



PennState
Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 36
Issue 2 *Dickinson Law Review - Volume 36,*
1931-1932

1-1-1932

The Pennsylvania General Assembly of 1931

A.J. White Hutton

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

Recommended Citation

A.J. W. Hutton, *The Pennsylvania General Assembly of 1931*, 36 DICK. L. REV. 86 (1932).
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol36/iss2/3>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

The Pennsylvania General Assembly of 1931*

In considering the Acts passed by the General Assembly and approved by the Governor, it will be impossible in the space of this number to give more than a mere mention to the great mass of this legislation. Viewing the same, however, through the eyes of a lawyer, certain measures will be pointed out according to topics familiar to the legal profession. Many Bills were enacted into law which have no general interest to the profession or the laity. These will be omitted entirely. For example, there were thirty-four enactments pertaining to the Administrative Code which are of interest to the different departments of the executive branch of the State Government.

To the practicing lawyer changes in the rules of practice are of prime importance, and, accordingly, these will be given first consideration.

CIVIL PROCEDURE

Senate Bill 656, known as Act No. 116, is entitled, "An Act requiring certain legal proceedings against state officers to be instituted in the Court of Common Pleas of Dauphin County."

Section 1, provides that the term "State Officer" shall mean the head of any administrative department or the chief executive officer of any independent administrative board or commission of the Commonwealth.

Section 2, provides that all actions at law or in equity by which it shall be sought to compel such a state officer to perform or to restrain him from performing any official act in the execution of the laws of the Commonwealth, shall be instituted in the Court of Common Pleas of Dauphin County, and for that purpose jurisdiction is conferred on that Court.

Section 3, repeals all acts or parts of acts inconsistent

*Continued from the October number of this Review.

therewith and Section 4, provides that the act shall become effective immediately.

As to this latter provision it may be mentioned that the Act of May 17, 1929, P. L. 1808, provides that all laws hereafter enacted, except laws making appropriations, shall be in full force and effect only from and after the first day of September, next following their final enactment, unless a different date is specified in the Act itself.

Prior to the passage of No. 116, if service could properly be obtained or was accepted, an action at law or equity might be maintained against such state officer in any appropriate State Court of the Commonwealth, otherwise having jurisdiction. The effect of the present enactment is to restrict all legal proceedings to the Court of Common Pleas of Dauphin County.

House Bill No. 1781, known as Act No. 189, is an Act amending Section 8 of the Practice Act of May 14, 1915, P. L. 483, as amended by the Act of April 22, 1929, P. L. 627, and permits a party to an action to require proof by the opposite party of facts alleged in the pleadings of said party, which facts are unknown to him or the means of proof thereof are under the exclusive control of the party making the allegation. It will be recalled that Section 8 proscribes as insufficient an Affidavit of Defense containing mere general denials of the allegations in the Statement of Claim and makes the same proscription relative to the reply of a plaintiff to allegations of set-off, counter claim or new matter. It is required that each party shall answer specifically each allegation of fact of which he does not admit the proof except as provided in Sections 7 and 13, the latter taking care of particular situations. The present amendment is in the form of a proviso as follows:

"Provided, however, that if either the defendant or the plaintiff has no knowledge, and after reasonable investigation is unable to ascertain, whether or not, the facts alleged by the opposite party are true, or if means of proof of the facts alleged are under the exclusive control of the party making the allegation, it shall be a sufficient answer to allege that either or both such conditions exist and to

demand proof of such alleged facts by the opposite party, but in no event shall either party be required to allege or prove that he has inquired of the opposite party as to, or investigated alleged facts, the proof of which is under the exclusive control of the opposite party."

In *Eberbach v. Clyde Steamship Company*, 74 Pa. Super. Ct.79, (1920), it was held that an averment of ignorance and demand for proof is not a denial within the meaning of the Practice Act of 1915. The Court further declared that where the statements of plaintiff are not denied, they must be taken to be admitted and the mere averment of ignorance is not sufficient to traverse the statements of the plaintiff. See also for general discussion Smith's Pennsylvania Practice Act, Third Edition, 1929, at page 117 and following.

