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LEGISLATION

The Pennsylvania Statutory Construction Act

On September 1, 1937,¹ there became effective in Pennsylvania the Statutory Construction Act,² which codifies, and in some instances changes, a few of the many rules used in the interpretation of statutes. It is not only a construction act, however, for it codifies all the prior effective statutes of the Commonwealth which were applicable to statutes in general, such as those acts which provided for the editing and publication of laws and bills.³ Nor is the Act an experiment in the field of statutory construction, since many states have such enactments. However, the majority of such statutes are merely skeletons in comparison with the comprehensive provisions of the Pennsylvania Act.

An examination of the statutes of other states reveals that most of them have merely brief sections providing for the interpretation of a few specific

1. As no effective date is provided by the statute, the effective date is September 1st.
PA. STAT. ANN. (Purdon, 1936) tit. 46, § 155.

2. Pa. Laws 1937, no. 282.

3. 28 PA. BAR ASS'N Q. 396 (1936).

words and phrases.⁴ Some of these also contain an additional provision that the repeal of a repealer does not revive the original law, or that statutes in derogation of the common law should not be construed strictly. Although eleven states devote special chapters to statutory construction,⁵ nevertheless, the majority of these are no more complete than those mentioned above.⁶ Four states simply have provisions that common law rules are applicable,⁷ whereas only one state has no provisions whatever.⁸

Reenactments

Several sections of the Act incorporate the previously existing acts which were applicable to statutes in general.⁹ For example, section 4, which provides the date upon which statutes enacted without a provision as to effective date shall become operative, is merely a re-enactment of a prior statute.¹⁰ Section 21 revives the law which required publication of notice for local and special legislation.¹¹ Section 22 reenacts the law requiring the Secretary of the Commonwealth to publish the statutes as soon as a bill becomes a law and to have them bound after each session of the Legislature.¹² Section 23 incorporates the recent act providing for the correction of errors in statutes.¹³ Section 24 revives the requirement that the prothonotaries shall keep on file the advance copies of the laws enacted at each session, for the use of the public.¹⁴ The printing of general laws, apart and separate from appropriation laws, is provided for in section 25.¹⁵ Section 37 incorporates the law which states that when time is mentioned in a statute, it shall be construed as standard time unless a different time is expressly provided for in the act.¹⁶

4. ALA. CODE ANN. (1928) §§ 1-15; CAL. CIV. CODE (Deering, 1931) §§ 2-21; DEL. REV. CODE (1935) c. 1, § 1; IND. STAT. ANN. (Baldwin, 1934) §§ 5, 6; IOWA CODE (1931) §§ 63, 64; KAN. GEN. STAT. ANN. (1935) §§ 77-201; LA. CIV. CODE ANN. (Dart, 1932) arts. 13-21; ME. REV. STAT. (1930) c. 1, §§ 5, 6; MD. CODE ANN. (Bagby, 1924) art. 1, §§ 1-15; MASS. GEN. LAWS (1932) c. 4, §§ 6-11; MICH. COMP. LAWS (1929) § 76; *Id.* (Supp. 1933) § 77-1; MINN. STAT. (Mason, 1927) §§ 1028-10933; MISS. CODE ANN. (1930) §§ 1365-1400; MONT. REV. CODES ANN. (1935) §§ 10519, 10520; NEV. COMP. LAWS (Hillyer, 1929) § 9022; N. H. PUB. LAWS (1926) c. 2; N. J. COMP. STAT. (1910) p. 4970; N. C. CODE ANN. (1935) § 3949; N. D. COMP. LAWS ANN. (1913) §§ 4318-4324, 7312, 7321-7327, 9201, 11172-11180; OHIO CODE ANN. (Baldwin, 1934) §§ 25, 26; OKLA. STAT. (1931) §§ 2, 3, 24-44; ORE. CODE ANN. (1930) §§ 9-214, 9-215, 9-222; S. C. CODE (1932) §§ 902, 2080, 2081; TENN. CODE ANN. (Michie, 1932) §§ 7282, 7593-7595, 7843, 7909; TEX. STAT. ANN. (Vernon, 1935) art. 10; UTAH REV. STAT. ANN. (1933) 88-2-1; VT. GEN. LAWS (1917) §§ 1-39; VA. CODE ANN. (1936) § 5; W. VA. CODE ANN. (1937) § 33; WIS. STAT. (1931) c. 370; WYO. REV. STAT. ANN. (1931) §§ 112-101, 112-105.

