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Computation of Criminal Sentences

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jury might deduce from the evidence.⁵ 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.⁶ 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,⁷ the latest of which is *Commonwealth v. Robinson* decided in 1935.⁸

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.¹ 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.

⁵13 Pepper & Lewis Dig. of Decisions 23154, and cases cited therein.

⁶Supra, 5.

⁷*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.

⁸*Commonwealth v. Robinson*, 317 Pa. 321 (1935).

¹Act No. 283—approved May 28, 1937.

Section 3 provides that where a person is sentenced to a prison other than the one where he was held before sentence, that it shall be the duty of the court to state in the sentence the date of commitment of such person.

Section 4, contains the usual repealing clauses.

D. F. Shughart

JOINDER OF PLAINTIFFS

In Pennsylvania the joinder of plaintiffs has been regulated heretofore, with few exceptions, by the technical rules and restrictions of the common law. The joinder of parties plaintiff, both in actions *ex contractu*¹ and *ex delicto*² has been confined to those having a joint interest in the subject matter of the suit. It has been necessary that the attorney determine the proper parties plaintiff to an action with considerable caution, since a misjoinder³ or non-joinder⁴ entailed serious consequences. Particular circumstances have presented problems of no little difficulty

The act of the General Assembly, No. 404, appears to have obviated substantially these problems. It provides:

Sec. 1: "That all parties who have a right of action, whether jointly, severally or in the alternative, in respect of, or arising from, the same transaction or series of transactions, and whose actions would give rise to any common question of law or fact, may join, as plaintiffs, in one civil action."

Sec. 2: "If, in any such action, it shall appear that the joinder of the plaintiffs will complicate, prejudice or delay the trial of such action, the court, on petition or on its own motion, may order separate trials, or make such other order as it deems expedient and proper."

Sec. 3: "In every such action, separate verdicts shall be rendered and judgments entered as to each plaintiff."⁵

Section 1 employs the liberal rules of the English practice⁶ which have for many years been in force in New York,⁷ New Jersey,⁸ and Illinois.⁹ In providing for joinder of parties having a several right of action it marks a sweeping change

¹Sweigart v. Berk, 8 S. & R. 308; Shaw v. Newingham, 279 Pa. 180.

²Schuylkill Nav. Co. v. Farr, 4 W. & S. 362; Kerr v. Penna. R. Co., 169 Pa. 95.

³Sturiale v. Pennsylvania Burial Co., 119 Pa. Super. Ct. 402.

⁴Donoghue v. Traction Co., 201 Pa. 181.

⁵Approved June 25, 1937.

⁶R. S. C. Ord. 16, r. 1, Halsbury, Laws of England, Vol. 23. Practice and Procedure, par. 183.

⁷N. Y. Practice Act, sec. 209.

⁸N. J. (P. L. 1912, p. 378).

⁹Ill. Civil Practice Act of 1933; (Ill. Revised Statutes 1935, Cha. 110, Sec. 23).