limited by the then existing legislation to $300. The

[9]Parson v. Downer, 9 D. & C. 246.

[10]6 D. & C. 597.

Act of 1923 does no more than confer express jurisdiction upon aldermen, magistrates and justices of the peace in cases of this character, where the defendant resides in some other county, and reduces the amount which may be involved to $100. By its very terms this section of the act has no application where the defendant resides in the county where the suit is brought.

We should note in passing the case of *Emlenton Water Company v. Kelly*[11] holding that when there is extra-county service of a summons issued by a Justice of the Peace in accordance with Sec. 36 of Act of 1923, the docket of the Justice of the Peace must disclose the important procedural facts that the cause of action arose in the county where the suit is brought, and that the plaintiff had the damage repaired and produced a receipted bill for the same, properly sworn to by the party making such repairs. The record of a Justice of the Peace must disclose affirmatively every fact necessary to sustain the procedure.

The case of *Wanke v. Michael*[12] holds that where suit is brought in the county where the injury is suffered and the summons is to be served in another county, the summons cannot be issued to a constable of the county where it is to be served. The provisions of the act are mandatory so that service of process in case of suit in Common Pleas or before a Justice of the Peace must be made as prescribed by the Act, i. e. by the sheriff of the county wherein the defendant or his registered agent resides or where service may be had upon him under existing laws of this commonwealth in like manner as process may now be served in the proper county. It is a novel procedure for a Justice of the Peace to issue process to the sheriff but it is the procedure prescribed in this special case.

A most common objection to Sec. 36 of the Act of 1923 is that it violates the constitution.

In *Campbell v. Krautheim, Supra,* the court in addition to holding that Sec. 36 of Act of 1923, extended the jurisdiction of Justices of the Peace to actions for consequential damages, holds that Section to be constitutional overruling the defendant's contention that it violated Art. 3, Sec. 3 of the Constitution of Pennsylvania in that it fails to give notice in its title of its subject matter. The Court

[11]10 D. & C. 453.

[12]6 D. & C. 40.

said "Lines 16, 17 and 18 of the title of the Act of June 14, 1923, read 'and regulating the service of process and proceedings in actions for damages arising from the use of any motor vehicle'.

"We are of the opinion that this reference sufficiently describes the Section now in controversy. It is well settled that the title need not be an index of the contents of an act. All that is necessary is that it shall give reasonably clear notice of the matter to be found in it: *Commonwealth v. Dickert, 195 Pa. 234 (1900); Commonwealth v. Caulfield, 221 Pa. 644 (1905).*"

By the Court's interpretation of the title it would seem reasonable that matters relative to procedure i. e. service of process etc., would be sufficiently indicated in the title. It is hard to conceive how the court can read the title so as to include in it notice that the jurisdiction of the Justice of the Peace is to be enlarged as to subject matter as is held in that case.

On the other hand in *Frye v. Lanning*[13] it is held:

> "It is sufficient to say that the attempted amendment of section 36 is wholly inoperative, because not covered by the title of the amending act. That title gives a minute and specific list of the particular matters concerning which it is proposed to amend the Act of 1919, and this matter of suits for damages arising from the use and operation of motor-vehicles is not one of those so specified. The specifications of certain particulars as the subject-matter of the intended amendments was in effect a declaration to legislators and others interested that the body of the bill contained no amendment of the Act of 1919 in any other particular, and thus this was a misleading title: See cases cited in *Com. v. Arguello, 7 Wash. Co. Repr. 17,* and also, the cases of *Com. v. Barbono, 56 Pa. Super. Ct. 637, 642-3,* and *Parson v. Downer, 7 Wash. Co. Repr. 28, 9 D. & C. 246.* The fact that the very specific statement as to just what the amendments were to consist of qualified and limited the effect of the preceding recital of the title of the Act of 1919 was overlooked in the case of *Campbell v. Krautheim, 4 D. & C. 577*".

In *Parson v. Downer*,[14] the court holds:

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[13] 10 D. & C. 727.
[14] 9 D. & C. 246.