5. ARIZ. REV. CODE ANN. (Strockmeyer, 1928) c. 73, §§ 3038-3049; ARK. STAT. DIG. (1921) c. 165, §§ 9726-9759; COLO. STAT. ANN. (Mills, 1930) c. 155, § 6993; CONN. GEN. STAT. (1930) c. 341, §§ 6568-6569; GA. CODE (1933) § 102-102; ILL. REV. STAT. (Cahill, 1933) c. 131, §§ 1-5, *amended*, Ill. Laws 1935, p. 1428; KY. STAT. ANN. (Baldwin, 1936) c. 26, §§ 446-469; MO. STAT. ANN. (1932) §§ 649-661; N. M. STAT. ANN. (1929) §§ 139-101 to 139-104; R. I. GEN. LAWS (1923) c. 32; N. Y. CONS. LAWS (Cahill, 1930), *amended*, *id.* (Supp. 1935) c. 23.

6. Among those states which have more complete acts are: Arizona, Illinois, Kentucky, Missouri, New York, and Rhode Island.

7. FLA. COM. GEN. LAWS ANN. (1927) § 90; IDAHO CODE ANN. (1932) § 16-102; S. D. COMP. LAWS (1929) § 10656; 2 WASH. REV. STAT. ANN. (Remington, 1932) § 144.

8. Nebraska.

9. 28 PA. BAR ASS'N Q. 397 (1936).

10. PA. STAT. ANN. (Purdon, 1936) tit. 46, § 155.

11. *Id.* § 183.

12. *Id.* § 212.

13. *Id.* §§ 223, 224.

14. *Id.* § 211.

15. *Id.* § 216.

16. PA. STAT. ANN. (Purdon, 1936) tit. 76, § 171.

There are several other specific provisions which are worth mention here. Section 61 provides that whenever an intent to defraud is required in any law in order to constitute an offense, the law shall be construed to require only an intent to defraud any person or body politic. Section 36 provides, in effect, that when a bond is required by statute a surety company's bond will suffice. The provisions of this section are in substance contained in an existing statute.¹⁷ Section 38 provides that when any period of time is referred to in any law, it shall be computed so as to exclude the first and include the last day of such period, with the exception that if the last day shall happen to fall on Sunday or on any day made a legal holiday, either under Pennsylvania or Federal law, such day shall be omitted from the computation. This provision is merely a partial re-enactment of a previous but more inclusive statute dealing not only with time computation under statutes but also under rules of court, ordinances, municipal regulations and the like.¹⁸

Codifications and Alterations of Common Law Principles

Section 55 is a restatement of a well established common law rule which has been followed in Pennsylvania. It provides that although part of a law is found to be unconstitutional, nevertheless, the remaining provisions shall be held effective,¹⁹ unless the valid portions are so inseparably connected and dependent on the void provisions that it cannot be presumed that the legislature would have enacted one without the other.²⁰ The Act follows the old view tending to hold statutes severable whenever possible and leaving it to the court's discretion to determine whether the entire act should be declared void.²¹

Section 58 expressly abrogates the common law rule that statutes in derogation of the common law shall be strictly construed. However, it specifies that in the following classes of laws, the rule of strict construction is to remain applicable: penal provisions,²² retroactive provisions,²³ provisions imposing taxes²⁴ and those exempting persons and property from taxation,²⁵ provisions conferring the power of eminent domain and those exempting property from this power,²⁶ provisions decreasing the jurisdiction of a court of record,²⁷ and provisions enacted prior to the effective date of this law which are in derogation of the common law. The strict construction rule has always been applied without comment in Pennsylvania,²⁸ but frequently has been criticized elsewhere.²⁹ Yet,

17. *Id.* tit. 40, § 831.

18. *Id.* tit. 76, §§ 172, 173.

19. *Rothermel v. Meyerle*, 136 Pa. 250, 20 Atl. 583 (1890).

20. *Commonwealth v. Potts*, 79 Pa. 164 (1875); *Kelley v. Kalodner*, 320 Pa. 180, 181 Atl. 598 (1936).

