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# Pennsylvania J.P. Courts-Jurisdiction-Constitutional Problems

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# PENNSYLVANIA J. P. COURTS— JURISDICTION—CONSTITUTIONAL PROBLEMS

Now, as in the past, the justice of the peace courts are a controversial branch of the law. This note will consider the following two problems concerning J. P. courts in Pennsylvania. Does a justice of the peace have jurisdiction over an action of trespass on the case? In a civil action involving less than one hundred dollars, is the right to appeal from a J. P. court only upon special allowance a denial of the right to trial by jury?

## Jurisdiction of Trespass on the Case

Can a justice of the peace, at the present time, entertain jurisdiction over an action which at common law would have been an action of trespass on the case? A review of the legislative and case history is necessary to satisfactorily examine this problem.

The J. P. courts received jurisdiction over some of the *ex delicto* actions by virtue of the act of 1814. It provided:

> The justices of the peace of this Commonwealth, and the aldermen of the city of Philadelphia, shall have jurisdiction of actions of trover and conversion, and of actions of trepass, brought for the recovery of damages for injury done or committed on real and personal estates in all cases where the value of the property claimed or the damages alleged to have been sustained shall not exceed one hundred dollars.[1]

The courts experienced no difficulty in construing the technical term "trespass" because when this statute was enacted, trespass and trespass on the case were two entirely different forms of action.[2]

Later, the jurisdictional amount was "enlarged" to three hundred dollars by the act of 1879.[3] Again the courts did not hesitate to hold that an action of trespass on the case was not within the jurisditcion of a justice of the peace.[4]

The rational for arbitrarily excluding actions of trespass on the case from the J. P.'s jurisdiction in 1814 is certainly not manifest in any of the court decisions or statutes. Possibly the legislature did not feel that a justice of the peace was competent to determine the question of consequential damages involved in

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[1] Pa. Stat. Ann. tit. 42, § 331 (1814).

[2] Paff v. Slack, 7 Pa. 254 (1848).

[3] Act of 1879, July 7, P.L. 194.

[4] Moreland v. Gordner, 109 Pa. 116 (1885); Wilcox v. Fowler, 2 Chest. 497 (1884).

an action of trespass on the case. At that time the J. P. was an appointee of the governor, and there were no qualification requirements necessary to hold such an office.[5]

It was clear, then, that these statutes did not give a J. P. jurisdiction over an action of trespass on the case. In the year 1887, however, the tranquility was disrupted by the passage of an act abolishing the procedural distinctions which existed between action *ex delicto*:

> So far as relates to procedure, the distinctions heretofore existing between actions ex delicto be abolished, and that all damages, heretofore recoverable in trespass, trover, or trespass on the case, shall hereafter be sued for and recovered in one form of action to be called an "action of trespass."[6]

A companion section was passed to further clarify the meaning of this act:

> The true intent and meaning of this act is, that it applies only to the present actions of assumpsit, debt, covenant, trespass, trover and case, and that all other actions now existing shall remain as heretofore, and are in no way affected by the passage of this act; and that, as to the action herein recited, it applies to the procedure only, and the legal rights of the party are not in any way to be affected thereby.[7]

Since the acts of 1814 and 1879 conferred jurisdiction over trespass actions on a justice of the peace, it would seem that under the act of 1887 one could bring an action which involved consequential damages and indirect injury before a justice of the peace by utilizing the new, all-inclusive label of "trespass." An evaluation of three appellate decisions on this issue can only lead to the conclusion that the courts were not willing to hold that the procedural act of 1887 extended the jurisdiction of justices of the peace.