"However, the entire amendment of section 36, which this Act of 1923 purports to make, is clearly unconstitutional and invalid because not covered by the title of the amending act. That title recites the title of the act proposed to be amended, and if it had stopped after doing so all of the proposed amendments would have been valid as being germane to the subject-matter of that title: *Philadelphia v. Railway Co., 142 Pa. 484, 491; Blanchard v. Township Supervisors, 286 Pa. 283;* but, after making that recital, the title of the Act of 1923 proceeded to give a list of the particular subjects respecting which it was proposed to amend the Act of 1919 and the changes to be made therein, and this list did not include the matters which the body of the amending act undertakes to insert in section 36, so that the title is, so far as concerns the attempted amendment of that section, a misleading title: *Brown's Estate, 152 Pa. 401; Union Passenger Ry. Co.'s Appeal, 81 Pa. 91".*

In *Smith v. Sechrist, Supra,* the court expressed doubts as to the constitutionalty but decided the case on other points.

In *Thompson v. Bean,*[15] the act was attacked for violation of Art. III, Section 7, of the constitution of the State of Pennsylvania which forbids the General Assembly to pass any local or special law, "authorizing the creation, extension or impairment of liens * * * or providing or changing methods for the collection of debts or enforcing judgments". The Court said: "Clearly it (Sec. 36, Act 1923) does not violate the provisions of the constitution against local legislation. * * * We are of the opinion, that under the authorities cited, as well as in reason, the legislature did not violate Art. III, Section 7, of the constitution of Pennsylvania with reference to special legislation by 'providing or changing methods for the collection of debts', but acted within its discretion".

The repeal of the Acts of 1919-1923 and the re-enforcement of the provision of Section 36 thereof by the Act of May 11, 1927, P. L. 886 may determine the question of constitutionality so far as the title to the act is concerned. The title is in part "An Act * * * conferring powers and imposing duties upon * * * magistrates, aldermen, Justices of the Peace, the courts and the clerks

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[15] 7 D. & C. 209.

thereof". This would seem to be broad enough to cover any possible interpretation the courts may ultimately place upon the new section 1212.

R. L. MYERS, JR.

REAL PROPERTY—NUISANCES—BUILDING RESTRICTIONS—GARAGES. Three recent cases by the same parties[1] disclose an interesting litigation on the subject of the erection of garages as nuisances or as violations of building restrictions. The first *Ladner v. Siegel* case[2] has definitely established the rule that a public garage in an exclusively residential neighborhood constitutes a nuisance *per se*. The defendants planned to construct a garage with space for the handling of over 400 automobiles in a neighborhood in West Philadelphia that was exclusively residential. Notice was given to the defendants that an injunction would be sought to prevent its erection. Nevertheless the building was started and a preliminary injunction was granted against the use of any building on the premises as a public garage. The building was completed and the lower court made the injunction permanent.

On appeal to the Supreme Court it was said that a nuisance *per se* was any such business as is "generally known to be injurious to health and to cause legal damage to property in certain localities and surroundings, regardless of how it may be carried on, for the common experience of mankind, of which the courts will take judicial notice, proves this to be the result, and such pursuits in certain areas are to be prohibited."[3] The court held that a public garage when conducted in a residential district is such a business and a nuisance *per se*.[4]

The importance of holding a given pursuit a nuisance *per se* is the resulting ease in the matter of proof. If a pursuit has been held such a nuisance all that need be averred and proved is the character of the neighborhood and the actual or proposed conduct of the given business and an injunction will be granted. If not a nuisance *per se*, these averments must be followed by an averment and

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[1]Ladner v. Siegel, 293 Pa. 306; 294 Pa. 360; 294 Pa. 368 (1928).

[2]293 Pa. 306 (1928).

[3]Pa. Co. v. Sun Oil Co., 290 Pa. 404, 410 (1927).

[4]Mitchell v. Guaranty Corp., 283 Pa. 361 (1925); Unger v. Edgewood Garage, 287 Pa. 14 (1926).