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The Pennsylvania Fraudulent Conversion Act of 1917

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THE PENNSYLVANIA FRAUDULENT CONVERSION ACT OF 1917

The Fraudulent Conversion Act of 1917[1] reads as follows: I. Any person having received or having possession, in any capacity or by any means or manner whatever, of any money or property, of any kind whatsoever, of or belonging to any other person, firm, or corporation, or which any other person, firm, or corporation is entitled to receive and have, who fraudulently withholds, converts, or applies the same, or any part thereof, or the proceeds or any part of the proceeds, derived from the sale or other disposition thereof, to and for his own use and benefit, or to and for the use and benefit of any other person, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine not exceeding one thousand dollars, and to undergo an imprisonment not exceeding five years, or either or both, in the discretion of the court.

II. The offense specified in this act may be joined in the same bill of indictment with any other felony or misdemeanor arising out of the same transaction or transactions, and there may be included in the same indictment as many counts as there are separate and distinct misdemeanors hereunder committed against the same person, firm, or corporation.

III. It is the true intent and meaning of this act to define and punish a distinct and separate midemeanor, and this act shall, in no wise, repeal or alter any statute relating to any felony or misdemeanor heretofore defined and punished by the laws of this Commonwealth.

CHARACTER AND PURPOSE

The act is, by its language, a general statute, i.e. one "relating to the whole community, or concerning all persons generally, as distinguished from a private or special statute which operates only upon particular persons and private concerns".[2] The act specifically says that *any person* acting in *any capacity* who fraudulently converts *any property or money* of *any person, firm or corporation* shall be guilty. Prior statutes[3] provide for the punishment of particular classes of persons (bankers, brokers, attorneys, merchants, agents, servants, employees, bailees, consignees, factors, partners, officers, managers of corporations, tax-collectors, etc.) and in order to secure a conviction under them the accused must belong to the particular class designated in the statute.[4]

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[1]Act of 1917, P.L. 241; 18 P.S. section 2486.

[2]1 Black. Comm., pp. 85 & 86.

[3]Act of Mar. 31, 1860, P.L. 382; Act of May 9, 1889, P.L. 145; Act of June 12, 1878, P.L. 196; Act of May 13, 1876, P.L. 161; Act of May 1, 1861, P.L. 503; Act of Apr. 23, 1909, P.L. 169; Act of June 3, 1885, P.L. 72, etc.

[4]Com. v. Fahnestock, 15 C.C. 598.

This act of 1917, however, does not confine itself to certain classes of persons, but is applicable to any person who is capable of committing criminal acts.[5]

The purpose of the act was probably two-fold. Its first purpose could be said to be an attempt to cover any and all cases not covered by previous statutes on embezzlement.[6] As has been noted, these statutes legislated against particular classes of persons. Prosecutions under these special statutes sometimes fail because it developed that the accused did not belong to any one of the classes specified in the acts. For example, a defendant who appeared to be an agent and was prosecuted for embezzlement as such, was found by the court not to be an agent within the court's interpretation of that word, and hence was not convicted.[7] Having been prosecuted under an act which made it a crime for an agent tc embezzle, it was necessary to prove the agency to obtain a conviction. Further than that, it was not only necessary to prove that the accused was a member of the particular class specified in the statute under which he was indicted but it had to be proved that at the time of the receipt of the property the accused was acting in that particular capacity.[8] So in the above example, if it had been found that the defendant was an agent, but had not received the property embezzled in that capacity, he could not have been convicted. As it is usually stated, the defendant must receive the property embezzled "by virtue of his employment," and unless it is so proved there cannot be a conviction. Experience has shown that many times it is difficult to fit the accused into any one of the classes specified, and, although the moral guilt and the social wrong may be just as great where he does not fall within the classes as where he does, the chances of punishing him are slight. Additional legislation was obviously necessary to cover up such deficiencies.

The second purpose is closely related to the first in that it arose out of the necessity of alleging and proving that the accused belongs to a special class. As before stated, this necessity often made it difficult to prove that the defendant belonged to *any* of the classes covered by the special statutes. But it also gave rise to an additional difficulty. In indicting under one of these special statutes, it must be proved that the defendant is a member of that particular class specified in the statute under which he is indicted.[9] This is a matter of indicting under the correct statute, and the prosecutor must be prepared to prove that he has. On the face of things it would appear to be a simple matter to select the proper statute, but this is not always the case. The distinction between the various classes is sometimes so vague that it is difficult to determine

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[5]Com. v. Drass, 111 Pa. Super. 375.

