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The Court of the Justice of the Peace

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By

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I ORGANIZATION OF THE COURT OF THE JUSTICE OF THE PEACE

For convenience in considering the possible reform of the minor judiciary system in Pennsylvania, the subject may be divided into three parts:

(a) Organization;

(b) forms of procedure; and

(c) jurisdiction.

A considerable share of the maladjustment in the system now becoming manifest is found in the organization of the court of the justice of the peace. The rapid changes taking place in the social system and the increasing complexity of modern life have created a situation which, in some degree at least, justifies the charge frequently made that the system is archaic.

It is hardly surprising that the minor judiciary system has become somewhat out of date. The office of justice of the peace comes down to us from the England of the time of William Penn and its then existing character and functions were more or less taken for granted. It was so much a part of the legal system which was being taken over by the colonists that it did not occur to anyone that it might be revised and reduced to a somewhat more systematic form. As some unforseen situation presented itself, isolated acts were passed to take care of the particular need. Some of the prevailing ideas relating to the justice of the peace were embodied in the constitution, when, as to these particulars, the system became rigid. The system today remains basically what it was in the first half of the nineteenth century. The social system, on the other hand, never stands still; it is always in a state of flux; the process of change is unceasing. In this century the process of change has been greatly accelerated. The world revolution, the outward beginnings of which can be fixed as the outbreak of war in August 1914, has shaken society to its very foundations. Our own society has become almost infinitely complex as compared to the society of the early nineteenth century. Government must respond to these changes. A vital government manifests itself in its ability to make the changes necessary to adapt itself to the social conditions of the time. All the world over the foundations of governmental institutions are being subjected to re-examination. The law of adaptation is an important law of life. All fields of the governmental process are subject to this law.

Since the office of justice of the peace is the foundation of the minor judiciary system in Pennsylvania, this discussion will be directed particularly to that office. The alderman performs the same functions under another name and, as new

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magistracies are constituted they are usually endowed with the powers of a justice of the peace.

While the forms of procedure need to be reduced to a consistent system of rules, and while the jurisdiction of the court of the justice of the peace can be improved by greater clarity of definition, a careful reorganization of the court would remove the ground for much of the fault now being found with the system. The maladjustments appear in the organization, rather than in the forms of procedure or in the jurisdiction. Much of the detail of the required reform is generally agreed upon among students of this subject. An accumulating volume of reports has been coming from bar associations, judicial councils and independent investigators of the minor judiciary system, with a wide variety of proposals for reform. In order to apply the results of these inquiries to our own problems in Pennsylvania, we must first examine the provisions of the constitution and the statutes upon which the system is based. It will then be possible to suggest the changes which will be necessary to bring about a form of organization which will meet the social conditions prevailing in the latter half of the present century. This will involve the extent of territorial jurisdiction, the qualifications of the justice, the selection, term and compensation of the justice, possible divisions of the court, physical equipment, clerical and executive assistants and finally the proper status of the court. The factors to be considered in determining a suitable form of organization are the function which the system is expected to perform and the social conditions under which it must operate. We will consider these problems in the order suggested.

A. Present Organization

(*a*) *Constitutional requirements*

Article V, sec. 1 of the constitution provides that "the judicial power of this commonwealth shall be vested in . . . magistrates' courts, and in such other courts as the General Assembly may from time to time establish." A reform of the system would not make necessary any change in this article.

Article V, sec. 11, relates specifically to justices of the peace and aldermen. It assumes the existence and functions of these officers. Its provisions are few. These officers

> "shall be elected in the several wards, districts, boroughs or townships, by the qualified electors thereof, at the municipal election, in such manner as shall be directed by law, and shall be commissioned by the governor for a term of six years. No township, ward, district or borough shall elect more than two justices of the peace or aldermen without the consent of a majority of the qualified electors within such township, ward or borough; no person shall be elected to such office unless he shall have resided within the township, borough, ward or district for one year next preceding his election. In cities containing over fifty thousand inhabitants, not more than one alderman shall be elected in each ward or district."

It follows from this section:

(a) That the ward, borough or township is the district;

(b) that the officer is chosen by election by the qualified voters of the district;

(c) that the officer is commissioned by the governor;

(d) that the term is six years;

(e) that the number is not more than two in each ward, borough or township, except by consent of a majority of the electors of the district, and, in cities over fifty thousand not more than one alderman in each ward or district;

(f) that the only qualification is residence in the district for one year.

(b) *Statutes*

A number of statutes, relating to election, bond, commission, term, location of office, seal and compensation, have been enacted at various times from 1802 to date. The principal act is that of June 21, 1839, P. L. 376.[1] This act has been variously amended and several supplements were enacted after the adoption of the present constitution. Most of this legislation consists of short, unrelated acts. The *Act of* 1839 itself is the only one indicating any study of the system as a whole. In case a modern organization should become possible, these acts could be repealed or their substance worked into its proper place in the new organization. In their present form they are somewhat disconnected fragments.

B. Suggested Reorganization

(a) *Extent of district*

The ward, borough or township is not a satisfactory territory to be covered by a justice of the peace under present conditions. In thinly settled rural districts, one properly organized justice's court could serve several townships. At the other extreme, in a thickly populated area, a ward may be too large a district. The volume of business does not depend upon the area of the district; density of population is a much more important factor. The nature of the district, whether it is residential or industrial, is also important in determining what area a justice's court can serve. One justice's court to some determined unit of population would be more realistic than the present provision. To determine a satisfactory unit will require some research; it cannot be done arbitrarily. The number should not be fixed by the constitution. It must be subject to change as conditions require; it is impossible to foresee just what population the court can satisfactorily serve.

