

MINUTES OF THIRD JUDICIAL CONFERENCE  
HELD AT PHILADELPHIA, PA.,  
APRIL 10 AND 11, 1930.

The Third Judicial Conference of Pennsylvania convened in the Supreme Court Room at Philadelphia on Thursday, April 10, 1930, at 10 o'clock A. M.

In calling the conference to order, the Chairman, Chief Justice ROBERT VON MOSCHZISKER, said:

"Gentlemen of the Conference, this is our third annual meeting. The Judicial Conference of Pennsylvania was formed for action and not for unnecessary talk; such a policy has distinguished our previous gatherings, and I hope this conference will follow it. I have only a few words to say.

"In the first place, a program has been circulated in the form of a printed agenda, and you are familiar with the work we have before us, some of which, if not all, is very important to the Commonwealth.

"Of 175 judges, 112 have indicated their intention to attend this conference. All of them have not yet arrived, but we have a large number present and no doubt others will come in during the morning. There were 13 responses saying that the writers were doubtful about coming, and 50 judges said they could not come. Of course, the judicial business of the Commonwealth cannot be entirely suspended for this conference, and, all things considered, I think we have a very good representation.\*

"The social program has also been given to you in the printed agenda, and the only information on that point which I wish to impart at the present time is as to the speakers at the dinner on Friday evening. Mr. Ira Jewell Williams, of the Philadelphia Bar, who has been good enough to attend to all the details of what I hope

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\* NOTE: The actual attendance was 117 judges.

will be a successful and an enjoyable occasion on Friday evening, is the chairman of the dinner, and will introduce the Honorable George Wharton Pepper, who will be the toastmaster. The dinner will be addressed by Judge STERN of Philadelphia, who will speak for the City Judiciary; Judge HARGEST, President Judge of Dauphin County, who will speak for the judges who do not have the misfortune to live in the largest cities—I was going to say in the large cities, but we consider Harrisburg one of the large cities—and also Mr. Owen J. Roberts, who will speak for the bar; and, by special request, the Chief Justice will say a few words in closing the dinner.

“I now declare the Third Judicial Conference open for business.”

Judge JAMES GAY GORDON, JR., of the Court of Common Pleas No. 2 of Philadelphia County, acted as secretary.

A committee consisting of

Judge THOMAS D. FINLETTER, Chairman, Philadelphia County;

Judge WILLIAM S. MCLEAN, JR., Luzerne County;

Judge A. R. CHASE, Clearfield County;

Judge GEORGE W. MAXEY, Lackawanna County;

Judge RICHARD H. KOCH, Schuylkill County;

Judge JOHN E. FOX, Dauphin County;

Judge FRANK P. PATTERSON, Allegheny County, recommended, and the conference approved, the following act:

### “AN ACT

To amend an act approved the twentieth day of April one thousand eight hundred and fifty-eight, entitled ‘AN ACT establishing a mode of Selecting and Drawing Jurors in and for the City of Philadelphia.’

“Section 1. Be it enacted, etc., that section 1 of an act approved the twentieth day of April one thousand eight hundred and fifty-eight, entitled ‘AN ACT establishing a mode of Selecting and Drawing Jurors in and for the City of Philadelphia,’ be amended so as to read as follows:

“Section 1. Be it enacted, etc., that the judges of the [Supreme Court, when sitting in the City of Philadelphia, of the district court and of the] Court of Common Pleas of the City of Philadelphia, with the sheriff thereof, shall constitute a board for superintending and managing the drawing and selecting of jurors, to serve in the several courts of the said city; one member of any two of the said courts of *common pleas*, with the said sheriff or his duly authorized deputy, shall be a quorum of said board for the transaction of business.

“Section 2. That section 2 of said act be amended to read as follows:

“Section 2(a). That prior to the [first day of December] *thirty-first day of January*, in each and every year, the receiver of public taxes of the said city shall lodge with the said sheriff, for the use of the said board, a duly certified list of all the taxable inhabitants of the said city, setting out their names, places of residence and occupation; and prior to the tenth day of December *thereafter* in each and every year, it shall be the duty of the said board, or a quorum thereof, to assemble together and select from the said list of taxables a sufficient number of sober, healthy and discreet citizens, *to be fixed by the board*, to constitute the several panels of jurors, grand and petit, that may be required for service in the said several courts for the next ensuing year. [In due proportion from the several wards of the said city and the principal avocations.]