The first of these, *Birkhead v. Ward,* was decided in 1908.[8] In this case the plaintiff claimed, "$10.50 as the cost of repairing a retaining wall belonging to defendants." [9] The court held that no express or implied contract was averred in the plaintiff's statement of claim, nor did he aver an action of trespass.[10] The court expressly held that the act of 1887 did not extend the jurisdiction of the J. P. courts to include "case," [11] and denied recovery.[12]

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[5] PA. CONST. art. V § 10 (1790).
[6] PA. STAT. ANN. tit. 12, § 2 (1887).
[7] PA. STAT. ANN. tit. 12, § 3 (1887).
[8] Birkhead v. Ward, 35 Pa. Super. 235 (1908).
[9] *Id.* at 236.
[10] *Id.* at 239.
[11] *Id.* at 240.
[12] *Id.* at 241.

In *Sprout v. Kirk*[13] and in *Battles v. Nesbit,*[14] the superior court said by way of *dicta* that the act of 1887 did not extend the jurisdiction of the J. P. court to include an action of trespass on the case. The only reason given in these cases for not extending the J. P.'s jurisdiction was that the act of 1887 "relates to procedure only." Hence, it is clear under these decisions that even after 1887 a justice of the peace could not hear an action of trespass on the case.

In 1955, a jurisdictional act, amending the act of 1879, was passed which provided:

> Be it enacted, &., That the alderman, magistrates, and justices of the peace, in this Commonwealth, shall have concurrent jurisdiction with the courts of common pleas of all actions arising from contracts either express or implied and of all contracts arising from contract either express or implied and all actions of trespass [and of trover and conversion], wherein the sum demanded does not exceed [three hundred] *five hundred* ($500) dollars, except in case of real contract where the title to lands or tenements may come in question [, or action upon promise of marriage].[15]

Since there is no longer a need to use the language of "trespass on the case" because the act of 1887 eliminated the distinction, the legislature might well have used the term "trespass" in this act to include trespass on the case.

There have been no cases construing the act of 1955, as of this writing, so the Statutory Construction Act is a guide to analysis. That act provides: "When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters, the former law, if any, including other laws upon the same or similar subjects. . . ." [16]

Upon examination of the act of 1955, it is readily apparent that the only new language appearing in italics are those words and phrases which "enlarge" the jurisdictional amount from three hundred dollars to five hundred dollars.

However, the use of the word "trespass" is ambiguous. If the word means the same as it did in the acts of 1814 and 1879, it could not include the action of trespass on the case within its scope. If the legislature intended to use the word in its all-inclusive sense as directed by the act of 1887, the word would include the action of trespass on the case. If the legislature had intended to change the meaning of the word "trespass" to include an action of trespass on the case, they could not have done it by italicizing the word. Since the word

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[13] Sprout v. Kirk, 80 Pa. Super. 514 (1923).

[14] Battles v. Nesbit, 149 Pa. Super. 113, 27 A.2d 694 (1942).

[15] Act of 1955, December 9, P.L. 817 § 1. The Statutory Construction Act provides that the language in brackets has been deleted, and the language which is italicized has been added. PA. STAT. ANN. tit. 46, § 571 (1937).

[16] PA. STAT. ANN. tit. 46, § 551 (1937).

was also used in the act of 1879 it was not a "new word," although the legislature might have intended that it have a different meaning.

However, when statutory language is ambiguous, the Statutory Construction Act authorizes past statutory and case law to be utilized in determining the legislature's intent.[17] The superior court is the only appellate court that considered this question of J. P. jurisdiction over an action of trespass on the case. The supreme court has held *per curiam* that a decision of the superior court is the law of this Commonwealth on an issue squarely decided whenever it has not been overruled by the Pennsylvania Supreme Court.[18] As previously noted, the superior court said a J. P. court has no jurisdiction over an action of trespass on the case. In addition, since there was no discussion on this bill in the General Assembly,[19] it is probable that the legislature never considered making a change in the scope of the word trespass. As a result, the conclusion should be that the word "trespass" has the same scope in the amendatory act of 1955 as it did in the earlier acts.

