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LEGISLATION

SOME SUGGESTIONS FOR THE PENNSYLVANIA GENERAL ASSEMBLY, SESSION, 1941

I. DECEDENTS' ESTATES

The Committee on Decedents' Estates and Trusts of the Pennsylvania Bar Association will no doubt submit bills for consideration by the Pennsylvania Legislature of 1941 and it is not the thought of the writer to anticipate the functions of this Committee. However, several bills which the Committee had approved either failed of enactment in 1939 or were not introduced, and in either event failed to become law as would appear desirable.

In the list of bills which failed of enactment was one amending Sections 2 and 3 of the Wills Act, in cases where testator has executed his will by mark, to provide that the name of the testator need not be written in his presence. It is suggested that a more desirable and worthwhile amendment to Sections 2 and 3 would be to combine two sections into one set of rules covering the execution of wills both by signature and by mark, and in the latter case eliminating the distinction now prevailing between the two sections when the will is executed by mark. The recent cases, as well as those of some years past, certainly point out the desirability of such an amendment.

The suggestions following were of bills not introduced but deemed desirable changes:

Bill amending Section 2 of the Transfer Inheritance Tax Act to classify adopted children as lineal descendants.

Bill amending Section 2(c) of the Fiduciaries Act to provide for the right of adopted persons to letters of administration.

Bill amending Section 16 of the Wills Act to provide that the words "lineal descendants," "issue" and "lineal heirs" shall include adopted children.

These bills follow the present law as enunciated by the Supreme Court in the past few years construing Section 16(a) and (b) of the Intestate Act.

To the above bills may be added a suggestion further amending Section 2(c) in order to make it absolutely clear that the spouses surviving are entitled to a prior right to letters of administration upon the estate of the deceased spouse. In other words, giving to each spouse the same right of priority as was given to the surviving husband before the amendment of 1925. This suggestion is made in view of the construction placed upon the present Section 2(c) and as it affected the right of a widow to letters in Friese's Estate, 317 Pa. 86, 176 A. 225 (1934).

II. WORKMEN'S COMPENSATION ACT

One of the probable storm-centers of proposed legislation in the Session of 1941 will be further amendments to the Workmen's Compensation Act as amended in the Session of 1939. The subject is controversial relating to the respective rights of employer and employe, with the insurance carriers more or less in the background. In the Earle Administration and during the Session of 1937, exten-
sive amendments to the Workmen's Compensation Act of 1915 were passed and again during the James Administration and in the Session of 1939 further amendments were made changing various provisions as enacted in the Session of 1937. It has been alleged that the legislation of 1937 was influenced by labor, whereas that of 1939 was under the spell of capital as represented by the insurance carriers. Whether these charges or counter-charges are correct is not the theme of the present writing, but it is hoped that in the Session of 1941 the Compensation Law will be given further and considerate attention and that the workmen's rights be protected and safeguarded to the fullest extent as was the original purpose of this legislation. Fair and impartial results can be attained in further enactments on this subject if (1) economic interests are eliminated as far as possible, and (2) the administration of the law is removed from politics. With these two objectives in mind the following legislation is suggested:

(a) That all compensation insurance carried by employers shall be written exclusively by the State Workmen's Insurance Fund.

(b) That the Workmen's Compensation Board consist of five members appointed by the Governor by and with the approval of the Senate and for a period of a ten-year term, and not removable from office except by impeachment proceedings as in the cases of the judges and justices of our appellate courts.

(c) That of the five members above mentioned, two shall be of the medical profession.

(d) That the Compensation Referes shall be appointed by and with the approval of the Senate and for a period of a ten-year term and not removable from office except by impeachment proceedings as in the case of the judges of the courts of common pleas.

(e) That three members of the Superior Court as designated by the president judge of that court shall constitute a Board of Appeal from the awards and decisions of the Workmen's Compensation Board on matters of law, and that the present law providing for appeals to the courts of common pleas shall be abolished.

(f) That the three members of the Superior Court designated as a Board of Appeal shall hear the cases appealed in the order as filed and without designation as to term, to the end and with the objective of having appealed cases disposed of in the quickest possible way.

(g) That in appeal cases to the Board, both from the Referee to the Workmen's Compensation Board and likewise from the Workmen's Compensation Board to the three-member Appeal Board, typewritten briefs shall be permitted by general order and no printed briefs required.

(h) That in appeals from the Referee to the Workmen's Compensation Board, Appellant and Appellee shall be furnished by the Referee's Office with a copy of the typewritten testimony as it has been taken stenographically but without charge.

(i) That further appeals from the Board of Appeal of the Superior Court shall be to the Supreme Court as cases are now appealed from the Superior Court to the Supreme Court.

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III. **The Penal Code of 1939**

The commissioners appointed in pursuance of a resolution of the Legislature in 1858 to collect all the statutes relating to the criminal laws of Pennsylvania; to arrange them systematically under proper titles, divisions, and sections; to suggest to the Legislature any contradictions, omissions, defects, and imperfections and the manner in which they could be reconciled, supplied, improved and amended; to designate such statutes as ought to be repealed; and to prepare and submit to the Legislature such new statutes as such repeal rendered advisable or necessary, thought well of the work which they did in obedience to this resolution.

In their report to the Legislature the commissioners declared that common law definitions of crimes were so clear, perspicuous and precise that it was doubtful if they could be improved upon by the most skillful codification and that therefore the code which they recommended to the Legislature consisted of the "common law and judicious and well considered statutes extending its operation so as to embrace new social emergencies."