House Bill No. 211, known as Act No. 55, provides by amendment of Section 9 of the Act of May 5, 1911, P. L. 198, as last amended by Act of April 9, 1915, P. L. 48, that appeals from the Allegheny County Court in civil actions may now be taken direct to the Supreme or Superior Court. Heretofore the appeal was to the Common Pleas of said County.

Senate Bill No. 182, known as Act No. 172, amends certain sections of the Public Service Company Law of July 26, 1913, P. L. 1374, by defining the duty of the Court on appeals from orders of the commission; provided that orders of the commission shall be prima facie evidence except in rate cases and requiring the Court on appeals to consider the testimony and providing that the amendment shall affect all appeals pending.

Senate Bill 813, known as Act No. 294, is entitled "An Act prescribing rights and remedies, and the procedure in connection with suits and recovery on bonds conditioned for the payment of material and labor furnished, supplied, or performed in the prosecution of any public work or improvement." The import of this act is to confer certain rights of procedure in assumpsit in the name of the Commonwealth upon persons, co-partnerships, associations or corporations, either as sub-contractors or otherwise, who

have furnished material or supplied or performed labor in the prosecution of any public work or improvement and to prescribe certain rules of procedure.

Senate Bill 865, known as Act No. 190, amends Section 30 of the Execution Act of June 16, 1836, P. L. 761, by providing that no citizen of this Commonwealth shall be arrested or imprisoned by a writ of *capias ad satisfaciendum* for any sum of money less than \$100.00 due or recovered in any action. The amending words are: "One Hundred Dollars", formerly "Five dollars and thirty-four cents", and the words "In any action", formerly "for breach of any contract since July 4, 1833."

House Bill No. 798, known as Act No. 37, is entitled: "An Act making the surviving spouse competent to testify in all cases where the right of such spouse to share in a deceased spouse's estate is disputed because of alleged desertion or non-support of the decedent, whether decedent died testate or intestate".

In *Phillips' Estate*, 271 Pa. 129, (1921), Frazer, J. said:

"The Court below erred, however, in permitting the husband to testify to matters occurring between him and his wife and not in the presence of the daughter, who had been called to testify. Under Section 5, clause (e) of the Act of May 23, 1887, P. L. 158, the husband was incompetent to testify to any matter occurring between him and his deceased wife and did not come within the exception applying to controversies between parties claiming by devolution on the death of the owner of property, as the husband claims by devolution (*Cooke v. Doron*, 215 Pa. 393) while the daughter claims under the will, which is by purchase: *Munson v. Crookston*, 219 Pa. 419. The daughter was called as a witness, however, and this made the husband competent to testify to matters occurring in her presence as provided in the Act of June 11, 1891, P. L. 287. This did not render him competent for all purposes, however, but only as to matters covered by the testimony of the surviving witness: *Krumrine v. Grenoble*, 165 Pa. 98; *Kauss v. Rohner*, 172 Pa. 481. Notwithstanding this, the court below permitted the husband to testify concerning matters occurring between himself and his wife and not in the presence of the daugh-

ter or within the scope of her testimony. Owing to the admission of this testimony we find it necessary to sustain the first assignment of error."

To the same effect was the more recent case of *Bowman's Estate*, 301 Pa. 337, (1930).

The effect of the recent enactment is to nullify the distinction as made in these cases and to render the surviving spouse competent to testify in either instance of intestacy or testacy of the deceased spouse.

House Bill No. 979, known as Act No. 236, is an Act to amend the title and Section 1 of the Act of April 10, 1929, P. L. 479, commonly known as the "Sci. Fa. Act" providing that any defendant named in any action may sue out a writ of scire facias to bring upon the record as an additional defendant any other person alleged to be alone liable or liable over to the particular defendant. The amendment refers to a defendant brought in on a sci. fa. who may be alone liable. The amendment further provides for the entry of judgments against such additional defendants.

Two recent cases of importance construing the sci. fa. Act of 1929, before the amendments as above indicated, are:

Vinnacombe v. Philadelphia, 297 Pa. 564; *First National Bank of Pittsburgh v. Baird*, 300 Pa. 92.

See also cases in 13 D. & C. at pages 431, 465 and 717.

In addition to the above authorities an interesting article entitled: "Some aspects of the Pennsylvania Sci. Fa. Act, etc.," by Warwick Potter Scott, may be found in January 1931 number of University of Pennsylvania Law Review at page 306 and following.