“(b) After such selection is made, the board through its members, or five masters, one to be appointed by each court of common pleas, may make inquiries touching the qualifications for jury service of the persons selected, and for this purpose the board is empowered to summon the persons selected and other witnesses, by subpoena, and members of the board and the masters shall have power to examine the persons selected and other witnesses, under oath, in relation to the qualifications of any person selected for jury service, saving the privileges as witnesses of the persons examined. A false answer to a pertinent question shall be perjury, punishable by not more than one year’s imprisonment in the county prison, or a fine of not more than \$100.

“(c) When a sufficient number of names is selected, notice by mail shall be given to each person selected, of his selection, with the request that he inform the board within ten days which of the four quarters of the year will be most convenient to him for jury service.

“(d) There shall be four jury wheels. From the first, jurors for service during the first quarter of the year shall be drawn; from the second, jurors for service during the second quarter; from the third, jurors for service during the third quarter and from the fourth, jurors for service during the fourth quarter.

“(e) The names of persons finally chosen by the board for jury service shall be deposited in equal proportions in the four wheels. The board shall respect the wishes of those chosen and deposit their names in the wheel for the quarter most convenient to the juror, so far as it is possible to do so without interfering with the reasonably proportionate numbers in each wheel.

"Section 3. That section 3 of said act shall be amended so as to read as follows:

"Section 3. That the names of taxables so [selected] *chosen*, with their respective places of residence and occupation, shall in the presence of the said board be written on separate pieces or slips of paper, which shall then and there be placed, *in reasonably proportionate numbers*, [in a closed wheel] *in four closed wheels*, to be provided by and kept in the exclusive custody of the said sheriff, securely locked, sealed or otherwise guarded from intrusion; a list of the names, residences and occupations so [selected] *chosen* and placed in the said [wheel] *wheels*, shall be certified by the members of the said board then present, to the *Prothonotary of the Court of Common Pleas* [each of the said courts], to be duly filed therein for preservation and public inspection.

"Section 4. That section 4 of said act shall be amended so as to read as follows:

"Section 4. That at least three weeks before the commencement of each and every term of any of the said courts, the said board, or a quorum thereof, shall assemble and cause to be drawn from the [said wheel] *wheel for the current quarter* as many of the names of the taxables therein deposited, as may be necessary to serve as grand and petit jurors for and in each of the said courts, according to the command of the venire or venires directed to the said sheriff; one list of which names, residences and occupations so drawn, shall be duly certified by the said board to the proper court, with the venire issued therefrom; and one other list of said names, occupations and residences, shall be duly certified to the said sheriff.

“Section 7. That section 7 of said act shall be amended so as to read as follows:

“Section 7. That whenever talesmen are required in any of the said courts, the said sheriff shall produce the [said wheel] *wheel for the current quarter* in open court, and in the presence of *one* of the judges thereof draw therefrom five names for every talesman required, which names so drawn shall be immediately noted on the minutes of the court, whereupon a venire shall be issued, requiring the said sheriff to bring into court any one of the said five persons so drawn, to serve as a tales juror; no tales juror shall be selected or served in any other manner; the tickets or slips so drawn from the said wheel shall be returned thereto.

“Section 8. That section 8 of said act shall be amended by adding thereto the following:

*“The names of jurors who are drawn for service and excused for reasons touching their own convenience shall be put in a wheel for the succeeding quarter.*

“Section 9. That section 9 of said act shall be amended so as to read as follows:

“Section 9. That the said sheriff shall preserve the said [wheel] *wheels* secure from all interference by others; and if the said board, on any examination the members thereof may institute into the condition of the said [wheel and its] *wheels and their* contents, shall discover that any names have been surreptitiously introduced or withdrawn therefrom, it shall be evidence of misdemeanor committed by the said sheriff; and thereupon it shall be the duty of any member of the said board to bind him over to answer at the next court of quarter sessions, for the said misdemeanor, and on conviction thereof he shall be punished by fine and imprisonment, at the

discretion of the court; the said fine to be not less than two hundred dollars, and the imprisonment, if any, not less than three months in the county jail.

“Section 12. That said act be amended by adding the following section:

*“Section 12. This act as amended shall go into effect on January 1, 1932, and shall apply to jurors to be drawn for service during the year 1933 and thereafter.”*

The same committee asked that the act on page 11 of the printed agenda, to provide for the selection of jurors in counties of the second class, be referred back to the committee for further consideration and future report. The Chairman of the conference, at the request of Judge FINLETTER, designated Judge PATTERSON (of Allegheny County) as chairman of the committee, and, since the subject in the hands of the committee concerned only Allegheny County, he added to the committee the following names:

Judge JAMES R. MACFARLANE, Allegheny County;  
Judge JAMES H. GRAY, Allegheny County.