[6]Com. v. Gartman, 83 Pa. Super. 108.

[7]Com. v. Kaufman, 11 Lanc. 247; Com. v. Lynch, 3 Lanc. 412; Com. v. Zehner, 13 Sch. 140; Com. v. Boyer 3 C.C. 234.

[8]Com. v. Ambler, 30 Dist. 437; Com. v. Wheeler, 73 Pa. Super. 164.

[9]Com. v. Beeby, 3 Lanc. 358; Com. v. Winkle, 43 Dist. 404.

whether the accused was acting in the capacity of an agent, servant, bailee or another of the classes.[10] So if the counsel for the defense is successful in convincing the court that his client was not acting in the capacity or was not a member of the particular class which the indictment alleges, the guilty party may escape punishment altogether or at best the proceedings will be delayed. Thus where a defendant was indicted for converting goods as a bailee, it was held that he was an agent and should have been indicted as such.[11] The second purpose, then, may be said to be to prevent the pleading of those fine distinctions between the classes which are often raised in connection with these special statutes on embezzlement.[12]

PERPETRATOR

The act says any person acting in any capacity may be found guilty of the offense. However, this language is subject to qualification. The word "person" as sometimes interpreted, means any "legal person", which would include corporations. It is doubtful if such is the case. The word is probably to be interpreted to mean any natural person. While corporations can be held criminally liable, it is usually for conduct involving nonfeasance or misfeasance.[13] Although the tendency in some jurisdictions has been to extend this liability to crimes of malfeasance where the particular crime was instigated by corporate officers and in the interests of the corporation,[14] Pennsylvania takes the attitude that such conduct as is involved in fraudulent conversion or other crimes of malfeasance cannot be ascribed to a corporation when the conduct is that of the corporate officers.[15] This attitude is evidenced in the special statutes on embezzlement which legislate against corporate officers but not against corporations. Fraudulent conversion is a crime requiring intent, and intent, it has been held, cannot be imputed to an inanimate legal entity, but only to natural persons.

The natural persons, who can commit the crime, would, in turn, of course, be limited to those to whom a criminal intent can be ascribed. The general rules applicable to infancy, insanity, and drunkenness with respect to criminal liability would also apply to the crime of fraudulent conversion.

Notwithstanding the broad language used in the act of 1917, i.e. that *any person* acting *in any capacity* may be found guilty, the question arose as to whether the statute applied to those persons already covered by previous

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[10]Com. v. Zehner, 13 Sch. 140.
[11]Com. v. Burkholder, 21 Lanc. 118.
[12]Com. v. Drass, 111 Pa. Super. 375.
[13]Com. v. Bredin, 165 Pa. 224; Com. v. New Bethlehem Borough, 15 Pa. Super 158.
[14]See Miller on Criminal Law, page 147.
[15]See Savidge on Penn'a. Corporations, Vol. I, page 714.

acts, or whether it was intended to be exclusive of them. The cases decided soon after the passage of the act were inclined to exclude from its operation those classes of persons punishable under one of the special acts. In *Com. v. Dixon,*[16] an agent was indicted under the Act of 1917 for fraudulent conversion of his principal's funds and the court said that there could not be a conviction under this act, because embezzlement by an agent was punishable under the act of 1860. In *Com. v. Gartman*[17] the court said that if the facts disclose embezzlement by a partner of partnership funds the indictment must be under the Act of June 3rd, 1885, P. L. 60. These courts supported their reasoning by pointing to section 3 of the act, which says, in effect, that the act is intended to define a separate misdemeanor and not to repeal or alter any other existing statute of the state. However, this reasoning is false, for to hold that this act applies to the classes of persons specified in the prior acts neither repeals nor alters those acts. Indictments will still lie under them if the case falls exactly within them. This is the attitude which the courts have taken in the later cases. The case of *Com. v. Wooden*[18] led the decisions in the other direction. Here, an officer of a corporation was prosecuted under the Fraudulent Conversion Act for converting corporate funds to his own use. The indictments were ordered quashed on the grounds that he should have been indicted under the 116th section of the Act of 1860, P. L. 382. The upper court, in reversing the order said, "The act of conversion is the gravamen of the offense of fraudulent conversion rather than how, when, or in what capacity the defendant received and possessed the property prior to the crime." The court, however, somewhat clouded the issue by attempting to distinguish the fraudulent conversion by a corporate officer under the Act of 1860 from the conduct of the defendant in the case in question. The case of *Com. v. Drass*[19] is decisive on this point. An agent was indicted under the Act of 1917 for converting his principal's funds. A motion to quash the indictment on the ground that it was not brought under the proper statute was refused. On appeal the upper court sustained the trial court in language that no longer left the question in doubt. It said, through Trexler, P. J., "We need not inquire as to whether he got the money as agent, broker, banker, or in any other way; the fact that he received the money of others and fraudulently converted and applied it to his own use brings him under the act. . . It was to avoid the drawing of fine distinctions which, no doubt, induced the passing of the latter act, so that fraudulent conversion could be punished irrespective of the capacity in which the defendant received the property. Section 3 of the

