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## Demurrer to Evidence in Criminal Prosecutions

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found, however, in *Semler v. Oregon State Board of Dental Examiners*, 294 U. S. 608. There an act of the State of Oregon almost identical in its terms was held by the United States Supreme Court not to deny the due process guaranteed under the Fourteenth Amendment nor to impair the obligation of any advertising contracts already made when the act became effective. The dental profession is bound to enjoy a larger measure of public esteem as a result of this act.

H. S. Irwin.

### DEMURRER TO EVIDENCE IN CRIMINAL PROSECUTIONS

At the last session of the General Assembly, Act No. 357 was passed and approved on June 5, 1937. This act materially changes some of the law relating to criminal procedure. The act provides that when a defendant demurs to the evidence submitted by the Commonwealth at the close of the Commonwealth's case, the demurrer shall be deemed an admission of the facts that the evidence tends to prove or the inferences reasonably deducible therefrom *only* for the purpose of deciding upon such demurrer, and if the court decides against the defendant on the demurrer, the decision shall be interlocutory only and the case shall proceed as if the demurrer had not been made.<sup>1</sup>

This changes the preexisting common law and brings the criminal procedure into conformity with the civil practice under the Practice Act of 1915. Under the Practice Act when a defendant files what is known as a statutory demurrer to the plaintiff's statement of claim, which is overruled, he is given fifteen days within which to file a supplemental affidavit of defense to the averments of fact.<sup>2</sup> The result in both cases is now that the defendant loses nothing by his demurrer in the event it is overruled.

The common law rule in the case of the demurrer to the evidence in a criminal case was that "where the defendant demurs to the evidence it is proper for the court to dismiss the jury and render judgment."<sup>3</sup> The result of this rule was that frequently the demurrer was overruled and the court proceeded to render judgment, thereby, in a sense, depriving the defendant of a jury trial, because of the error of his counsel in making the demurrer. It was said, "in criminal cases a demurrer to the evidence of the Commonwealth admits all the facts which the evidence tends to prove, and all inferences reasonably deducible therefrom."<sup>4</sup> This same result followed when a defendant demurred to the evidence in a civil suit. He was deemed to admit every inference and conclusion which the

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<sup>1</sup>Act No. 357, approved June 5, 1937.

<sup>2</sup>Act of May 14, 1915, P. L. 483, Section 20.

<sup>3</sup>*Commonwealth v. Parr*, 5 W. & S. 345 (1843).

<sup>4</sup>*Commonwealth v. Parr*, *supra*.

jury might deduce from the evidence.<sup>5</sup> This practice has been abandoned by the effect of the act of March 11, 1875, P. L. 6 which provided for the entry of a nonsuit in such a situation. The effect of a motion for a nonsuit differs from a demurrer to evidence, in that judgment cannot be given for the plaintiff should the court think the case made out, but in that case the nonsuit will be refused and the case given to the jury.<sup>6</sup> The earliest case on the subject was that of *Commonwealth v. Parr*, 1843, and this rule has been adhered to and followed by many subsequent cases,<sup>7</sup> the latest of which is *Commonwealth v. Robinson* decided in 1935.<sup>8</sup>

D. F. Shughart

### COMPUTATION OF CRIMINAL SENTENCES

Act No. 283 of the past session of the General Assembly contains provisions for the computation of sentences for criminal offenses.<sup>1</sup> The first section of this act provides that in the event the person being sentenced is being held in custody at the time of the sentence in default of bail or otherwise, the sentence shall begin to run from the date of commitment. Section 2 of the act defines the date of commitment for the offense for which the sentence is imposed. For example, if the person were in prison for two months prior to sentence in default of bail and then was sentenced to one year he would have but ten months to serve after sentence. Prior to the act it seems to have been the practice to use discretion in crediting the defendant with time spent in custody before sentence. By the act it is now mandatory.

The clause in section 1 "or otherwise" following the terms "in default of bail," by the act does not include the case where the person was in prison serving a prior sentence. In such case the act provides that the court may in its discretion direct that, first, the new sentence shall begin to run and be computed from the date of imposition thereof, or second, shall begin to run from the expiration of such other sentence or sentences. It is submitted that the exception is the product of sound judgment, since it prevents a second offender from receiving the benefit of a shortened sentence because of prior infractions. The provision for the use of the discretion of the court provides the necessary relief in cases where it might be appropriate to allow the sentences to run concurrently.

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<sup>5</sup>13 Pepper & Lewis Dig. of Decisions 23154, and cases cited therein.

<sup>6</sup>Supra, 5.

<sup>7</sup>*Commonwealth v. Kolsby*, 100 Pa. Super. Ct. 596; *Commonwealth v. Nathan*, 93 Pa. Super. Ct. 193; *Commonwealth v. Smith*, 97 Pa. Super. Ct. 157; *Commonwealth v. Beech*, 97 Pa. Super. Ct. 157; *Commonwealth v. Williams*, 71 Pa. Super. Ct. 311.

<sup>8</sup>*Commonwealth v. Robinson*, 317 Pa. 321 (1935).

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<sup>1</sup>Act No. 283—approved May 28, 1937.