House Bill 1614, known as Act No. 296, amends Section 1 of the Act of May 7, 1929, P. L. 1589 by extending its provisions to receivers in state proceedings or receivers or trustees in bankruptcy where a distress warrant had been issued for rent and providing that there shall be a lien on the proceeds of the sale of such personal property by the individuals named or the sheriff as set forth in the original section.

House Bill 677, known as Act No. 36, amends section 44 of the Act of June 13, 1836, P. L. 572 relating to foreign attachments by providing that such may be issued against the real or personal property of a non-resident of the state temporarily in the state at the time of issue and in certain cases of residents who have removed from the state after having become liable in an action of tort. The person suing out the writ in the latter case must, however, certify by oath or affirmation to the truth of the claim and of the facts upon which such attachment is founded, as well as that he verily believes such person has removed to escape service of process to answer for such alleged tort.

House Bill 1438, known as Act No. 310, is entitled "An Act defining the rights of persons accused of contempt of Court arising out of violation of injunctions; limiting eligibility of judges in such cases; and prescribing procedure and penalties."

The effect of this act, passed at the instance of and by reason of the influence of the labor unions of the state, is to restrict the power of the Courts as hitherto exercised.

House Bill No. 1522, known as Act No. 295, is entitled: "An Act relating to proceedings where goods or chattels have been levied upon or seized by the sheriff, and claimed to belong to others than the defendant in the execution or process and relieving the sheriff from liability therefor." This law is known as the Interpleader Act, comprises 22 sections and revamps the law on this subject.

Senate Bill No. 978, known as Act No. 162, is entitled: "An Act providing that in certain cases where a scire facias is issued on a judgment to revive or extend the lien thereof, such lien shall take effect from the date of issuance of the writ."

This Act, which consists of one short section, provides that where a scire facias is sued out upon any judgment of record, whether for the purpose of reviving the lien thereof against the real estate of the person against whom the judgment is entered after such lien shall have been lost, or for the purpose of extending the lien thereof to the after

acquired real estate of such person, the proceedings on such sci. fa. shall be as provided by law for such writs and shall be concluded without delay, and the lien shall be effective as of the date when the sci. fa. issued. All such writs of sci. fa. shall be properly indexed in the judgment docket.

House Bill 1230, known as Act No. 238, is a supplement to the Act of May 8, 1901, P. L. 143, and limits to 5 years the lien of judgments entered upon any order, sentence, decree or judgment of the criminal courts and providing further that such judgments may be revived in the manner provided in the Act to which this is a supplement. Such order, sentence, etc., as certified shall not be a lien upon real estate of the defendant until entered and indexed in the court of Common Pleas.

House Bill 1439, known as Act No. 311, is entitled: "An Act defining labor disputes; and prescribing the procedure by which, and the conditions under which, injunctions may be granted in such disputes."

This is a companion measure with House Bill 1438, known as Act No. 310, heretofore referred to in this article.

House Bill 1695, known as Act No. 349 is an Act amending Section 9 of the Act of July 7, 1917, P. L. 363, by extending the jurisdiction of the Orphans' Court to trustees inter vivos and life insurance trusts by empowering the Orphans' Court to control, remove, discharge and act upon settlement of acts of such trustees whether taking effect during the lifetime or at or after the death of the insured or settlor.

In approving this measure the Governor appended a note showing that there was a divergence of views among Orphans' Court Judges as to the expediency of this measure. Said the Governor: "After carefully weighing both views I am inclined to agree with that favoring approval."

House Bill 1162, known as Act No. 91, amends the Act of June 11, 1879, P. L. 141, which provides for the satisfaction of mortgages, by the inclusion of equitable holders of mortgages as proper parties to petition for satisfaction and further regulating the procedure for such satisfaction.

House Bill 431, known as Act No. 178, is an amendment to Section 1 of the Act of April 10, 1862, P. L. 364 and applies to sheriff's sales of real estate in the County of Allegheny and provides a change of manner in which Sheriffs shall make returns of sales of real estate and requiring notice of such returns to be posted for the benefit of lien holders. As the original Act was extended subsequently to all counties in the Commonwealth this particular Act is of general interest. In short, sheriff's sales instead of being reported in open court are reported by filing in the office of the Prothonotary and by posting a notice as provided by the Act in that office.

