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Review of Pennsylvania Legislation 1939 - Criminal Law and Procedure Waiver of Indictment on Plea of Not Guilty

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The Act, by its terms,[5] becomes effective immediately upon final enactment, which was June 9, 1939.

It is to be noted that similar statutes, or those with the same purpose in view, have been enacted in a number of other states, notably Michigan,[6] Washington,[7] Iowa,[8] Nebraska,[9] and New York.[10]

ROBERT I. SHADLE

c. *Waiver of Indictment on Plea of Not Guilty*

The Act of June 15, 1939,[1] amends the Act of April 15, 1907,[2] by providing that a person accused of any crime except homicide may "waive an indictment by a grand jury" and enter "a plea of *not guilty*," and in such case the accused may be tried for the crime "with or without a jury as provided by law."

This Act quite manifestly decreases the importance of the accusatory function of the grand jury. The necessity of a formal accusation by a grand jury has been for many years a fundamental characteristic of Anglo-American criminal procedure. The necessity for securing an indictment from a grand jury and the powerlessness of the king to proceed without in the early days (1249) in England is strikingly demonstrated by Pollock and Maitland in their *History of English Law*.[3] In more recent times the necessity for an indictment by a grand jury has been regarded as a traditional barrier and a valuable safeguard against the unjust oppression of the accused.

It may well be argued that this barrier ought not to be destroyed unless its uselessness has been fully demonstrated and is generally conceded, even though the removal is limited to cases in which the accused *apparently* freely consents.

The gradual attrition of the importance of the accusatory function of the grand jury is in marked contrast with recent remarkable increases in the importance and use of the inquisitorial function of the grand jury. Until recently, the inquisitorial power of the grand jury was regarded as an extraordinary one, to be exercised sparingly and with great caution and only when special circumstances or pressing emergencies require it for the suppression of general and public evils. But this, in view of very recent developments, can no longer be said to be true.

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[5]Section 3.
[6]Mich. Public Acts of 1925, Act No. 280.
[7]Wash. Acts 1903, p. 68, c. 56.
[8]Iowa, Acts 37th Gen. Ass., c. 293.
[9]Neb. Comp. St. 1922, section 9737.
[10]N. Y. PENAL LAW, § 270, as amended by Laws 1917, c. 783.

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[1]P. L. 400, 19 PURD. STATS. (Pa.) § 241.
[2]P. L. 62.
[3]Vol. 2, p. 652.

A state has, of course, the power to determine by its legislature the methods in which it will initiate and conduct its prosecutions, save as restrained by constitutional restriction. There is no provision in the Federal Constitution requiring a state to initiate its criminal prosecutions by indictment by a grand jury. The due process of law clause does not require it.

The maintenance of the accusatory function of the grand jury was supposed to be secured to the accused by Section 10 of Article I of the present Pennsylvania Constitution, but one who, after reading the decision in *Commonwealth v. Francies*,[4] attacks the constitutionality of the present statute will demonstrate the truth of the adage that fools rush in where angels fear to tread.

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IV. DOMESTIC RELATIONS

When a woman marries, her correct legal surname becomes that of her husband. A subsequent divorce *a vinculo* does not of itself have the effect of restoring her maiden name. Such divorcee could have her name changed by a petition under the Act of April 18, 1923.[1] It has been held, however, that this statute does not abrogate the common law rule that a person may assume any name which does not interfere with the rights of others, and hence a divorced woman may resume her maiden name without any statutory authority.[2] However, it would seem desirable for her to have some formal, authoritative record of the change and yet not need to take court proceedings under the general statute. To accomplish this the Legislature, following the lead of over thirty states,[3] provided by the Act of May 25, 1939[4] that it shall be lawful for a woman who has been divorced from the bonds of matrimony to retake her maiden name. She must file written notice of such intention with the prothonotary of the court where the divorce was granted and a certificate copy thereof is competent evidence for all purposes of her right to use such maiden name. It will be noticed that this applies only to an absolute divorce, for a divorce *a mensa et thoro* does not terminate the marriage, while if a purported marriage is annulled, the woman necessarily reverts to her former name.

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4250 Pa. 496, 95 Atl. 527 (1915).

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1P. L. 75, 54 PURD. STATS. (Pa.) 1.
2Appeal of Egerter, 32 Pa. D. & C. 164 (1938).
3See VERNIER, AMERICAN FAMILY LAWS (1931) § 93.
4P. L. 192, 12 PURD. STATS. (Pa.) § 98.

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