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16 49 C.C. 527.

17 3 D. & C. 329.

18 94 Pa. Super. 452; see also Com. v. Akromovage, 25 Luz. 309.

19 111 Pa. Super. 375.

Act of 1917, was never intended to exclude from its application the particular classes of individuals covered by the several sections of the Act of 1860. It was to provide a definite and separate misdemeanor applying to any one who fraudulently converted the property of another, but it also left the provisions of the Criminal Code[20] still operative."

Considered with respect to the purposes of the act, this conclusion is logical and reasonable. In the past fraudulent conversion has been particularly difficult to prosecute by reason of just such technicalities. The legislature passed this general statute to ease the situation. To allow, then, those same technicalities which before enabled guilty parties to escape or delay justice would be to defeat the purposes of the act. If the prosecutor can show a fraudulent conversion of another's property, (an offense which this act plainly makes a crime), the guilty party certainly should not be protected merely because another statute also covers the same situation. As one court has said, "Criminal pleading is no longer the technical thing it once was, and courts look more to substantial justice than to artificial nicety."[21]

PROPERTY

There has been only one case under the Act of 1917 which raised the question of the kind of property to which the act applied.[22] Counsel in this case questioned the constitutionality of the act for the reason that the title of the act does not give notice that "original money" was subject to conversion. The court held, however, that the title, in using the language "property or the proceeds of property," was broad enough to include "original money". Practical examples of other types of property subject to conversion under this statute are horses, cattle, automobiles, stock certificates, promissory notes, bonds, etc.[23] Logically, it would seem that any property capable of ownership and which is of any value at all to the owner can be the subject of conversion, as the offense is the depriving another of property which he owns or is entitled to have. We can safely assume that the courts will not consider the value of the property in the sense that it must be above a certain value. It would be absurd to say that any property under a fixed value could not be fraudulently converted. On the other hand, the property must not be valueless, as it would be equally absurd to make it a criminal act to convert something of no value to anyone.[24] In this respect, each case must stand on its own merits,

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[20]The Criminal Code is the Act of Mar. 31, 1860, P.L. 382.

[21]Com. v. Wooden, 94 Pa. Super. 205.

[22]Com. v. Disanto, 33 Dauph. 144.

[23]Com. v. Spear, 73 Pa. Super. 205; Com. v. Lindeman, 15 D. & C. 454; Com. v. Overheim, 106 Pa. Super. 424; Com. v. Shanklin, 87 Pa. Super 434; Com v. Ryder, 80 Pa. Super. 452; Com. v. Gilliam, 82 Pa. Super. 75.

[24]See 20 C.J. page 414.

and it is for the court to determine whether the particular property in question falls within the term as used in the statute.

OWNERSHIP OF THE PROPERTY

Each case must be examined carefully to ascertain where the title to the property purportedly converted lies, as it is essential that the property belong to one other than the accused.[25] The act was not intended to apply where the defendant converts his own property.[26] Sometimes it requires a close examination of the facts to discover if the ownership is in the accused or another. Such was the case where A was injured and received medical attention from B, a physician. A's insurance company gave him a draft drawn to the order of A and B. A procured B's indorsement to the draft by giving him a check for the amount B was entitled to have. A then stopped payment on the check before B could cash it, and B was never paid for his services. A was prosecuted under the Act of 1917. It was argued by the defense that title to the draft was in A and he, therefore, was not converting another's property. This argument was not sustained. The draft had been drawn to the order of A and B, thereby placing title partly in B, and A's conversion of the entire proceeds was fraudulent. The court held thus in the face of the fact that B had indorsed the draft with the apparent intention of giving up title to his share.[27]