### Trespass on the Case Under the Motor Vehicle Code

The language of the Motor Vehicle Code of 1959 also gives rise to the question of whether a justice of the peace has jurisdiction over the action of trespass on the case. The significant language of that statute is as follows:

> All civil actions for damages, arising from the use and operation of any vehicle, may . . . be brought before and magistrate, alderman, or justice of the peace. . . . No action involving more than one hundred dollars ($100.00) shall be brought before any magistrate in cities of the first class, and no action involving more than three hundred dollars ($300.00) shall be brought before any alderman, or justice of the peace.[20]

The language, "All civil actions for damages," has already been construed in prior enactments, and the only change that has occurred in the wording of the statute since 1923 has been the two hundred dollar increase in the jurisdictional amount.[21]

An example of how some courts have construed this language prior to the 1959 act may be found in *McClellan v. Powers*.[22] This court held that under

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[17] Pa. Stat. Ann. tit. 46, § 551 (1937).
[18] Townsend Trust, 349 Pa. 162, 36 A.2d 438 (1944).
[19] Pa. Legislative Journal (1955).
[20] Act of the General Assembly, No. 32 (July 1, 1959).
[21] The Act of 1923, June 14, P.L. 718 § 30 provided, "All civil actions for damages . . . may . . . be brought before any . . . justice of the peace. . . . Provided, That no action involving more than one hundred ($100) dollars shall be brought before any . . . justice of the peace."
[22] 22 Pa. D. & C. 447 (1935). See also: Campbell v. Krautheim, 4 Pa. D. & C. 577 (1924); Walsh v. Martin, 21 Pa. D. & C. 98 (1933).

the Vehicle Code of 1923 justices of the peace had jurisdiction over an action of trespass on the case.

It was not until 1938 that an appellate court dealt with the matter of whether an exception was made under the Motor Vehicle Code. The precise question was before the superior court in *Paulson v. Eisenberg.*[23] The court held that to construe the Motor Vehicle Code as conferring upon owners of automobiles a right of action in trespass different from the scope of the action of trespass that is used by persons injured in accidents generally would violate Article III, section 7 of the Pennsylvania Constitution.[24] This section provides: "The General Assembly shall not pass any local or special law . . . regulating the . . . jurisdiction of . . . courts, aldermen, justices of the peace . . . or other tribunal . . . ." The court further held that there was nothing in the title of the act that could be construed as enlarging the jurisdiction of justices of the peace; to construe the act as extending the J. P.'s jurisdiction over an action of trespass on the case would be to also violate Article III, section 3 of the Pennsylvania Constitution.[25] This section provides: "No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title." By way of *dicta,* the court reached the same conclusion in *Battles v. Nesbit.*[26]

It would appear that the action of trespass on the case must have been included in such all-inclusive language as "All civil actions for damages." However, the holdings of the previously mentioned decisions are equally applicable to the act of 1959. An action of trespass on the case, then, can not be heard by a justice of the peace under the Motor Vehicle Code.

Although this result must be reached in order to be legally consistent, it is suggested that the real purpose of these acts is being defeated by excluding the action of trespass on the case from a J. P.'s jurisdiction. The jurisdictional amount was increased in both of these acts in order that more injured parties in civil actions involving direct injuries would not have to drop their suits at the expensive prospect of bringing their claims into the court of common pleas. In this highly commercialized era more suits than ever before involve an agent or the servant of a defendant. This factual situation, of course, gives rise to the common law action of trespass on the case.[27] It is an injustice to deny these claimants of the comparatively simple and inexpensive remedy of a trial before a justice of the peace, especially where no apparent reason exists in the law for

[23] 134 Pa. Super. 503, 4 A.2d 585 (1938).
[24] *Id.* at 512, 513, 4 A.2d at 587.
[25] *Id.* at 510, 512, 4 A.2d at 587.
[26] *Supra,* note 14.
[27] Dreibelbis v. Bowman, 31 Pa. D. & C. 570 (1937); Matthews v. Klepfer, 40 D. & C. 484 (1941).

the distinction today. The J. P. courts have been deciding implied contract actions for well over a century, and it cannot be argued with any degree of conviction that an action of trespass on the case poses a knottier problem. This writer advocates an immediate remedy to this situation in the form of a statutory enactment by the General Assembly.

