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S.A. Schreckengaust Jr.

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"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.

The fact that all controversies between the state and the contracting party, where the amount is \$300.00 or more, are entitled to be aired before the Board is significant in that the obligee is given a chance to assert his claim where formerly no recourse existed. Article I, section 11 of the Pennsylvania Constitution of 1874 provides:

“ . . . Suits may be brought against the Commonwealth in such manner, in such courts, and in such cases as the Legislature may by law, direct.

That the state is a sovereign who cannot be sued against her consent was recognized as early as 1843 in *Monongahela Navigation Company v. Coons*.¹ Where neither liability on the part of the state nor the right to sue exists, the legislature cannot pass special legislation and thereby vest in a particular individual the right to sue and recover from the state.² However, where the liability exists, then the legislature may pass a special act giving an individual the right to sue the Commonwealth.³

The recent act provides an inexpensive, direct method whereby claims arising under contract with the state may be disposed of with the maximum efficiency and speed. With this statute on the books, the legislature in all probability will be reluctant to open the doors by general or special statute, thereby giving its consent to suits against the state.

The question may arise as to whether the procedure of the present act will override the provision of the Arbitration Act of 1927 relative to state contracts.⁴ Section 16 of that act provides:

“Section 16. State and Municipal Contracts—The provisions of this act shall apply to any written contract to which the Commonwealth of Pennsylvania, or any agency or sub-division thereof, or any municipal corporation or political division of the Commonwealth shall be a party.”

Although no cases have arisen under Section 16 of the Act of 1927, it is submitted that the acts should not conflict. Where in a written contract, the parties stipulate for arbitration, then the Act of 1927 should apply; however, where no provision for arbitration appears in the contract, then the act of 1937 is applicable. It is submitted that if an arbitration clause is included in the contract, the better practice would be to stipulate that any subsequent arbitration is to be conducted according to the procedure as outlined in the earlier act.

S. A. Schreckengaust, Jr.

¹6 W. & S. 101. 116.

²*Collins v. Commonwealth*, 262 Pa. 575; 106 A. 229 (1919).

³*Philadelphia County v. Commonwealth*, 270 Pa. 353; 113 A. 661 (1921).

⁴April 25, 1927, P. L. 381, Sec. 16. Consider also Act of May 13, 1925, P. L. 670.