Sometimes what appears to be the conversion of another's property by the accused is nothing more than a breach of contract or a failure to pay a debt. Neither of these situations constitutes a crime, and the Act of 1917 is not applicable to them.[28] Thus where an investment company lent money to an automobile agency with which to buy a car, which car was sold by the agency, but the borrowed money never repaid, there was no fraudulent conversion.[29] The investment company prosecuted on the theory that, in as much as it had lent the money with which to buy the car, the car was its property. This reasoning, of course, was false. The company, in lending the money, had given up title to it. The money was, thereafter, the property of the agency, and in converting it and later the car, it was dealing with its own property. In the words of the court, "It (the statute) is not to be so applied as to make it an effective substitute for an action at law in the collection of a debt".

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[25]Com. v. Bixler, 79 Pa. Super. 295.

[26]Com. v. Hillpot, 84 Pa. Super. 454.

[27]Com. v. Cox, 19 D. & C. 12. While this point was not discussed by the court, A's method of procuring B's indorsement was an obvious fraud, which made voidable any title which he may have acquired thereby. Then too, it is probable that this particular type of situation would fall within the Act of 1917; see ante.

[28]Com. v. Brown, 49 C.C. 647; Com. v. Heil, 8 D. & C. 797.

[29]Com. v. Bixler, 79 Pa. Super. 295.

In a similar case,[30] B desired to purchase a new car. He turned over his old one with the certificate of title to A as part of the purchase price. A sold the old car, but did not give B a new car as agreed. B prosecuted under the Act of 1917 charging a fraudulent conversion of the old car. This could not be proved, as the title to the old car was no longer in B. He had given up title to A as part of the purchase price. A had sold his own property, an act for which he could not be criminally liable. It is true that he failed to carry out the agreement, but, as before noted, the Act of 1917 was not intended to punish a breach of contract.

On the other hand, what sometimes appears to be a breach of contract or a failure to pay a debt may be a fraudulent conversion. This is the case where property is sold on the bailment lease plan.[31] For example, A desires to buy an automobile. He is given a lease on a car which stipulates that he is to pay a periodic rental for its use, and after paying the full price in rentals, for a nominal consideration, title to the car is to be transferred to him. The seller, by this method, preserves the title of the car in his own name until it has been fully paid for. So, if A were to sell the car and convert the proceeds to his own use and refuse to pay the balance of the purchase price, he would be converting another's property. What, at first glance, seems to be a failure to pay a debt or a breach of contract is a fraudulent conversion, and may be punished under the Act of 1917.

The above cases merely serve to illustrate the importance of examining the facts carefully to ascertain where the title to the property lies. In this connection it is well to note that the ownership need not be necessarily in the one who prosecutes. The act says "property belonging to any other person, firm, or corporation or which any other person, firm, or corporation *is entitled to receive or have*". Thus if a bailee, who is entrusteed with property, in turn entrusts it to a third party, who then fraudulently converts it, the third party cannot be heard to say that the property did not belong to the bailee, and that the situation, therefore, does not fall within the act.[32] Although the property may not belong to the bailee, the latter is entitled to "receive and have it", and an indictment under the act will be sustained. The owner of the property, however, must be identified in the indictment to show that the title lies in one other than the accused.[33]

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[30]Com. v. Overheim, 106 Pa. Super. 424; but see Com. v. Day, 20 D. & C. 136 in which the same method was used to procure title to a car, and the defendant was convicted. The court in this case, however, believed that the defendant from the beginning intended to defraud the owner of the car and, after much consideration, managed to convict him of fraudulent conversion on a technicality.

[31]Com. v. Petres, 2 Som. 296.

[32]Com. v. Davis, 26 Dauph. 160

[33]Com. v. Shanklin, 87 Pa. Super. 53.