## DENIAL OF TRIAL BY JURY

The act of 1956, dealing with appeals in actions of trespass, provides:

> In every action of trespass before a magistrate, alderman or justice of the peace, in which a right of appeal from the decision thereof to the court of common pleas now exists, the right of appeal shall hereafter apply only where the judgment . . . shall exceed the amount of one hundred dollars. . . . In case the amount of judgment does not exceed one hundred dollars ($100), the judgment of the magistrate, alderman or justice of the peace shall be final except by petition to the court of common pleas for special allowance.[28]

The issue posed by this statute is whether the "special allowance" requirement is unconstitutional as a denial of the right to trial by jury.

One line of cases[29] has held that the "special allowance" provision violates Article I, section 6 of the Pennsylvania Constitution. This section provides: "Trial by jury shall be as heretofore and the right shall remain inviolate."

Another line of cases holds the act to be constitutional. The rationale underlying these decisions seems to be threefold. First, the act does not absolutely deny trial by jury. Second, it would not be practical to appeal when such a small amount is involved. Third, there never was a right of appeal for a sum less than $5.33.[30]

It is submitted that the "special allowance" provision of the act of 1955 is constitutional. This conclusion can be reached by analogy to the statutes providing for appeals from summary convictions and from judgments in suits for penalties. The Constitution of Pennsylvania provides that:

> In all cases of summary conviction in this Commonwealth, or of judgment in suit for a penalty before a magistrate, or court not of record, either party may appeal to such court of record as may be prescribed by law, upon allowance of the appellate court or judge thereof upon cause shown.[31]

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[28] PA. STAT. ANN. tit. 42, § 913a (Supp. 1956).

[29] Booz v. Reed, 13 Pa. D. & C. 2d 283 (1957); Randall v. Ort, 16 Pa. D. & C. 2d 533 (1938); Reading Bus Co. v. Reber, 18 Pa. D. & C. 2d 296 (1959).

[30] High v. Schaefer, 15 Pa. D. & C. 2d 134 (1958); Booz v. Reed (No. 2), 18 Pa. D. & C. 2d 261 (1959).

[31] PA. CONST. art. V § 14.

The act of 1876 was the first act to carry this provision into effect,[32] and thereafter the supreme court held that an appeal under the act was not given as a matter of right.[33]

In *Commonwealth v. McCann* the court considered whether Article V, section 14 of the Constitution relating to appeals in cases of summary convictions and in cases of judgments for penalties was inconsistent with Article I, section 6 of the Bill of Rights.[34] The court held that the provisions were not inconsistent and that "Regulating the method by which the judgment of an inferior court may be brought into the superior court for trial so that a jury may be reached upon any question of fact in dispute obtained is not a denial of trial by jury." [35]

The act of 1955 also regulates the manner by which the judgment of an inferior court may be brought into the court of common pleas. Since the "special allowance" provision regulating criminal matters has been upheld, there appears to be no valid reason for striking down a similar provision in a civil enactment.

Our society depends upon regulation to some extent for its very existence. At no time in the history of our federal or state constitution have the citizens enjoyed their constitutionally guaranteed rights free from all restraints. Although requiring a dissatisfied litigant to obtain a "special allowance" from the court of common pleas might possibly be considered a technical violation of his constitutionally guaranteed rights by a few courts[36] such a requirement is necessary if our courts are to function properly.

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[32] Act of 1876, April 17, P.L. 29 § 1.
[33] McGuire v. Shenandoah, 109 Pa. 614 (1885); Commonwealth v. Eichenberg, 140 Pa. 158, 21 Atl. 258 (1890).
[34] 174 Pa. 19, 34 Atl. 299 (1896).
[35] *Id.*, at 23, 34 Atl. at 300.
[36] *Supra*, note 29.