21. See 1 COOLEY, CONSTITUTIONAL LIMITATIONS (8th ed. 1927) 359.

22. *Commonwealth v. Exler*, 243 Pa. 155, 89 Atl. 968 (1914).

23. *Ricup v. Bixter*, 2 Dall. 132 (Pa. 1791).

24. *Pittsburgh Terminal Coal Co. Appeals*, 83 Pa. Super. 535 (1924).

25. *Saxe v. Board of Revision*, 107 Pa. Super. 108, 163 Atl. 317 (1932).

26. *Lance's Appeal*, 55 Pa. 16 (1867).

27. *Felt v. Cook*, 95 Pa. 247 (1880).

28. *Cadbury v. Durval*, 10 Pa. 265 (1849); *Heaney v. Mauch Chunk Borough*, 322 Pa. 487, 185 Atl. 732 (1936).

29. *Fitzgerald v. Quann*, 109 N. Y. 441, 17 N. E. 354 (1888); *The Warkworth, L. R. 9 P. D. 20*, at 21 (1883); *ENDLICH, INTERPRETATION OF STATUTES* (1888) § 127. See *Billings v. Baker*, 28 Barb. 343, at 361 (N. Y. 1859) wherein Judge Potter said: "Why, in this noon of the 19th century, and under a free government are we solemnly warned against innovations upon the common law as it existed, and the legal precedents established in the days of the Norman conqueror? Did all knowledge exist in the past? Is the glory of the ancient common law so dazzling that the learning of the present day, and all the attempted reforms upon the system to meet the wants of the age, are to be regarded as dangerous experiments? With melancholy auguries against progress I have no sympathy. For theories which have no support but antiquity I have no veneration. For the outcry against innovation upon the

despite considerable doubt as to the propriety of such a rule, it was too securely established to be altered other than by statute. Under the Act, except in those instances specified, all statutes subsequently enacted must receive a liberal construction.

Section 72 provides that whenever any existing law, incorporated into and repealed by a code is also amended by other legislation enacted at the same session of the legislature, such separate amendment shall be construed to be in force notwithstanding the repeal by the code of the law it amends, and such amendment shall be construed to prevail over the corresponding provisions of the code. This section would therefore seem to mean that when a code incorporates and repeals an existing law and at the same session a separate act amends that law, then the separate act, even though adopted at an earlier date, supersedes the code. The merit of this provision is difficult to perceive. Codes are usually well considered and carefully drawn by such bodies as the Department of Justice³⁰ and the Legislative Reference Bureau³¹ and are subjected to the scrutiny of the bar associations, whereas separate enactments seldom receive such consideration. In addition, the attention of the interested groups is usually centered upon the code during its enactment. Therefore, it would seem that if a rule of construction is necessary to determine which law should take precedence, that rule should be adopted which favors the code. However, since the conflict arises as the result of an oversight usually brought about by the pressure of last minute enactments, no rule can adequately determine the legislative intent in such a case. It would be more desirable, therefore, to leave the determination of the outcome of such a mistake to the elasticity of judicial decision rather than to the hard and fast rule of a statute.³²

Section 94 is subject to the same criticism. It provides that whenever a law repeals any provision of another law incorporated into a code adopted at the same session of the legislature, the law repealing the provision so incorporated into the code shall be construed to effect a repeal of the corresponding provision of the code. Strangely, these sections do not seem to provide for the situation where both the act and the code amend the existing law; and since section 72 seems to be limited to the problem where the code repeals the existing law, it would not apply to the re-enactment of the existing law by the code when there

mysterious excellence of the English common law, which I cannot behold, I have no reverence. I hold an honest, sensible construction of the statute, according to its true intent, to be practical wisdom; and that the spirit of justice, befitting the wants of the age, is the soundest philosophy in a system of law. I regard it as a humiliating admission of intellectual decline, and worse than weak superstition, to assume that all wisdom existed in the former common law of England, or that laws suited to the condition of a free government could only be framed by the ancient inhabitants of Britain, whom Blackstone with fond partiality calls 'our Saxon princes'; nor do I believe that it is only in the annals of past ages that we shall look for the wisdom necessary to guide us in our own. As changes are wrought in the circumstances of a people, or country, it is necessary not only that their laws themselves, but also the spirit of the laws should be accommodated. I bow with willing submission to the shrine of legal reason. I am not opposed to seeing it traced to its sources, nor to explore its earliest teachings; but '*tempora mutantur et nos mutamur in illis.*'"