There is one other phase of ownership to be considered in construing this statute. The act punishes the conversion of the property of any other person, firm, or corporation. One case has held that if the owner does not fall within one of these categories, a prosecution under the act will fail.[34] In this case the defendant fraudulently converted money belonging to a school district. The court said that he could not be convicted under the Act of 1917. It gave as its reason the fact that the Supreme Court in at least two early decisions had held a school district not to be a corporation, which decisions were presumably known by the legislature, and, therefore, in using the word "corporation", it did not intend to include organizations not strictly falling within that category. It is difficult to believe, however, in view of the broad language used elsewhere in the statute, that the legislature intended to exempt from its operation one who fraudulently converts property of an organization which is not, strictly speaking, a corporation. As one court has said,[35] "the act of conversion is the gravamen of the offense . . .", and added, "The courts look more to substantial justice than to artificial nicety". It is true that the statute being criminal, must be strictly construed, but in so construing it, the probable intention of the legislature must be considered, as well as the wording of the act itself.[36] It is the writer's opinion that the act is couched in such language as to make it plain to the person of ordinary intelligence that the converting of another's property is being made a crime irrespective of the legal status of the owner, and that it was never intended by the legislature that such technical defenses as the one above should be used by one who otherwise is guilty of fraudulent conversion.

POSSESSION

The crime of embezzlement was created by an early English statute[37] to cover certain situations which escaped being the common law crime of larceny. At common law, for larceny to be committed, there had to be a trespass in the taking; i.e. the accused had to acquire possession of the property by unlawful means. Therefore, if one, who was entrusted with property by the owner, or received the property from another to give to the owner, subsequently converted it, he could not be convicted of common law larceny.[38] The embezzlement statutes of England and our states were enacted to remedy this situation. But many of these statutes, upon being applied, while solving the problem generally, still left room for defenses based upon vague distinctions, which

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[34]Com. v. Smith, 116 Pa. Super. 146.
[35]Com. v. Wooden, 94 Pa. Super. 452.
[36]See Miller on Criminal Law, page 37.
[37]39 Geo. III, c. 85; see also Miller on Criminal Law, page 375.
[38]Miller on Criminal Law, page 375.

served to make a prosecution for embezzlement a complicated matter. These distinctions arose largely out of the question of possession. For example, it is said that there must be a "breach of trust" to commit the crime; that if the defendant has mere custody as distinguished from possession, he can not be guilty of this particular offense; that unless he receives possession "by virtue of his employment" the particular statute will not apply.[39]

The statute of 1917, however, reads, "Any person having received or having possession, *in any capacity* or *by any means or manner whatever* . . . ". Such language seems broad enough to cover possession acquired either lawfully or unlawfully. There are no Pennsylvania cases which discuss the question, and all the cases which apply the statute, with two exceptions,[40] were situations where possession was lawfully acquired. In both of these cases, the facts indicated possession acquired by fraud, although this fact was not brought out by the courts. In the first, the defendant procured the prosecutor's indorsement to a money draft drawn to the order of both of them, by giving him a check for his share, and then stopping payment on the check. In the other case, the defendant induced the prosecutor to part with title to his car by giving him an order blank crediting him with payment in full for a new car, which was never delivered. In both cases the defendants were convicted under the Act of 1917. Whether the defense overlooked the question of unlawful possession, or whether they took it for granted that the act applied to such a situation, is not known.

The broad language of the act, together with these cases, would indicate that in cases of unlawful possession the statute will apply. This is probably true, but only to a limited extent. If the property is possessed with the consent of the owner or the one who controls it, even though the consent may have been induced by fraud, the situation falls within the act. It is likely that the words "having received or having possession" were intended to exclude cases in which property is taken against the will of the owner or possessor, as when violence or duress is used, while the words "by any means or manner whatever" indicate that it is immaterial that the possession is unlawfully acquired. This distinction may seem more reasonable when it is pointed out that where fraud is used to induce consent there is no outward appearance of unlawful possession, and the perpetrator may convert the property without fear of interference from the owner, but where violence or duress is used, there is no pretense at lawfulness, and the owner can take immediate steps to remedy his wrong.

As has already been noted, the crime may be committed by one acting in any capacity.[41] There need not be that relation of trust and confidence between the accused and the owner, as in the offense of embezzlement.

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[39]See Wharton's Criminal Law (1932 edition), pages 1587 & 1601.
[40]Com. v. Cox, 19 D. & C. 12, and Com. v. Day, 20 D. & C. 136.
[41]Com. v. Drass, 111 Pa. Super. 375; Com. v. Meile, 115 Pa. Super. 269.

The fact that the defendant did not receive the property "by virtue of his employment" will not take the case out of the statute. The fraudulent conversion is the gist of the offense, and not the breaching of a trust.

