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Extension of the Remedy of Accounting in Assumpsit

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the death of the person against whom they existed and the court accordingly held that the plaintiff could institute an action for personal injuries against the executors of the wrongdoer.

However, after fourteen years, the doubt cast by *Strain v. Kern*, *supra*, upon the full effectiveness of section 35 (b) has been removed by the Act of July 2, 1937, No. 563, which re-enacts the provisions of section 35 (b) and amends the above quoted portion of the title of the Fiduciaries Act so that it now reads: "An act relating to . . . the abatement and survival of actions, and the substitution of executors and administrators therein; the survival of causes of actions and suits thereupon by or against fiduciaries."

So far as injuries to the person of the decedent are concerned, it is believed that the intention of the legislature through this amendment was not to provide an alternative or cumulative remedy to the action for wrongful death when the injuries suffered cause the death of the decedent. The Act of April 1, 1937, No. 48, giving the executor or administrator a limited right of action where the injuries cause death indicates that it is only in the situation covered by this amendment that the representative may sue for wrongful death injuries. The amendment to the Fiduciaries Act, however, will permit suit by the personal representative when the injuries do not cause the death of the injured party but he dies before suit is brought. In this situation, prior to this recent amendment, no action could be brought by anyone. Hereafter there should be no doubt as to what causes of action survive the death of either the persons in whose favor or the persons against whom they exist.

F. S. Reese

EXTENSION OF THE REMEDY OF ACCOUNTING IN ASSUMPSIT

The remedy for an accounting is engrafted upon the action of assumpsit under designated circumstances by the provisions of Section 11 of the Practice Act. "If the plaintiff avers that the defendant has received moneys as agent, trustee, or in any other capacity for which he is bound to account to the plaintiff, or if the plaintiff is unable to state the exact amount due him by the defendant by reason of the defendant's failure to account to him, the plaintiff may ask for an account."¹

In *Miller v. Belmont Packing and Rubber Co.*,² it was held that the section is not rendered invalid by reason of the fact that defendant as to a counterclaim or set-off on his part, is afforded no similar right to ask for an accounting. Said the Court, "If this is an incongruity, the legislature can remedy it." This the legislature of 1937 purports to do by amending the above quoted section to read:

¹1915, May 14, P. L. 483, Sec. 11, 12 P. S. 393.

²268 Pa. 51, 110 A. 802 (1920).

"If either the plaintiff in his statement or the defendant in a counter claim avers that the defendant or plaintiff has received moneys as agent, trustee, or in any other capacity for which he is bound to account to the plaintiff or defendant, or if the plaintiff or defendant is unable to state the exact amount due him by the defendant or plaintiff, by reason of the defendant's or plaintiff's failure to account to him, the plaintiff or defendant may ask for an account."³

Since counterclaim is a broader and more comprehensive term than set-off and since both terms are used indistinguishably in the Practice Act⁴ it will no doubt be held that the remedy of account in assumpsit is now available to a defendant as to a counterclaim or set-off on his part, and the defendant need no longer adopt the cumbersome method of a Bill in Equity for an accounting.

Wilbur Garber.

ASSERTING CONTRACT CLAIMS AGAINST THE COMMONWEALTH

Under the provisions of Act No. 193 of the 1937 session of the General Assembly, a Board of Arbitration of Claims against the Commonwealth has been set up. The act provides for the creation of the Board, fixes compensation of members and employees, regulates procedure in prosecuting claims before the Board, defines the duties and powers of the Board, and prescribes the method for payment of awards. This note is concerned primarily with Section 4 of the act which sets forth the powers of the Arbitration Board:

"Section 4. (a) The Board of Arbitration shall have jurisdiction to hear and determine all claims against the Commonwealth, arising from contracts hereafter entered into with the Commonwealth, where the amount in controversy amounts to \$300.00 or more; (b) such jurisdiction shall also attach in cases arising from contracts heretofore entered into, where the claims as herein provided, are presented before final payment under such contracts, and where the parties in such contracts heretofore entered into agree to submit the claim to the Board under the terms of this act.

"The award of the Board of Arbitration shall be final, and no appeal from such award to any court shall be allowed."

³Act of General Assembly No. 235, Approved May 26, 1937.

⁴1915, May 14, P. L. 484, Sec. 14; 1929, April 22, P. L. 627, Sec. 2, 12 P. S. 431.