On motion of Judge PATTERSON (of Allegheny County), the conference authorized the committee of which he is the chairman to place before the next Legislature, “as though approved by” the conference, such an act as it may decide upon, provided that the proposed statute be approved by a majority of the common pleas judges of that county and also by the Allegheny County Bar Association.

A committee consisting of

Judge ROBERT S. GAWTHROP, Chairman, Superior Court;  
Judge RICHARD W. MARTIN, Allegheny County;  
Judge CHARLES V. HENRY, Lebanon County;

Judge SAMUEL E. SHULL, Monroe County;

Judge CHARLES L. BROWN, Philadelphia County,  
reported that in its opinion the conference should defer  
action on the following resolutions:

“RESOLVED, That the law forbidding adverse comment by court or counsel on the failure of a defendant on trial to offer himself as a witness, should be repealed, to the end that all legitimate argument and comment thereon shall be allowed.”

“RESOLVED, It is the sense of the conference that, whenever, in the opinion of the trial court, the police or court records sufficiently indicate that a defendant is a professional criminal, the Commonwealth should be permitted to present that fact in its case in chief, and that such police and court records should be admissible in evidence, in the discretion of the trial judge.”

After discussion, the recommendation was adopted.

A committee consisting of

Judge THOMAS D. FINLETTER, Chairman, Philadelphia County;

Judge HARRY H. ROWAND, Allegheny County;

Judge WILLIAM S. MCLEAN, JR., Luzerne County;

Judge FRANK B. WICKERSHAM, Dauphin County;

Judge H. ROBERT MAYS, Berks County,

recommended that the conference again adopt the following resolutions:

“RESOLVED, That the right to separate trials of defendants jointly indicted for capital offenses should rest in the sound discretion of the trial court as in other cases.”

“RESOLVED, That the law should require the examination of prospective jurors on their voir dire to be conducted exclusively by the trial judge subject to the right of counsel, after such examination, to



suggest additional questions to be put to the prospective juror by the trial judge, in his discretion," but Judge FINLETTER asked that these resolutions be referred back to the committee for further consideration and report at the next conference. On motion this was agreed to by the conference.

A committee consisting of

Justice JOHN W. KEPHART, Chairman, Supreme Court;

Judge HARRY S. McDEVITT, Philadelphia County;

Judge ROBERT A. STOTZ, Northampton County;

Judge ALBERT DUTTON MACDADE, Delaware County;

Judge JOHN S. FINE, Luzerne County,

favorably reported the following resolution:

"RESOLVED, That in all criminal cases, except capital cases and where a constitutional question is involved, the laws should be so amended as to permit appeals only after allowance thereof by a judge of the appellate court to which the appeal lies."

After a lengthy discussion, the resolution was disapproved by the Conference.

The same committee recommended a resolution

"That the time for taking appeals in criminal cases should be limited to three weeks, unless such time be extended during that period for an additional period of three weeks. Such extension may be secured by petition in writing to the trial judge, setting forth in detail the reasons therefor."

After discussion, the resolution was approved by the conference.

The same committee also recommended the following act of assembly:

#### "AN ACT

Concerning practice and procedure authorizing the Supreme Court to promulgate rules regulating such

matters, subject to approval by a majority of the judges of the court or courts to be affected.

“Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, that the power and authority now vested in the Supreme Court of Pennsylvania to make rules of practice in equity proceedings is hereby extended to all actions, suits and proceedings at law, so that hereafter the Supreme Court may promulgate and enforce rules of practice and procedure to govern actions at law, either on the criminal or the civil side of the law, throughout the Commonwealth. Provided that the rules so adopted shall not be inconsistent with the statutory law, and provided further that before any rule is finally adopted and promulgated by virtue of the authority granted by this act, it shall first be submitted to the judges of the court or courts which will be affected by the proposed rule, and the rule shall not be adopted unless a majority of the judges of the court or courts to be affected shall favor it. The method of submission may either be by a vote at a conference of the judges duly called or by a vote taken by correspondence through the mail. The Supreme Court shall make such rules as may be necessary to govern the taking of such a vote. When a rule is adopted and promulgated it shall be binding upon all subordinate tribunals administering the law, to which the rule may be applicable. Local courts may pass rules that are not inconsistent with those adopted by the Supreme Court. The promulgation of such rules by the Chief Justice of the Supreme Court shall be conclusive as to their formal adoption in accordance with the requirements of this act, and any rule so promulgated shall be binding upon the courts of the Commonwealth.”

This was adopted by the conference. The chairman of the committee and the chairman of the conference, being authorized to draw a proper title, agreed upon the title which appears above. For explanation of a change in phraseology from the text of the act as it appears in the agenda, see page xlv.

