The Court of Common Pleas of the County in Which the Seat of Government is Located

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As a result of being in "the county in which the seat of government is located" the Court of Common Pleas of Dauphin County occupies a unique position among the Courts of Pennsylvania.

It is our intention in this article to outline briefly some of the steps in the development of its special jurisdiction, and to make brief reference to the practice before it. This article should not be considered a detailed or comprehensive account of its history, jurisdiction, or practice.

At the present time the Common Pleas Court is composed of three judges. By Acts Nos. 216, 217 and 218 of 1937, a separate Orphans' Court was created for Dauphin County, and given jurisdiction, along with the Court of Common Pleas, to determine suits in which the Commonwealth is a party. A separate docket is kept in the Prothonotary's Office in Dauphin County, known as the "Commonwealth Docket", in which are placed appeals and other cases in which the Commonwealth is a party. (This, of course, does not include criminal cases.) Naturally counsel from all over the state practice in what is sometimes unofficially referred to as the "Commonwealth Court".

There have been numerous Acts passed giving the Common Pleas Court of Dauphin County special jurisdiction, and reference is made here to only a few of the more important.

The Act of March 30, 1811 provided:

"That if any person or persons, body politic or corporate, be dissatisfied with the settlement of his, her or their account, by the auditor-general and state treasurer, he, she, or they may appeal therefrom to THE COURT OF COMMON PLEAS OF THE COUNTY IN WHICH THE SEAT OF GOVERNMENT SHALL THEN BE, and such appeal shall be transmitted by the auditor-general to the clerk of the said court, to be by him entered of record, subject to like proceedings under the directions of the state treasurer as in common suits . . ."
The Court operated under this Section in disposing of tax appeals until the passage of the Fiscal Code of April 9, 1929, which by Section 1805 specifically repealed it, but retained its provisions generally in Section 1104 which provides for an "appeal to the Court of Common Pleas of Dauphin County from the decision of the Board of Finance and Revenue or from the decision of the Department of Revenue or of the Department of Auditor General, as the case may be."

Most of the cases contained in the Commonwealth Docket are appeals taken from tax settlements under the authority of the aforesaid law.

The Act of April 7, 1870, as amended by the Act of May 27, 1937 provides as follows:

"The court of common pleas of the county of Dauphin and the judges of the orphans' court of Dauphin County are hereby clothed with jurisdiction, throughout the State, for the purpose of hearing and determining all suits, claims and demands whatever, at law and in equity, in the court of common pleas of said county, in which the Commonwealth may be the party plaintiff for accounts, unpaid balances, unpaid liens, taxes, penalties and all other causes of action, real, personal and mixed."

The purpose of this Act was "simply this: That while suits could be brought in the court of common pleas of Dauphin County, by the Commonwealth, against either natural or artificial persons, resident or located in any part of the state, for any pecuniary demand, the attorney general might be put to the inconvenience of following the supreme court in its peregrinations, or of going into the remote counties of the state, to exercise the prerogative of the commonwealth to call upon corporations to show their warrant for acts claimed to be usurpations of rights belonging to her alone. We have no doubt, 'the true reason of the remedy' was, that the convenience of the commonwealth required that tribunal should be found, at the seat of government, to which her law officer could resort in all cases in which an appeal to the courts on her behalf should become necessary."

Justice Simpson in *Comm. v. Wilkins*, stated that "the evident purpose of the said Act is that the Commonwealth when suing in her own right shall be allowed to prosecute her claim at the seat of government and not be required to go to other parts of the state where the defendants happen to reside. The fact that under other legislation she has also the privilege of proceeding wher-

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8P.L. 343.
4P.L. 57, 17 PS 255.
5P.L. 783.
ever the defendant may be found and served with process is beside the question. For . . . she still has the absolute right to litigate her claims in Dauphin County if she chooses so to do.”

The passage of the Unemployment Compensation Law has opened a new field which is likely to bring an increasing number of cases to the Dauphin County Courts.