30. E. g., ADMINISTRATIVE CODE of 1923, PA. STAT. ANN. (Purdon, 1930) tit. 71, c. 1, repealed by ADMINISTRATIVE CODE of 1929, *id.* tit. 71, c. 2; BUILDING AND LOAN CODE of 1933, *id.* (Supp. 1936) tit. 15, § 1074-1; BUSINESS CORPORATION LAW of 1933, *id.* tit. 15, § 2852-1; DEPARTMENT OF BANKING CODE of 1933, *id.* tit. 71, § 733-1; FISCAL CODE of 1929, *id.* tit. 72, § 202.

31. E. g., THE DIVORCE LAW of 1929, PA. STAT. ANN. (Purdon, Supp. 1936) tit. 23, § 1; THE GENERAL COUNTY LAW of 1929, *id.* tit. 16, § 2; THE GENERAL BOROUGH ACT of 1927, *id.* tit. 53, § 12221; The Third Class City Law of 1931, *id.* tit. 53, § 12198-101; THE FIRST CLASS TOWNSHIP LAW of 1931, *id.* tit. 53, § 19092-101; THE SECOND CLASS TOWNSHIP LAW of 1933, *id.* tit. 53, § 19093-101; THE GENERAL COUNTY ASSESSMENTS LAW of 1933, *id.* tit. 72, § 5020-101.

32. See The Phila. Legal Intelligencer, Oct. 23, 1937, p. 1, col. 2.

was no repeal.³³ But both of these situations are just as likely to arise and to be productive of as much confusion as those cases arising under sections 72 and 94.

Section 77 provides that provisions of a law no longer effective shall not be construed as being revived by re-enactment in an amendatory law, unless it shall clearly appear that the legislature intended to revive such provisions. This appears to be a mere restatement of the existing case law,³⁴ although it has been suggested that many members of the bar were of the opinion that a revival occurred in such a case.³⁵

Section 83 also reiterates a rule well recognized by the courts,³⁶ to the effect that a law which re-enacts the provisions of an earlier law shall not be construed to repeal an intermediate law which modified such earlier law. Such intermediate law shall be construed to remain in force and to modify the re-enactment in the same manner as it modified the earlier law.

The Pennsylvania common law rule as to the effect of the enactment of a new statute of limitations is changed in section 95, which provides that whenever a limitation or period of time, prescribed in any law for acquiring a right or barring a remedy, or for any other purpose, has begun to run before a law repealing such law takes effect, and the same or any other limitation is prescribed in any other law passed at the same session of the legislature, the time which has already run shall be deemed part of the time prescribed as such limitation in such law passed at the same session of the legislature. This section seems to state that where the statute of limitations is changed, the time which has already run under the old statute is to be included in the running of the new statute. Therefore, if the statutory period were changed from six years to three years and three years had already run, the plaintiff's right of action would be destroyed. This section would appear to be unconstitutional, since it is well settled that while the legislature may shorten the period of limitation, they cannot take away a vested right.³⁷ Shortening the period is merely regulation of the remedy, and is within the powers of the legislature.³⁸ But to cut off the right of action without a reasonable period for its enforcement, so that under the guise of regulation there is deprivation of a right, is unconstitutional.³⁹ Pennsylvania's common law rule was clear that where a right of action had accrued under the old statute and the new statute changed the period, the plaintiff was permitted to bring his action within the new period of time, which was held to commence to run on the enactment of the new statute; but if the old period would have ended sooner, then the plaintiff could have availed himself of only that amount of time which he

33. In § 94, where apparently re-enactment is referred to, the word "incorporated" is used alone, whereas § 72 uses the words "incorporated and repealed". This would seem to indicate that a different meaning was intended, and hence § 72 means that the code not only re-enacted, but also repealed the prior law.

34. See *Harvey v. Hazleton*, 81 Pa. Super. 1 (1923). An act of 1913 fixed the mayor's salary until changed by ordinance. An ordinance changed his salary in 1913. In 1919 a statute fixed a higher salary "until changed by ordinance". The mayor claimed that since council had not fixed his salary since 1919 he should receive the salary provided by the new statute. It was held that since this part of the 1913 statute was ineffective after council had acted, the salary fixed by the statute of 1919 did not apply to him. *Genkinger v. Porter*, 8 D. & C. 338 (Pa. 1926) (same situation as *Harvey v. Hazleton*, the court relying exclusively on that case).