A committee consisting of

Judge E. M. BIDDLE, JR., Chairman, Cumberland County;

Judge JAMES B. DREW, Allegheny County;

Judge JOHN M. BROOMALL, 3D, Delaware County;

Judge EDWIN O. LEWIS, Philadelphia County;

Judge HAROLD G. KNIGHT, Montgomery County,

favorably reported the following resolution:

“RESOLVED, That it is the sense of the conference that the trial of criminal cases not involving the higher felonies, by a judge without a jury, if the accused voluntarily gives his consent thereto, is desirable and should be incorporated in our penal system”;

accompanied by the form of an act of assembly, to be found on page 19 of the agenda. After lengthy discussion, the report of the committee was disapproved and the proposed act rejected.

The same committee recommended that “the conference take no further action at this time looking to the repeal of the Ludlow Act.” This report was adopted, and it was decided to refer the whole subject to a new committee. The Chairman appointed the following committee:

Judge E. M. BIDDLE, JR., Chairman, Cumberland County;

Judge JOHN M. BROOMALL, 3D, Delaware County;

Judge EDWIN O. LEWIS, Philadelphia County;

Judge HAROLD G. KNIGHT, Montgomery County;

Judge HARRY S. McDEVITT, Philadelphia County;

Judge ELDER W. MARSHALL, Allegheny County;

Judge HORACE STERN, Philadelphia County;

Judge WILLIAM M. HARGEST, Dauphin County,  
“to consider how far and in what respects the Ludlow  
Act of June 29, 1923, P. L. 975, should be amended or  
repealed.”

For another assignment to this committee see page  
xlv.

A committee consisting of

Justice ALEXANDER SIMPSON, JR., Chairman, Su-  
preme Court;

Judge ROBERT S. GAWTHROP, Superior Court;

Judge JAMES GAY GORDON, JR., Philadelphia  
County;

Judge GEORGE HENDERSON, Philadelphia County;

Judge ELDER W. MARSHALL, Allegheny County;

Judge JOHN E. FOX, Dauphin County;

Judge W. A. VALENTINE, Luzerne County;

Judge PAUL N. SCHAEFFER, Berks County;

Judge JAMES A. CHAMBERS, Lawrence County,  
recommended the following act:

### “AN ACT

Amending the procedure in courts of first instance  
in cases to be tried and determined in civil actions  
at law.

“Section 1. Be it enacted, etc., that hereafter the  
right to a trial by jury in civil actions at law shall  
be deemed waived by the plaintiff in each case un-  
less in his first pleading, and by the defendant un-  
less within the time provided for his first pleading,  
whether filed or not, he shall specifically state of  
record that he elects to have the case tried by a  
jury. The court by order duly filed may extend the  
time for such election. Such election shall be con-  
clusive in all subsequent proceedings in the case,  
except that either party may subsequently with-

draw his election to have a jury trial by a paper filed of record.

“Section 2. In trials without a jury the trial judge in addition to passing upon questions regarding the admission of evidence, may at the trial require either party to state of record what evidence he is then able to produce to sustain his contentions, in whole or in part, may require the other party to state what evidence he has then on hand in answer thereto and may limit the proofs accordingly; he may also call expert evidence where technical questions are to be determined; and in general shall actively control the proceedings so as to result in a just and speedy determination of the issues in the case.

“Section 3. In trials without a jury, it shall be sufficient for the trial judge to enter a general or special verdict, and to answer such points presented by either party, and such only, as call for a binding determination regarding the whole case, or any part of the claim or defense. Such answers shall be given and verdict rendered promptly on the conclusion of the trial, unless the litigants agree otherwise.

“Section 4. In all other respects, the procedure in such cases, whether before, during or after the trial, shall conform to the procedure now in force or hereafter to be adopted in regard to cases to be tried by a jury, save in so far as it is altered by consonant, general or special rules of court.”

The conference decided that a provision should be added to section 1 of the proposed act, which was adopted, giving the presiding judge the right to extend the time for the election to have a jury trial, a provision to this effect to be put in form by the chairman of the committee and the chairman of the conference. This

duty has been performed, as appears by the above draft of the act.

The following committee, consisting of

Judge JAMES GAY GORDON, JR., Chairman, Philadelphia County;

Justice ALEXANDER SIMPSON, JR., Supreme Court;

Judge ELDER W. MARSHALL, Allegheny County;

Judge CLAUDE T. RENO, Lehigh County;

Judge JOHN E. FOX, Dauphin County,

reported, "That, in view of the resolutions of the conference defining the scope of its work, and limiting its recommendations to matters involving practice and procedure, it is the unanimous opinion of the committee that the conference should not act upon the subject-matter referred to this committee, for to recommend the adoption of the doctrine of comparative negligence (that being the subject-matter in question) would involve a change in the substantive law. It is, therefore, recommended that no action be taken by the conference on the subject in question."