House Bill 78, known as Act No. 42, amends Section 1, 2 and 5 of the Act of May 14, 1929, P. L. 1721, relative to service of process in civil suits on non-resident operators or non-resident owners of motor vehicles by extending the provisions of said act to a resident who becomes a non-resident or conceals his whereabouts and by providing that the Sheriff of Dauphin County may be deputized to make service on the Secretary of Revenue. It validates prior services made in that manner.

House Bill 463, known as Act 46, amends Section 1, clause first; section 1, clause second, as amended; section 1, clause tenth, as amended; and section 1, clause twelve of the Act of July 9, 1901, P. L. 614, known as the Service Act by giving the same effect to a single return of nihil habet in certain writs as of two returns.

House Bill 525, known as Act No. 48, amends Section 22 of the Act of May 16, 1923, P. L. 207, by providing that one return nihil habet of a writ of sci. fa. to revive a municipal lien shall have the same effect as two returns.

House Bill 934, known as Act No. 156, is an Act relating to the trespassing of live stock on improved lands; providing for the taking up, impounding and sale thereof, imposing duties on and fixing the fees of constables, justices of the peace, and viewers appointed in connection therewith, prescribing the procedure for repossession by the owner thereof, providing for the fixing and taxing of costs including attorneys fees and repealing inconsistent

legislation.

This Act is a revamping of the law pertaining to the trespass of live stock on improved lands.

DECEDENTS' ESTATES

House Bill 798, known as Act No. 37 qualifying a surviving spouse to testify in certain proceedings where the right to share in the deceased spouse's estate is disputed, has already been considered and reference is merely made to this Act as properly falling under the above sub-heading.

Senate Bill 784, known as Act No. 180, amends Section 5 of the Act of June 17, 1913, P. L. 507, by providing for the more efficient assessment of property and collection of taxes, interest and penalties in cases of refusal or failure of taxables to make return and or where a taxable makes a false or incomplete return; by authorizing and directing the County Commissioners or Board for Revision of Taxes to assess or re-assess personal property for any current or former year or years, not exceeding five years, where no return is made or a false or incomplete return is made and to charge interest thereon at the rate of six per cent per annum; by requiring executors and administrators at the time of filing their inventory and appraisement with the Register of Wills to file an affidavit in duplicate setting forth the items included in such inventory, which may be liable to a tax during the last completed taxing period for county purposes; and providing for notice of the time for appeals.

This is an important amendment setting forth certain duties relative to taxes imposed upon personal representatives of a decedent.

House Bill 952, known as Act No. 28, amends Section 25 of the Fiduciaries Act of June 7, 1917, P. L. 447, by authorizing the sale of real estate by private sale for the payment of legacies and certain moneys charged upon or payable out of such real estate.

House Bill 1231, known as Act No. 188, is a new enactment entitled "an Act relating to the settlement of

estates of deceased minors" and provides that whenever a minor child dies during minority leaving an estate in the hands of a guardian, distribution of the balance thereof may be made at the discretion of the auditing judge of the Orphans' Court having jurisdiction of said estate or of the auditor to whom said account has been referred for audit, at the audit of the guardian's final account, to creditors and the persons entitled to receive the same under the intestate law, unless it should appear at the audit that the estate of the minor is involved in litigation, or is likely to be, making it necessary to distribute the balance to a legal representative for the minor's estate.

House Bill 1928, known as Act No. 343, amends sub-Section G of Section 2, of the Intestate Act, of June 7, 1917, P. L. 429, by conferring jurisdiction on the Orphans' Court of the County wherein real property of any intestate domiciled without the Commonwealth at the time of his or her death is situate, in securing the rights of the surviving spouse in the matter of the \$5000.00 allowance and by validating proceedings heretofore instituted.

House Bill 1151, known as Act No. 86, amends Section 12F of the Fiduciaries Act of June 7, 1917, P. L. 447, by providing in certain cases that the exemption to the widow or children may be allowed and set aside without notice or appraisalment. This amendment provides that when the estate as left does not exceed in value \$500.00 an exemption of said amount may be made by the Court upon petition without notice or appraisalment or the Court may appoint two appraisers, and with the same effect as if letters testamentary or administration had issued and the appraisers been selected in the usual way.