35. Fertig, *Statutory Law* (1936) 42 PA. BAR ASS'N REP. 383.

36. *Commonwealth v. Provident Trust Co.*, 287 Pa. 251, 134 Atl. 377 (1926); *Ferguson's Estate*, 325 Pa. 34, 189 Atl. 289 (1937).

37. *Rodebaugh v. Philadelphia Traction Co.*, 190 Pa. 358, 42 Atl. 953 (1899); *Phila., B. & W. R. R. v. Quaker City Flour Mills Co.*, 282 Pa. 362, 127 Atl. 845 (1925); 2 COOLEY, *op. cit. supra* note 21, at 756.

38. 2 COOLEY, *op. cit. supra* note 21, at 760.

39. *Rodebaugh v. Philadelphia Traction Co.*, 190 Pa. 358, 42 Atl. 953 (1899); 1 COOLEY, *op. cit. supra* note 21, at 593.

would have had under the old statute.⁴⁰ Thus, if the old statute were six years and two years had already run when the new statute changed the period to two years, the plaintiff could bring his action within two years from the date of the enactment of the new statute. Under section 95, however, the plaintiff has no time remaining and hence his right is lost. Again, if the old law gave three years and two years had run when the statute changed the period to two years, then under the Pennsylvania case law, the plaintiff would have had one year within which to sue; but section 95 would deprive him of his right of action. If the old period had been three years and two years had run when the statute was changed to six years, under the common law he would have had only one year in which to start suit, whereas under this section he would have four years. It would appear, therefore, that aside from the constitutional objection to this section, the common law rule operated in such a satisfactory and equitable manner, that a change was unjustified, especially since it would permit the enactment of a new statute of limitations to deprive even the diligent of vested rights.

However, it may be argued that since section 95 says that the time which has already run shall be deemed *part* of the time prescribed in the new statute, this section does not apply where the time which has already run is the same or longer than the time prescribed by the new law, since, under this construction, such time would not be a *part* but rather the whole time or greater.

Section 96 provides that the repeal of any civil provisions of a law shall not affect or impair any act done, or right existing or accrued, or affect any civil suit, action or proceeding pending to enforce any right under the authority of the law repealed. Such suit, action or proceeding shall and may be proceeded with and concluded under the laws in existence when such suit, action or proceeding was instituted, notwithstanding the repeal of such laws, or the same may be proceeded with and concluded under the provisions of the new law, if any, enacted. This section changes the common law principle that when a statute is repealed, all rights and remedies which accrued under it are also abolished, except, perhaps, where the change was merely in the remedy.⁴¹ Of course, it is to be noted here that the legislature is restrained by the state and federal constitutions from abrogating vested rights by the repeal of a statute.⁴² And it has been held competent for a legislature which repeals a statute to save all rights and remedies which have accrued under the repealed law.⁴³

Section 97, in stating that the repeal of a repealing law shall not be construed to revive the law originally repealed, changes a well recognized common law principle that a repeal of a repealer does revive the original law.⁴⁴ The common law rule is allegedly based on the fallacious presumption that the legislature intended to revive the former statute⁴⁵; consequently it led by its operation to many unanticipated results. It is inconceivable that a statute which has

40. *Rodebaugh v. Philadelphia Traction Co.*, 190 Pa. 358, 42 Atl. 953 (1899); *Bowden v. Philadelphia, W. & B. R. R.*, 196 Pa. 562, 46 Atl. 843 (1900); *Philadelphia, B. & W. R. R. v. Quaker City Flour Mills Co.*, 282 Pa. 362, 127 Atl. 845 (1925).

41. *Hickory Tree Road*, 43 Pa. 139 (1862); *Commonwealth v. Mortgage Trust Co. of Pa.*, 227 Pa. 163, 76 Atl. 5 (1910). But where a tax statute is repealed, the courts have found that the legislature did not intend to deprive the state of the right to collect the taxes which accrued under the repealed act. *Pacific and Atlantic Telegraph Co. v. Commonwealth*, 66 Pa. 70 (1870); *Commonwealth v. Robb*, 14 Pa. Super. 597 (1900); *Commonwealth v. Mortgage Trust Co. of Pa.*, 227 Pa. 163, 76 Atl. 5 (1910).