This report was adopted.

A committee consisting of

Judge FRANK B. WICKERSHAM, Chairman, Dauphin County;

Judge FRANK L. HARVEY, Clarion County;

Judge FRANCIS SHUNK BROWN, JR., Philadelphia County;

Judge ALONZO T. SEARLE, Wayne County;

Judge H. ROBERT MAYS, Berks County;

Judge CHARLES L. BROWN, Philadelphia County;

Judge SYLVESTER J. SNEE, Allegheny County,

presented a lengthy report on the subject of the Juvenile courts and the procedure therein. This report will be found beginning on page 25 of the agenda. The report was referred back to the committee for further consider-

ation and to report at the next conference a revised Juvenile Court Act. The committee was reconstructed as follows:

Judge FRANK B. WICKERSHAM, Chairman,  
Dauphin County;  
Judge FRANK L. HARVEY, Clarion County;  
Judge FRANCIS SHUNK BROWN, JR., Philadelphia  
County;  
Judge ALONZO T. SEARLE, Wayne County;  
Judge H. ROBERT MAYS, Berks County;  
Judge CHARLES L. BROWN, Philadelphia County;  
Judge D. PAULSON FOSTER, Allegheny County;  
Judge JAMES E. GORMAN, Philadelphia County.

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On Friday morning, April 11, 1930, the conference resumed its work and a committee consisting of

Justice WILLIAM I. SCHAFFER, Chairman, Supreme Court;  
Judge WILLIAM B. LINN, Superior Court;  
Judge JAMES GAY GORDON, JR., Philadelphia  
County;  
Judge E. M. BIDDLE, JR., Cumberland County;  
Judge HORACE STERN, Philadelphia County;  
Judge W. ROGER FRONEFIELD, Delaware County;  
Judge CHARLES V. HENRY, Lebanon County;  
Judge JOHN M. GROFF, Lancaster County;  
Judge WILLIAM M. HARGEST, Dauphin County;  
Judge THOMAS F. BAILEY, Bedford County;  
Judge JAMES B. DREW, Allegheny County;  
Judge FRANK E. READER, Beaver County;  
Judge GEORGE W. MAXEY, Lackawanna County;  
Judge W. A. VALENTINE, Luzerne County;  
Judge WILLIAM G. THOMAS, Carbon County;  
Judge PAUL N. SCHAEFFER, Berks County,  
recommended an act of assembly as follows:

## "AN ACT

"Regulating trial by jury in civil cases.

"Section 1. Whenever a jury shall render a general verdict in any civil action it shall also find specially, if so requested, any relevant fact or facts by answering such reasonable number of simple interrogatories as may be propounded by the trial judge of his own accord, or on motion of counsel approved by the trial judge. Such interrogatories with the answers of the jury shall be termed special findings and shall be received, filed and become part of the record of the cause. If the special findings are inconsistent with the general verdict, they shall control, and if they are sufficiently comprehensive to include all governing issues, the court may give judgment accordingly. The Supreme Court shall make and promulgate appropriate rules to be effective in all the courts of the Commonwealth for carrying out this statute."

This act was approved.

The same committee reported favorably another act to be found on page 32 of the agenda, accompanied by a constitutional amendment to be found on page 37, both relating to a new and additional method of collecting sums due on mortgages. It was decided that the proposed act and amendment did not come within the policy of confining the consideration of the conference exclusively to procedural matters; therefore, that they should not be adopted, but should be submitted to the State Bar Association for such action as that body might see proper to take.

The same committee also reported on the subject of improving the practice on motions for judgment n. o. v., so that, on such a motion, "only such testimony shall be transcribed as counsel may agree upon, or, upon failure to agree, as the court shall determine," that, since "a majority of the committee believe no such amendment



should be recommended, [and] a minority think otherwise," the difference of opinion should be submitted to the conference for determination. By motion duly carried, the conference determined that the subject be referred back to the committee, with instructions to draw an act to be submitted to the next conference.

A committee consisting of

Judge JESSE E. B. CUNNINGHAM, Chairman, Superior Court;

Judge JOSEPH H. TAULANE, Philadelphia County;

Judge HARRY H. ROWAND, Allegheny County;

Judge JOHN E. EVANS, Cambria County;

Judge W. BUTLER WINDLE, Chester County,

appointed to consider and report upon the Criminal Code approved by the American Law Institute and to make such recommendations as might seem proper to the committee, reported that, since the Law Institute had not completed its work on the proposed code, it was impracticable to make any recommendations. No action was taken on this report.