In spite of the broad language, however, it is not believed that the legislature intended to make the statute applicable in cases of larceny, robbery or other crimes against property. The purpose was rather to lessen the difficulties which are met with in prosecutions for embezzlement.[42] It, of course, does not follow the principles of embezzlement in every respect, but, as it creates a separate and distinct misdemeanor,[43] this presents no difficulty. In any case, the distinction between several of the crimes against property is often difficult to determine before all the evidence is brought out at the trial,[44] and, as it is permissible under the act to join the offense with any other felony or misdemeanor arising from the same transaction,[45] it is always well to do so in case of doubt.

THE MENTAL ELEMENT—INTENT

As in most crimes, proof of a criminal intent is required to secure a conviction under the Act of 1917. The act stipulates that anyone who *fraudulently* converts the property of another may be guilty; i.e. the conversion must take place with the *intention* of defrauding another of the use or benefit of his property. So where a court, in charging a jury to convict the defendant if it believed he had converted the goods in question, omitted the word "fraudulently", a new trial was granted on the ground that the court's charge failed to give notice that the defendant must have deliberately and intentionally converted the goods.[46] Although a person may so use another's property as to cause the other a loss, he cannot be convicted of fraudulent conversion if he neither intended to injure the owner of the property nor to benefit himself or any other. In *Com. v. Domotor*[47] the defendant, in good faith, used money which the prosecutor had entrusted to him, to buy a mortgage. The mortgage was placed in the prosecutor's name, and the interest paid to his wife. The defendant could not be convicted, because he had no intention to defraud the prosecutor or to benefit himself.

This situation, however, must not be confused with the situation where the defendant fraudulently uses another's property for his own benefit with the intention of later making full restitution to the owner. Most fraudulent

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42Com. v. Gartman, 83 Pa. Super. 108.
43Section III of the Act of 1917.
44See Miller on Criminal Law, pp. 373 & 374.
45Section II of the Act of 1917; see Com. v. Drass, 111 Pa. Super. 375.
46Com. v. Lindeman, 15 D. & C. 454.
4784 Pa. Super. 352.

conversions are committed under just these circumstances, and it is no defense to say that there was an intention to reimburse the owner.[48] It is the fact that the defendant uses the property of another, even though temporarily, for his own or some other's benefit without the owner's consent which makes his conduct criminal.[49] If he converts the property, knowing his act to be wrong, he is guilty irrespective of his intention as to making right his wrong. Nor is it a defense to say that the owner later ratified the conversion. Once having, with criminal intent, used another's property, the offense has been committed, and ratification will not make it less criminal.

While the intent of the accused must be criminal, the intent of the prosecutor or the owner is immaterial. In the case of *Com. v. Gartman*[50] the defendant attempted to justify his conduct and criminal intent by pointing to the prosecutor's illegal purpose. The prosecutor had given the defendant a large sum of money with which to buy "bootleg" liquor, and the defendant absconded with the money. This fact, however, did not exempt the defendant from the operation of the statute. An illegal intention on the part of the owner of the property does not make the wrongful intention of the accused less criminal.

H. L. Weary

RIGHT OF PARENT TO SUE CHILD FOR CHILD'S NEGLIGENCE, IN PENNSYLVANIA

An action may not be maintained by a parent against an unemancipated child for personal injuries of the parent resulting from the negligence of the child. *Duffy v. Duffy*, 117 *Pa. Super.* 500, April 15, 1935.

By this case Pennsylvania adopts the conservative view. There are three other cases in which this question arose.[1] In only one jurisdiction may the parent sue the child in this situation.[2] It is interesting to note that in all four of these cases the plaintiff-parent was the mother.

The reasons advanced by the Pennsylvania court are threefold: (1) in the converse situation, the great weight of authority will not permit an

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[48]Com. v. Meile, 115 Pa. Super. 269.
[49]Com. v. Gilliam, 82 Pa. Super. 75.
[50]83 Pa. Super. 108.

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[1]Crosby v. Crosby, 230 App. Div. 651, 246 N. Y. S. 384, (1930); Schneider v. Schneider, 160 Md. 18, 152 A. 498, (1930); Wells v. Wells, 48 S.W. (2d.) 109, (Mo., 1932).
[2]Wells v. Wells, 48 S.W. (2d.) 109, (Mo. 1932).