Although appeals of claimants are taken directly from the Unemployment Compensation Board of Review to the Superior Court, Section 309 of the Act provides that:

"If after notice of the Department any employer fails, neglects or refuses to pay any contribution due or the interest or penalties due thereon, the amount due may be collected by civil action in the name of the Commonwealth . . . ."

This, taken with the aforesaid Act of 1870, results in the suits being brought in the Court of Common Pleas of Dauphin County.

In addition to this under the amendment of April 23, 1942, to Section 304 of the Act, the Department has authority to make assessments against employers who fail to file reports, and an appeal "to the Court of Common Pleas of Dauphin County" may be had by any petitioner dissatisfied with the action of the Department on his petition for re-assessment.

The first of these cases are now being appealed and none has yet been heard. No allowance by the Court is deemed necessary and appeals are being taken by filing the appeal along with a petition specifying all of the objections to the assessment or re-assessment.

Many of the Acts creating the various State Boards and Commissions contain provisions for appeals from their action to the Court of Common Pleas of Dauphin County. A few examples are: The "Milk Control Law" of April 28, 1937;9 the "Dental Law" of May 1, 1933;10 the "Professional Engineers Act" of May 6, 1927;11 the "Registered Nurses Act" of May 1, 1909;12 and the "Real Estate Brokers License Act" of May 1, 1929.13

Perhaps the most frequent actions now being brought before the Court of Common Pleas of Dauphin County are writs of mandamus issued to state officers, boards and commissions.

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7271 Pa. 527.
9P.L. 417, Sec. 901 et seq, 31 PS, 700 J-901 et seq.
10P.L. 216, 63 PS 120 et seq.
11P.L. 820, 63 PS 131 et seq.
12P.L. 321, 63 PS 191 et seq.
13P.L. 1216, 63 PS 431 et seq.
An interesting history of the writ, and the jurisdiction of the Courts to issue it, is contained in the case of Comm. v. Wickersham. There we find that, "by the common law the writ of mandamus was looked upon as a high prerogative writ which could be issued out of the Court of King's Bench alone, where the king was originally supposed to be seated in person. The power to issue it did not exist in any inferior tribunal . . . By an early statute (Act of 22nd of May 1722) the Supreme Court of this state was authorized to administer justice as fully and amply, to all intents and purposes whatsoever, as the justice of the Court of King's Bench, Common Pleas and Exchequer at Westminster or any of them may or can do. The law continued in force . . . until the convention for forming a new constitution, in the plentitude of its wisdom, abrogated the power altogether without conferring it on any other tribunal. The third section of the fifth article gives authority to issue writs of mandamus to all inferior courts but takes away original jurisdiction in all other cases . . . The Courts of Common Pleas in the state never were authorized to issue the high prerogative writ of mandamus until it was conferred in a very limited form by the 18th section of the Act of June 14th, 1836, which declares that they shall within their respective counties have the like power with the Supreme Court to issue writs of mandamus to all officers and magistrates elected or appointed in and for the respective county, or in or for any township, district or place within such county and to all corporations being or having their chief place of business within such county."

In the aforesaid case it was held that no power existed in the Court to issue a writ of mandamus to a state officer appointed by the Governor, and it was suggested that if the Legislature intended to give any such power to the inferior courts over the state departments it had to be brought about by direct legislation.

Two years later by the Act of May 25, 1881, the Legislature provided that, "The Court of Common Pleas of the county in which the seat of government is or may be located shall have the power and it shall be required to issue the writ of mandamus to the Governor, Lieutenant Governor, Secretary of the Commonwealth, Attorney General, Secretary of Internal Affairs, Superintendent of Public Instruction, State Treasurer and Auditor General, which may be served by the Sheriff or his deputy in any county of the Commonwealth, and thereupon like proceedings be had therein as in any other writs of mandamus issued out of Courts of Common Pleas of this Commonwealth."