An executive committee was appointed as follows:

Chief Justice ROBERT VON MOSCHZISKER, Chairman, Supreme Court;

Justice ROBERT S. FRAZER, Supreme Court;

Judge WILLIAM H. KELLER, Superior Court;

Judge WILLIAM B. LINN, Superior Court;

Judge JAMES GAY GORDON, JR., Philadelphia County;

Judge ROBERT A. STOTZ, Northampton County;

Judge FRANK P. PATTERSON, Allegheny County;

Judge WILLIAM S. MCLEAN, JR., Luzerne County;

Judge WILLIAM M. HARGEST, Dauphin County;

Judge H. ROBERT MAYS, Berks County;

Judge MARION D. PATTERSON, Blair County;

Judge JAMES I. BROWNSON, Washington County;

Judge JAMES M. BARNETT, Juniata County;

Judge DONALD P. McPHERSON, Adams County;

Judge WILLIAM N. APPEL, Lancaster County;

Judge CHARLES L. BROWN, Philadelphia County,

with full power to decide as to what measures approved by the conference should be placed before the next Legislature, and also, to decide as to the date and place of the next conference.

The conference authorized the chairman to appoint a committee to study the subject of Public Defenders and to report at the next conference. The following committee was appointed:

Judge JAMES GAY GORDON, JR., Chairman, Philadelphia County;

Judge BENJAMIN R. JONES, Luzerne County;

Judge JOHN E. FOX, Dauphin County;

Judge PAUL N. SCHAEFFER, Berks County;

Judge HARRY H. ROWAND, Allegheny County.

Judge HORACE STERN, of Philadelphia, called up for action a proposed act of assembly, not in the printed agenda, but copies of which had been sent to all the judges as a supplement to the agenda, as follows:

### “AN ACT

To further amend section seventy-five of an act, approved the thirty-first day of March, one thousand eight hundred and sixty (Pamphlet Laws, three hundred and eighty-two), entitled ‘AN ACT to consolidate, revise and amend the penal laws of this Commonwealth,’ by providing how the court shall be constituted in cases of pleas of guilty of murder, in determining the degree of murder and the penalty therefor.

“Section 1. Be it enacted, etc., that section seventy-five of the act, approved the thirty-first day of March, one thousand eight hundred and sixty (Pamphlet Laws, three hundred and eighty-two), entitled

‘AN ACT to consolidate, revise and amend the penal laws of this Commonwealth,’ which was amended by an act approved the fourteenth day of May, one thousand nine hundred and twenty-five (Pamphlet Laws, seven hundred and fifty-nine), entitled ‘AN ACT to amend section seventy-five of an act, approved the thirty-first day of March, one thousand eight hundred and sixty (Pamphlet Laws, three hundred and eighty-two), entitled “AN ACT to consolidate, revise and amend the penal laws of this Commonwealth,” by providing that the penalty for murder of the first degree shall be either death or life imprisonment, at the discretion of the jury, or of the court, as the case may be,’ is hereby further amended to read as follows :

“Section 75. That every person convicted of the crime of murder of the first degree shall be sentenced to suffer death in the manner provided by law, or to undergo imprisonment for life, at the discretion of the jury trying the case, which shall fix the penalty by its verdict. The court shall impose the sentence so fixed, as in other cases. In cases of pleas of guilty, the court, where it determines the crime to be murder of the first degree, shall, at its discretion, impose sentence of death or imprisonment for life. *In hearing cases of pleas of guilty the court shall be constituted of three judges of the judicial district, who shall determine the degree of the crime, and, where the crime is determined to be murder of the first degree, the penalty as aforesaid. Where there are not three judges available in the judicial district involved, judges of other judicial districts may be called upon to serve in accordance with the provisions of existing law.* It shall be the duty of the clerk of the court wherein such conviction takes place, and he is hereby required, within ten days after such sentence of death, to transmit a

full and complete record of the trial and conviction to the Governor of this Commonwealth.

“Section 2. All acts or parts of acts inconsistent herewith are hereby repealed.”

After discussion by various judges on different phases of this proposed legislation, Judge GORDON suggested that the act might be amended so as to leave it with the trial judge as to whether he desired to invite other judges in; not to compel him to invite them. It was also suggested that the act should state that the judges who were to sit with the trial judge could be associate judges not learned in the law, in districts which have such judges; or, if it was not deemed wise to have the associate judges perform this service, that the act should state that the judges to be called in should be judges learned in the law. It was finally decided to have the whole subject sent to a committee to report at the next conference, with power to draft an act. The Chairman was instructed to appoint such committee. He appointed the following judges:

Judge HORACE STERN, Chairman, Philadelphia County;

Judge HARRY S. McDEVITT, Philadelphia County;

Judge ELDER W. MARSHALL, Allegheny County;

Judge JOHN S. FINE, Luzerne County;

Judge JOHN E. EVANS, Cambria County.