DEEDS

Senate Bill 40, known as Act No. 40, is entitled "An Act requiring the recording of certain written agreements pertaining to real property and prescribing the effect thereof as to subsequent purchasers, mortgagees, and judgment creditors of the parties thereto."

"Section 1. Be it enacted, etc., That all agreements in writing relating to real property situate in this Commonwealth by the terms whereof the parties executing the same do grant, bargain, sell, or convey any rights or privileges of a permanent nature pertaining to such real property, or do release the grantee or vendee thereunder against damages which may be inflicted upon such real property at some future time, shall be acknowledged according to law by the parties thereto or proved in the manner provided by law, and shall be recorded in the office for the recording of deeds in the county or counties wherein such real property is situate.

"Section 2. The legal effect of the recording of such agreements shall be to give constructive notice to subsequent purchasers, mortgages, and/or judgment creditors of the parties to said agreement of the fact of the granting of such rights or privileges and/or of the execution of said releases, and the rights of the subsequent purchasers, mortgagees, and/or judgment creditors of the parties to said agreements shall be limited thereby with the same force and effect as if said subsequent purchasers, mortgagees, and/or judgment creditors had actually joined in the execution of the agreement or agreements aforesaid."

House Bill No. 1101, known as Act No. 191, amends Section 1 of the Act of May 12, 1925, P. L. 613, as follows: "Section 1. Be it enacted, etc., That all deeds, conveyances, contracts, and other instruments of writing wherein it shall be the intention of the parties executing the same to grant, bargain, sell and convey any lands, tenements, or hereditaments situate in this Commonwealth, upon being acknowledged by the parties executing the same or proved in the manner provided by the laws of this Commonwealth, shall be recorded in the office for the recording of deeds in the county where such lands, tenements, and hereditaments are situate. Every such deed, conveyance, contract, or other instrument of writing which shall not be acknowledged or proved and recorded, as aforesaid, shall be adjudged fraudulent and void as to any subsequent bona fide purchaser or mortgagee or holder of

any judgment, duly entered in the prothonotary's office of the county in which the lands, tenements, or hereditaments are situate, without actual or constructive notice, unless such deed, conveyance, contract, or instrument of writing shall be recorded, as aforesaid, before the recording of the deed or conveyance or the entry of the judgment under which such subsequent purchaser, (or) mortgagee, or judgment creditor shall claim. Nothing contained in this act shall be construed to repeal or modify any law providing for lien of purchase money mortgages."

Senate Bill No. 105, known as Act No. 25, is entitled "An Act to validate conveyances and other instruments which have been defectively acknowledged" and provides as follows:

"Section 1. Be it enacted, etc., That no grant, bargain and sale, feoffment, deed of conveyance, release, assignment, or other assurance of lands, tenements and hereditaments, whatsoever bearing date, prior to the year one thousand nine hundred and thirty-one, made, executed and delivered by husband and wife, or by any person or trustee or attorney in fact for any other person or persons, to a bona fide purchaser or purchasers for a valuable consideration, and acknowledged before any officer duly authorized by law to take such acknowledgement, shall be deemed, held or adjudged invalid or defective or insufficient in law by reason of any informality in such acknowledgement, or by reason of the acknowledgement thereto having been made by any trustee or attorney in fact in his individual capacity instead of as such trustee or attorney in fact; but all and every such grant, bargain and sale, feoffment, deed of conveyance, release, assignment, or other assurance, so made, executed and acknowledged, as aforesaid shall be as good, valid and effectual in law for transferring, passing and conveying the estate, right, title, and interest of such husband and wife of, in and to the lands, tenements and hereditaments mentioned in the same, as if all the requisites and particulars of such acknowledgement had been made according to law, and as if such trustee or attorney in fact had made the acknowledge-

ment thereto in such capacity; and the record of the same duly made in the proper office for recording of deeds in this Commonwealth, and exemplifications of the same duly certified, shall be legal evidence in all cases in which the original would be competent evidence.

"Section 2. This act shall not apply to suits now pending and undetermined."

Chambersburg, Pa.

A. J. WHITE HUTTON.