42. 1 N. Y. CONS. LAWS ANN. (McKinney, 1916) § 180.

43. *State v. Boyle*, 10 Kan. 113 (1872).

44. *Directors of the Poor v. Railroad*, 7 W. & S. 236 (Pa. 1844); *Manchester Township Supervisors v. Wayne County Comm'r*, 257 Pa. 442, 101 Atl. 736 (1917); *Commonwealth v. Scott*, 287 Pa. 392, 135 Atl. 225 (1926) (rule applies only to express repeals and not repeals by implication).

45. *Directors of the Poor v. Railroad*, 7 W. & S. 236 (Pa. 1844).

been repealed and which is considered as if it had never existed, can be revived by a repeal of the repealer.

Finally, section 101 contains definitions of one hundred and eleven words and phrases which, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section when used in laws hereafter enacted. The power of a legislature to prescribe such definitions of its own language, which are binding on the courts, is well established.⁴⁶ And it is common for particular statutes to have statutory definitions of their own.⁴⁷ This section should certainly tend to clarify the terminology of subsequent enactments and to avoid the necessity for detailed explanations therein.

Constitutionality

There appears to be a question as to whether the Act is applicable to those statutes previously enacted by the legislature or merely to future enactments or to both. There is no particular clause in the Act specifying which statutes are to be subject to its provisions. However, the distinct wording of sections 58 and 101 would seem to indicate that the legislature intended the other provisions to have effect on present as well as future statutes. Section 58 explicitly states that the rule of strict construction of laws in derogation of the common law shall have no application to laws "hereafter enacted", and that laws "enacted prior to the effective date of this law" shall be strictly construed. Section 101 provides that certain enumerated words and phrases when used in any law "hereafter enacted" shall have the meaning ascribed to them in this section. Inasmuch as these sections are the only ones that are so restricted in their application, it is reasonable to conclude that the Legislature did not intend to limit the other sections to apply to future acts only.⁴⁸

This gives rise to the problem whether such statutory rules may be applied to laws passed prior to the effective date of the Act. Apparently this question has never been decided, although in New York the factual situation has arisen several times. In *Matter of Bronson*,⁴⁹ a dispute centered upon the meaning of the word "property" in the tax act⁵⁰ which was passed prior to the statutory construction act.⁵¹ Justice Gray in the majority opinion held that the construction act could not apply because the meaning intended by the legislature in the tax act was clear.⁵² However, Justice Vann in the dissent applied the statutory construction act and stated that it is applicable to all statutes.⁵³ In *Matter of Whiting*,⁵⁴ decided at the same term, the interpretation of the word "property" in the tax act was again before the court, and Justice Vann in giving the majority opinion relied on the statutory construction act⁵⁵ in support of his argument. However, Justice Gray in the dissent refused to apply the construction act on the ground that it was passed after the tax act and therefore could not be read into it.⁵⁶ A direct decision of the problem has usually been avoided

46. 1 N. Y. CONS. LAWS ANN. (McKinney, 1916) § 106; ENDLICH, INTERPRETATION OF STATUTES (1888) § 365.

47. *Goodman v. Greenberg*, 53 Misc. 583, 103 N. Y. Supp. 779 (Sup. Ct. 1907).

48. *Rich v. Keyser*, 54 Pa. 86, 89 (1867). If certain words are used in one part of a statute and not in another, it indicates that the two parts differ in meaning.

49. 150 N. Y. 1, 44 N. E. 707 (1896).

50. N. Y. Laws 1892, c. 399.

51. *Id.* c. 677.

52. 150 N. Y. 1, 5, 44 N. E. 707 (1896).

53. *Id.* at 15, 44 N. E. at 711.

54. *Id.* at 27, 44 N. E. at 715.

55. *Id.* at 30, 44 N. E. at 716.