Justice SIMPSON, offered the following resolution:

“RESOLVED, That the Chairman of the Conference be authorized to appoint, from time to time, such a number of active, practicing lawyers as he may deem wise, to attend and take part in the deliberations of the then next judicial conference.”

It was suggested that these invitees should be given the right to attend the conference but not to vote. The motion as originally written was put to the conference,

and the vote being close, a division was called for. On the division, the motion was declared lost.

Justice SIMPSON offered the following resolution :

“RESOLVED, That it is the judgment of this conference that the appellate courts should, in both civil and criminal cases and of their own motion, exercise the power given to them by section 21 of the Act of May 19, 1897, P. L. 72, of awarding additional costs and damages against appellants who have sued out an appeal merely for delay.”

This resolution was not carried.

Judge HARGEST offered the following resolution :

“RESOLVED, That the executive committee shall have power to carry out the recommendations of the conference, to determine what bills shall be presented to the Legislature, and if in any case, after any bill has been presented, it shall be deemed inadvisable to present it, the executive committee may withdraw it from that session.”

It was carried.

Judge ALESSANDRONI moved that it was the sense of the conference, that in cases of murder of the second degree, the penalty should be raised from twenty to forty years. This was referred to the committee appointed to consider the Ludlow Act. (See pages xxxv-xxxvi.)

Judge APPEL offered the following resolution :

“RESOLVED, That a committee composed exclusively of orphans' court judges be appointed, to which shall be referred all matters touching the court or its business, with power to examine and report to the conference.”

It was carried and a committee appointed as follows :

Judge WILLIAM N. APPEL, Chairman, Lancaster County;

- Judge JOSEPH F. LAMORELLE, Philadelphia County ;  
Judge JOHN MARSHALL GEST, Philadelphia County ;  
Judge GEORGE HENDERSON, Philadelphia County ;  
Judge LEWIS H. VAN DUSEN, Philadelphia County ;  
Judge ALLEN M. STEARNE, Philadelphia County ;  
Judge THOMAS P. TRIMBLE, Philadelphia County ;  
Judge H. WALTON MITCHELL, Allegheny County ;  
Judge EDWARD C. CHALFANT, Allegheny County ;  
Judge HENRY A. CLARK, Erie County ;  
Judge DANIEL J. SNYDER, Westmoreland County ;  
Judge E. FOSTER HELLER, Luzerne County ;  
Judge JOHN WILLIAM DAWSON, Fayette County ;  
Judge MACHENRY WILHELM, Schuylkill County ;  
Judge FREDERICK A. MARX, Berks County ;  
Judge J. BOYD CRUMRINE, Washington County ;  
Judge JOHN B. HANNUM, Delaware County ;  
Judge J. BURNETT HOLLAND, Montgomery County ;  
Judge M. F. SANDO, Lackawanna County ;  
Judge SAMUEL L. REED, Cambria County.

By vote taken, the conference authorized its secretary and chairman to amend the proposed act of assembly, passed earlier in its sessions, conferring upon the Supreme Court certain rule-making powers, by striking out, beginning at the 16th line of the act as it appears in the agenda, the words, "of common pleas throughout the Commonwealth, if it is a rule concerning practice in such tribunals, or to the judges of the orphans' court throughout the Commonwealth, if it is a rule concerning practice in those tribunals," and inserting "or courts which will be affected by the proposed rule," and by striking from the following clause the words, "voting thereon" and inserting "of the court or courts to be affected." In the draft of the proposed act, above, these changes have been made. (See page xxxiv.)

Before the conference adjourned, on motion, of Justice KEPHART, a rising vote of thanks and appreciation was tendered to the Chief Justice for his labors as presiding officer. On motion of Judge KOCH, Justice KEPHART was authorized to appoint a committee of five members to "draw up a proper resolution and preamble concerning the services of the Chief Justice to this conference and to the State," and to take such steps as they may deem necessary in the premises.

The conference adjourned after adopting resolutions of appreciation of the courtesy of Justice SCHAFFER and of Mr. Robins in entertaining the judges at luncheons, and of the Committee of the Philadelphia Bar which tendered the dinner to the members of the conference and ladies.

[Signed] ROBERT VON MOSCHZISKER,  
*Chairman.*

[Attested]:

JAMES GAY GORDON, JR.,  
*Secretary.*

LIST OF JUDGES WHO ATTENDED THE JUDICIAL CONFERENCE AT PHILADELPHIA ON APRIL 10 AND 11, 1930.