Writs of mandamus are now issued under authority of the Act of June 8, 1893, which contains the following:

1490 Pa. 311 (1879).
15P.L. 32.
16P.L. 345, as amended, 12 PS 1911.
"... the court of common pleas of the county in which the seat of government is or may be located shall have the power, and it shall be required, to issue the writ of mandamus to all officers of the executive department of the Commonwealth as defined in Article IV, section one, of the Constitution, except the Governor; all other heads of administrative departments of the State government, except the Secretary of Banking; all independent administrative boards or commissions of the State government and all departmental administrative boards or commissions of the State government."

A recent development in the power of the Court of Common Pleas of Dauphin County to issue writs of mandamus is found in the case of Hotel Casey Co. v. Ross. Because the Fiscal Code provided for no appeal from the action of the Board of Finance and Revenue in petitions for refund (to be distinguished from petitions for resettlement) and because it was held that the action of the Board was final, it was believed that there was no power in the Court to review the action of the Board. It was held, however, in the above case that the Court of Common Pleas of Dauphin County could pass upon the refusal of the Board of Finance and Revenue to grant a refund. The matter was brought before the Court on a writ of mandamus which it was held the Court had authority to issue in accordance with the above quoted provisions of the Act of 1893.

**Practice**

Regular sessions of "Commonwealth Court" are held in January, March, June and October. Cases for these sessions are placed on the list in the office of the Prothonotary of Dauphin County and are called by the Court on days set in the Court Calendar. Both arguments and trials are placed on the same list, and heard during the same sessions of the Court.

Special sessions of "Commonwealth Court" are held almost every month. It is frequently necessary, as in election matters, to give the cases precedence over all other work.

Almost without exception, "Commonwealth cases" are heard by a Judge without a jury, in accordance with the provision of the Act of April 22, 1874. A stipulation waiving a jury trial is obtained by the Attorney General's office, signed by counsel for all parties involved, and introduced as an exhibit at the trial of the case.

The hearings are naturally less formal than trials before a jury. Sometimes all four judges hear the testimony while at other times only one or two sit.

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17343 Pa. 573 (1942).
18Shorts' Estate, 315 Pa. 561; also see Seidl's Appeal, 143 Pa. Super. 539.
19P.L. 109, 12 PS 688 et seq.
for this purpose. At the opening of the case the Attorney General usually makes a brief statement of the questions involved and issues to be tried. If he desires to do so, opposing counsel is also given an opportunity to briefly state his position to the Court before the taking of testimony.

Frequently there are very few disputed facts in these cases. The Court encourages the parties to stipulate all facts which can be agreed upon, and the Judges have frequently expressed from the Bench the thought that much time could be saved if counsel would stipulate more of the facts which are not in dispute. The Court also encourages oral stipulations which are frequently made during the trial of the cases.

Testimony to which objection is made is frequently admitted subject to the objection and passed upon subsequently by the Court. After taking of testimony is concluded the case is generally placed upon the list for argument at the next term, or a special time set therefor. Occasionally counsel desire to submit the case on briefs, which desire is at times allowed by the Court. In a few instances a brief argument is heard by the trial judge immediately after testimony is taken.

At the present time the Court is considering separating the sessions of Court at which trials will be held and the sessions at which arguments are heard.

At the time of arguing the case, or submitting the briefs, counsel also submit requests for findings of fact and conclusions of law. Generally, in addition to writing the opinion, the Court acts separately on each one of these requests. This is done by writing on the margin of each request, "affirmed", "refused", "immaterial", or some qualifying remarks. Reference to these is made in the Opinion and the requests filed as a part of the record.

The Judges are of the opinion that the requests for findings of fact and conclusions of law are too numerous. Eighty to one hundred such requests by each side in a single case are not unusual. The Judges are also of the opinion that in filing exceptions counsel could generally raise the issues by fewer exceptions. In one case the Court stated five issues as all that were raised by one hundred and twenty exceptions.