56. *Id.* at 32, 44 N. E. at 717.

in New York by finding the legislative intent from the context of the statute to be interpreted, thus rendering unnecessary a consideration of the applicability of the construction act to prior legislation.⁵⁷

However, in the somewhat analogous situation, where a subsequent legislature has declared what a previous legislature meant by a certain statute, the decisions have been uniform in holding that such an interpretation is not binding upon a court because it was an unconstitutional encroachment upon the court's exclusive function of interpreting the law.⁵⁸ Nevertheless, most jurisdictions have given a future effect to such a statute as being an amendment of the law so interpreted.⁵⁹ But Pennsylvania courts were so adamant in their denunciation of this infringement upon their exclusive jurisdiction that they refused to accord any recognition to such an attempt.⁶⁰ While the Construction Act does not interpret any particular statute, it does direct that the intent of a prior legislature must be determined by applying rules which may or may not have been in the minds of that body when they drafted the act. In this respect there is a determination of the intent of a prior legislative body and consequently a usurpation of the judicial function. Aside from this aspect, it is difficult to perceive the grounds upon which the legislature of today may determine the intent of the legislature of yesterday.⁶¹ Furthermore, the application of such rules to previously existing statutes would in many instances effect an amendment of these statutes, a result which one would hardly attribute to a construction act. Even so, such a result would be prohibited by the Constitution of Pennsylvania which requires restatement of the amended portion of the statute.⁶²

However, it does not follow that a construction act effective only as to statutes passed subsequent to its enactment, would also be an encroachment upon the judicial function. It seems not too unrealistic to argue that the legislature would take cognizance of such rules in drafting future laws and that they would therefore express themselves accordingly. In this manner, the Act would be read into each subsequent statute.⁶³ The courts could then apply the Act as they now apply explanatory clauses which, in order to clarify the legislative intent, are made part of a particular act.⁶⁴ This also seems to be the theory upon which non-statutory rules of construction are based.⁶⁵ Nor can it reasonably be argued that the Act would bind a subsequent legislature in the expression

57. *Stack v. Brooklyn*, 150 N. Y. 335, 44 N. E. 1030 (1896); *Matter of Bronson*, 150 N. Y. 1, 44 N. E. 707 (1896).

58. *Mutual Life Ins. Co. of N. Y. v. Board of Supervisors of City and County of N. Y.*, 16 N. Y. 424 (1857); *New York v. Lawrence*, 250 N. Y. 429, 165 N. E. 836 (1929); *Greenough v. Greenough*, 11 Pa. 489 (1849); *Reiser v. William Tell Sav. Fund Ass'n*, 39 Pa. 137 (1861); *Haley v. Philadelphia*, 68 Pa. 45 (1871); 1 N. Y. CONS. LAWS ANN. (McKinney, 1916) § 104; 1 COOLEY, CONSTITUTIONAL LIMITATIONS (8th ed. 1927) 190; Freund, *Interpretation of Statutes*, 65 U. OF PA. L. REV. 207, at 210 (1917); *Sicherman, Uniformity of Interpretation*, 2 A. B. A. J. (1916) 60, at 63.

59. *Cambridge v. Boston*, 130 Mass. 357 (1881); 1 N. Y. CONS. LAWS ANN. (McKinney, 1916) § 104; Freund, *supra* note 58, at 210.

60. *Greenough v. Greenough*, 11 Pa. 489 (1849); *Titusville Iron Works v. Keystone Oil Co.*, 122 Pa. 627, 15 Atl. 917 (1888); *Commonwealth v. Warwick*, 172 Pa. 140, 33 Atl. 373 (1895); Freund, *supra* note 58, at 211; *Sicherman, supra* note 58, at 64. But see 2 Pa. 22 (1845).

61. See *Phila. Legal Intelligencer*, Oct. 23, 1937, p. 1, col. 2.

62. PA. CONST. art. III, § 6. "No law shall be revived, amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length."

63. *Prentiss v. Denaher*, 20 Wis. 311 (1866); *O'Keeffe v. Dugan*, 172 N. Y. Supp. 558 (1918), *aff'd*, 225 N. Y. 667, 122 N. E. 887 (1919); Freund, *supra* note 58, at 216.

64. See *People v. Gray*, 185 N. Y. 196, 77 N. E. 1172 (1906); *People v. Teal*, 196 N. Y. 372, 89 N. E. 1086 (1909); 1 N. Y. CONS. LAWS ANN. (McKinney, 1916) § 104.

65. 1 N. Y. CONS. LAWS ANN. (McKinney, 1916) § 51.