*Supreme Court.*

Chief Justice Robert von Moschzisker.  
Justice Robert S. Frazer.  
Justice Emory A. Walling.  
Justice Alex. Simpson, Jr.  
Justice John W. Kephart.  
Justice Sylvester B. Sadler.  
Justice William I. Schaffer.

*Superior Court.*

President Judge Frank M. Trexler.  
Judge William H. Keller.

Judge William B. Linn.

Judge Robert S. Gawthrop.

Judge Jesse E. B. Cunningham.

Judge Thomas J. Baldrige.

Judge J. Frank Graff.

*Common Pleas.*

	<i>Dist.</i>
Alessandroni, Eugene V. ....	1
Baird, Eugene H. ....	25
Barnett, James M. ....	41
Berkey, John A. ....	16
Biddle, E. M., Jr. ....	9
Boose, Norman T. ....	16
Broomall, John M., 3d ....	32
Brown, Francis Shunk, Jr. ....	1
Brownson, James I. ....	27
Campbell, James O. ....	50
Chambers, James A. ....	53
Chase, A. R. ....	46
Copeland, Chas. D. ....	10
Corson, George C. ....	38
Coughlin, Clarence D. ....	11
Culver, Charles M. ....	42
Darr, William T. ....	54
Davis, Howard A. ....	1
Dom, William T. ....	10
Drew, James B. ....	5
Evans, Charles C. ....	26
Evans, John E. ....	47
Fine, John S. ....	11
Finletter, Thomas D. ....	1
Fleming, M. Ward ....	49
Fox, John E. ....	12
Fronefield, W. Roger ....	32
Gordon, James Gay, Jr. ....	1
Groff, John M. ....	2
Hargest, William M. ....	12



	<i>Dist.</i>
Harvey, Frank L. ....	18
Henderson, Davis W. ....	14
Henry, Charles V. ....	52
Hicks, Roy P. ....	21
Hildebrand, R. Lawrence ....	53
Houck, Henry ....	21
Hudson, Thomas H. ....	14
Hughes, Howard W. ....	27
Jones, Benj. R. ....	11
Keller, Hiram H. ....	7
Kent, O. Clare ....	30
Knight, Harold G. ....	38
Koch, Richard Henry ....	21
Kun, Joseph L. ....	1
Landis, Charles I. ....	2
Lewis, Edwin O. ....	1
Macfarlane, James R. ....	5
MacDade, Albert Dutton ....	32
MacNeille, Raymond ....	1
McConnel, William A. ....	36
McDevitt, Harry S. ....	1
McKeen, William M. ....	3
McKenrick, Ivan J. ....	47
McLaughry, James A. ....	35
McLean, Wm. S., Jr. ....	11
McPherson, Donald P. ....	51
Martin, J. Willis ....	1
Marsh, Howard F. ....	4
Marshall, Elder W. ....	5
Maxey, George W. ....	45
Mays, H. Robert ....	23
Morrow, S. John ....	14
Niles, Henry C. ....	19
Parker, William M. ....	28
Patterson, Frank P. ....	5
Patterson, Marion D. ....	24
Potter, Miles I. ....	17

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Schaeffer, Paul N. ....	23
Searle, A. T. ....	22
Shanaman, Forrest Ritter ....	23
Sherwood, Ray P. ....	19
Shull, Samuel E. ....	43
Smith, Frank ....	1
Stern, Horace ....	1
Stewart, Russell C. ....	3
Stotz, Robert A. ....	3
Terry, Charles E. ....	44
Valentine, W. A. ....	11
Wickersham, Frank B. ....	12
Williams, J. Ambler ....	38
Windle, W. Butler ....	15

*Orphans' Court.*

Appel, William N. ....	2
Dawson, John William ....	14
Heller, E. Foster ....	11
Henderson, George ....	1
Snyder, Daniel J. ....	10
Stearne, Allen M. ....	1
Van Dusen, Lewis H. ....	1

*Retired Judges.*

C. R. Savidge ....	8
Nevin M. Wanner ....	19

*Allegheny County Court.*

D. Paulson Foster.  
 Sylvester J. Snee.  
 Samuel J. McKim.

*Municipal Court of Philadelphia.*

Charles L. Brown, President Judge.  
 Leopold C. Glass.

## THIRD JUDICIAL CONFERENCE.

li

James E. Gorman.

H. Gilbert Cassidy.

William Gray Knowles.

Eugene C. Bonniwell.

Utley E. Crane.

John E. Walsh.

William M. Lewis.

Thomas Bluett.