The trial judge generally does not pass upon the case until it is argued before the entire court en banc. The Opinion as handed down in the first instance is not merely the opinion of the trial judge, but is the opinion of the entire Court. For this reason exceptions to the Opinion are frequently overruled as a matter of course, unless the Court's attention is called to something which was overlooked in the original Opinion.

As most of the "Commonwealth cases" are tax appeals, brief reference to the practice in this particular field might be advisable.
Section 1104 of the Fiscal Code\(^2\) authorizes the appeal to the Court of Common Pleas of Dauphin County and sets forth the practice to be followed. We therefore quote it in its entirety:

"Any person, association, corporation, public officer, or other debtor, aggrieved by the decision of the Board of Finance and Revenue, or by the board’s failure to act upon his or its petition for review within ninety (90) days, may within sixty (60) days, appeal to the court of common pleas of Dauphin County from the decision of the Board of Finance and Revenue, or from the decision of the Department of Revenue, or of the Department of the Auditor General, as the case may be. Such appeal shall be in such form as shall be prescribed by the rules of the court of common pleas of Dauphin County. All such appeals shall be lodged with the Department of Justice, which department shall transmit them to the clerk of the court of common pleas of Dauphin County and notify the appellant of the date of filing and the term and number of the appeal.

"Every such appeal shall be accompanied with a specification of objections to the settlement, resettlement or other decision, as the case may be, and the party appealing shall enter sufficient security, before one of the judges of the court of common pleas of Dauphin County, within ten (10) days next after the filing of the appeal, with the clerk, to prosecute the appeal with effect, to pay all costs and charges which the court shall award, and any sum of money which shall appear by the judgment of the court to be due by such party to the Commonwealth.

"The party appealing shall file, with every such appeal, an affidavit, containing the specification of objections, and stating that the appeal is not taken for delay but because appellant believes injustice has been done by the settlement or resettlement or other decision appealed from, and that the facts set forth therein are true to the best of affiant’s knowledge and belief. If a corporation, limited partnership, or joint-stock association, is the party appellant, such affidavit shall be taken by one of its chief officers.

"Appeals taken hereunder shall be hearings de novo, but no facts shall be admitted in evidence that were not brought to the attention of the department making the settlement, or in the application for resettlement, or petition for review prior to the appeal, and set forth in the specification of objections contained in the affidavit accompanying the appeal, unless the court shall be satisfied that the appellant was unable, by the exercise of reasonable diligence, to have laid such evidence before the department making the settlement and the Board of Finance and Revenue, and no questions shall be raised which are not included in the specification of objections filed as hereinbefore provided.

\(^2\)Act of April 9, 1929, P.L. 343, 72 PS 1704.
"From the judgment of the court of common pleas of Dauphin County, an appeal may be taken by either party as in other cases."

One of the unusual provisions of this Section is that requiring the appeal to be lodged with the Department of Justice, which department then transmits it to the "Clerk" of the Court of Common Pleas of Dauphin County. In other cases the practice is for the party taking an appeal to file it in the Court to which the appeal is taken. The unusual method provided in this section has been followed since the Act of 1811, supra, which provided that "the appeal shall be transmitted by the Auditor General to the clerk of said Court to be by him entered of record."

The hearings before the Court are de novo. The Commonwealth generally introduces the tax settlement, the re-settlement, if any, the opinion of the Board of Finance and Revenue, and then calls a taxing officer or investigator of the Department of Revenue to testify to the manner in which the settlement was made and any facts concerning the taxpayer's business which may be relative to the determination of the case. Stipulations of admitted facts are frequently used.

In a recent case the Commonwealth attempted, by introduction of testimony before the Court, to make claim for additional items of tax for which no claim had been made before the Board of Finance and Revenue. The Court held that where new issues were raised this could not be done. The Court, however, has at times increased the tax over that claimed by the Commonwealth where no new issues were involved.

Harrisburg, Penna. April 20, 1943.

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21Comm. v. West, 279 Commonwealth Docket, 1938, decided April 9, 1943.