The forensic experience of those who were called upon to administer the code enacted in 1860 in response to this recommendation demonstrated that the common law definitions were not always precise and perspicuous and that the statutes were not all judicious and well considered.

As a result of the defects inherent in the criminal code of 1860 and of the fact that many criminal statutes were subsequently passed without reference to the provisions of the code of 1860 or of statutes passed subsequently thereto, the so-called criminal code of Pennsylvania became exceedingly defective and inadequate. It was a mixture of inconsistent theories; many sections were poorly drawn; many were obsolete; many were overlapping; and the penalties provided for the various crimes were inconsistent with each other.

As a consequence of the recognized inadequacy of the criminal code, for the last twenty years there has been a persistent insistence that the criminal laws of the Commonwealth should be carefully, scientifically and comprehensively consolidated, amended and revised. The ultimate result of this effort was the enactment of the Penal Code of 1939. *Mons ruit. Mus fuit.*

The Penal Code of 1939 was a perfect example of what has been described as aglutinous and tonsorial jurisprudence. Consequently the criticism of it was immediate, widespread, adverse and devastating. There is a rather urgent and common desire that it should be reconsidered and amended and revised at the present session of the Legislature. Those to whom this task is delegated should consider, among other things, the following matters:

**Methods of Proscription**

The Penal Code of 1939 makes acts criminal in the following four ways:

1. Some crimes are named and defined, as, e.g., "treason" in section 201 and "sedition" in section 207.

2. Some crimes are named but not defined, as, e.g., "larceny" in section 807 and "murder" in section 701.

3. Some crimes are defined but not named, as, e.g., the crime of breaking down fences in section 940 and the crime of mutilating monuments in section 522.
Some crimes are neither named nor defined. Section 1101 provides: "Every offense now punishable either by the statute or common law of this Commonwealth and not specifically provided for by this act shall continue to be an offense punishable as heretofore."

Those who are called upon to draft the amendments or revision of the code should consider carefully whether it is desirable to use all of these various methods of interdiction and particularly whether it is desirable to retain the doctrine of "common law crimes" by a provision similar to section 1101.

**Names**

Each section of the Code of 1939 has a section heading and these sectional headings usually are intended as the names of the crimes to which the section relates, as, e. g., "Libel," section 412, "Enticing Persons to Gamble," section 606, and "Pollution of Drinking Water," section 640. But this is not always true. Certainly the section heading "Bank Cashiers," section 686, or "Electric Storage Batteries," section 884, or "Fences," section 940, can hardly be intended as the name of a crime.

The giving of a specific name to each crime may promote convenience of expression and of reference, but it may also be misleading. It is difficult to justify the giving of the well known common law name of "burglary" to a statutory crime which resembles common law burglary in only relatively unimportant respects, section 901.

**Definitions**

The question whether all crimes should be specifically defined by statute or whether statutes may also make acts criminal by simply using their common law name or whether the whole doctrine of common law crimes should be retained is one upon which the authorities have differed for many years. But certainly if crimes are defined by statute there should be uniformity of expression in defining similar crimes. There seems to be no good reason why if one who "wilfully" mutilates a book (section 910) or "wilfully" injures the property of an exhibitor at a fair (section 912) is guilty of a crime, one who destroys the window of a dwelling house is guilty only if he does it "wilfully and maliciously" (section 915); and one who destroys a dam is guilty if he does it "maliciously" (section 926); and one who throws an explosive substance against a building is guilty only if he did so "unlawfully, wantonly, wilfully and maliciously" (section 917); and one who shuts a water lock is guilty if he does it merely "wantonly" (section 923).

It is also difficult to discover why if one "steals" a bank bill he is guilty of "larceny of a bank bill" (section 808); one is guilty of larceny of a motor vehicle "if he either steals or takes" it (section 810); and one is guilty of "larceny of growing property" if he either "steals" or "takes" or "carries away" (section 811).

It is also difficult to discover why a tax collector is guilty of embezzlement if he "converts or appropriates" (section 823) but an officer of a corporation is guilty of embezzlement if he "fraudulently takes, converts or applies to his own use" (section 827); and a transporter is guilty of embezzlement if he "fraudulently sells, disposes of or pledges" (section 831).

"Larceny of Fixtures," "Larceny of Electric Equipment" and would render un-
necessary most of the sections relative to embezzlement and malicious mischief.

Punishments

The draftsmen of the Code of 1939 prescribed a variety of punishments for
the various crimes. They evidently believed that in the individualization of pun-
ishment the crime and not the criminal should be taken as the criterion.

The variety of the punishments provided is sufficiently evidenced merely by
stating that the following kinds of imprisonment are prescribed for various crimes:

- Imprisonment
- Simple Imprisonment
- Imprisonment Without Labor
- Simple Imprisonment Without Labor
- Imprisonment by Separate OR Solitary Confinement at Labor
- Imprisonment by Separate AND Solitary Confinement at Labor
- Imprisonment by Separate and Solitary Confinement
- Imprisonment in Solitary Confinement
- Imprisonment at HARD Labor
- Imprisonment at Labor

There are some crimes for which no punishment is prescribed.

Classification

The Code classifies crimes as felonies and misdemeanors without defining
either term and without setting forth the basis of the classification. There are
some crimes which are not classified as either felonies or misdemeanors and at least
one crime which is classified as both.

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