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Review of Pennsylvania Legislation 1939 - Restitution

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Paragraph (b) was added to Section 405 and provides that every motor carrier is prohibited from interchanging, receiving or delivering with, from, or to any common carrier which does not have a certificate authorizing it to transport property within the jurisdiction of the Act. The same Act adds a proviso to Section 915 to the effect that all motor carriers of passengers whose current liquid assets do not exceed their current liabilities by $100,000 must cover each vehicle with a public liability policy in such amounts as the Commission may prescribe, but not less than a five and ten thousand dollar policy. It also adds a new Section to Article IX (Section 922) which requires the Department of Revenue to cooperate in the issuance of registration plates for commercial vehicles which will identify those operating under Commission certificates, without the need of separate identification plates; and a new Section to Article XIII (1315) fixing penalties for violations by officers, agents, employes, shippers, or consignees of any provisions of the Act relating to motor carriers.

F. E. Reader*

XI. Restitution

The Act of June 24, 1937, made the property of an indigent person liable for the expenses of his support and burial incurred by any public body whether such property was owned "at" the time the expenses were incurred or "acquired thereafter." The Act of June 9, 1939, amends the former Act and provides for such liability only "if such property was owned during the time the expenses were incurred or if the right to ownership of such property existed or was acquired during the time such expenses were incurred."

The Act of 1937 made a judgment for moneys so expended a lien upon the real estate of the indigent person and made it collectible as other judgments.

The Act of 1939 provides that the home of the indigent person shall not be subject to execution "during the lifetime of the indigent person, surviving spouse, or dependent children."

In Wills' Estate, it is said:

"From the general tenor and purpose of this legislation, it is clear that there was an implied obligation on the part of the beneficiary to repay the state for its assistance, if, and when, he was in a position to

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8 66 Purd. Stats. (Pa.) § 1362.
9 66 Purd. Stats. (Pa.) § 1505.

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1 P. L. 2045.
3 536 Pa. 151, 7 A. (2d) 329, decided July 3, 1939.
do so, and that this obligation should constitute a claim upon the estate of a deceased beneficiary. There was no need to incorporate this condition in the statute, for at common law there is an implied duty on the part of a recipient of public assistance, or his estate, to make reimbursement."

and 4

"Therefore it seems to us that although the Act of 1934 made no express provision for reimbursement, there was an implied condition attached to every payment of assistance funds, that the recipient would repay the Commonwealth when able to do so, and that his estate should be subject to the same liability. Whether the obligation be regarded as contractual or quasi-contractual, it was nevertheless inherent in the acceptance of state aid. It is apparent that the provision of Section 15 of the Act of 1936 is merely declaratory of the existing law, creating no new obligation and conferring no additional right or remedy upon the Commonwealth which it did not already possess."

When the Act of 1939 was enacted, less than a month before this decision of the Supreme Court, it must have been supposed by the Legislature that the right to recover expenses incurred was dependent upon the existence of a statute creating the right. It now makes the statutory right dependent upon the ownership of property while the expenses are being incurred. If one rejects a tendered assistance payment the day before he inherits a fortune, he may keep the fortune without liability for past assistance, so far as the statute is concerned. But since it is now held that a common law liability exists aside from the statute, and since the statute does not say that there shall be no liability unless assistance was accepted while one had property, it may be that the Act of 1939 will not serve to end such liability. It does definitely stay execution on the "home and furnishings" of indigent persons, regardless of what other property the defendant in the judgment may have acquired subsequent to receiving assistance.

It had been held 4a that liability to repay what one had received as old age assistance did not exist under the Act of January 18, 1834,5 but that it was first created by the Act of June 25, 1936.6 This was the view taken by the lower court in Waits' Estate. The Legislature appears to have had the same notion.

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