(b) *Qualifications*

For a judicial officer upon whom falls heavy responsibilities and whose functions form an important segment of the judicial process, residence within the district for a period of one year, by itself could hardly be considered seriously as a

[1] PA. STAT. ANN. tit. 42, § 1 (1930).

qualification. The candidate for the office of justice of the peace should be of an age insuring some experience with human affairs and some degree of maturity. He should, above all, have some substantial education. If the office is made of sufficient importance and placed on an adequate salary basis, the candidate might be required to be a member of the bar of the court of common pleas in the county where his district is located. An alternative would be a requirement for graduation from a suitable school for magistrates established at the state university. Some provision for continued legal education might be considered. In this field of continued legal education for members of the minor judiciary, a splendid beginning has been made by the minor judiciary school conducted by the Public Service Institute of Pennsylvania. This movement has also developed the fact that many magistrates are very much interested in such training. Activities of this kind will become much more effective when the basic defects of the system are removed.

(c) *Selection, term, compensation*

It is improbable, as a practical matter, that the method of election by the qualified voters of the district could be changed. It is possible that appointment by the governor would insure more efficient officials; this may or may not be true; it is very much an open question.

The term should be long enough to justify the candidate in preparing himself for the efficient performance of the duties of the office.The present term of six years does not fully meet this requirement. Possibly a ten year term with eligibility for re-election would serve the purpose. If the justice is appointed, the term might be during good behavior, as in the federal courts.

It is generally agreed that compensation of the justice of the peace should be by fixed salary. Many of the abuses now prevalent find their basis in the fee system. The justice is a judicial officer whose actions should not be influenced by whether or not they result in a fee. The salary must be in correspondence with the qualifications and degree of efficiency required. It must be sufficient to lead men properly qualified to make a career of this office.

(d) *Divisions of the court*

Some states increase the flexibility of the justice's court by adding to it additional justices with special jurisdictions. The traffic court could be handled in this manner. It would then serve all the purpose of the special traffic court and would also fit into the minor judiciary system. The magistrate, dealing only with this class of cases, has a chance to become an expert in this field. The so-called small claims court would lend itself to the same treatment. This flexibility would make it possible for these courts to meet the demands of rapidly changing social conditions without the necessity of frequent constitutional amendment. The revision of Section 11 should give the legislature sufficient power to create such divisions as conditions may require.

(e) *Physical equipment*

The justice of the peace holds a court, and this implies a proper place to hold a court. While the present law requires the justice of the peace to maintain an office in his district, it makes no provision for furnishing the necessary quarters. If the office is to be given its due importance, the justice must be provided with a court room, properly equipped and properly maintained at public expense.

(f) *Clerical and executive assistants*

No court can function efficiently without a trained and competent clerk. This should be an established and properly paid position. The clerk should probably be appointed by the justice and should work under the justice's direction. The law should also permit the employment of a stenographer if circumstances make it advisable.

The constable is presumed to be the executive arm of the justice of the peace. With some modification and codification of the present law, the constable could be transformed into an efficient executive officer.

(g) *Status as a court*

Justices of the peace, under Section 11 of the constitution, have been held to be township, ward or borough officers. Nevertheless, he holds a court. It is not a court of record, although he is required to keep a docket and must make some quite complicated records of his transactions. His filled docket, when filed in the office of the prothonotary, becomes a record open to the public.

There does not seem to be any substantial reason why the court of the justice of the peace should not take its place in the hierarchy of courts, holding the same status as to the field which it covers as does the court of common pleas in its field. It should certainly be a court of record and, if it were provided with a qualified clerk and adequate stenographic service, could be so effectively.

C. Conclusion.

These suggestions for the reform of the minor judiciary system are not new. The defects of the system due to its antiquated character are generally recognized. The lack of flexibility in the constitutional provisions, which do not give to the legislature authority to make structural changes in the system as they are demanded to meet rapidly changing social conditions, is clearly understood. It is generally agreed that the justice of the peace should have an educational qualification; that the term should be lengthened; that the district should be fixed on the basis of population; that the fee system should be abolished and be replaced by an adequate salary; that the magistrate should be furnished with a proper court room, a clerk, a stenographer and a more efficient executive officer; and that the court should be made a court of record and its status should be clearly defined and its dignity increased. Present social conditions require all of these reforms and the demand for them is becoming more and more insistent.

Some of the objections to the present system were clearly understood by the Commission on Constitutional Amendment and Revision of 1920. In its proposed revision of Section 11, it recommends:

(a) Election of the justice of the peace by districts to be created by the court of common pleas after each decennial census;

(b) increase of required residence to two years;

(c) payment by salary, fees to be paid into the county treasury.

These would have been steps in the right direction. These details, as well as most of the other proposed provisions, are more properly matters to be left to the legislature rather than embodied in the constitution. The debates of this commission show that, even at that date, the inadequacy of the present system was recognized.

These improvements need not wait upon a general revision of the constitution. All of these suggestions can be put into effect by amendment of Article V, Section 11. The amended constitutional provisions should authorize the legislature to ordain and establish such inferior courts as may from time to time become advisable and that such courts shall have such jurisdiction as may from time to time be prescribed by law. A brief provision to this effect could replace the present Section 11. Any attempt to prescribe the details of the organization of such courts in the constitution destroys the flexibility of the provision. It makes the system rigid and renders impossible the continuous adaptation of the system to the continually changing conditions. The constitution, as a framework of government, should place the general power in the hands of the legislative authority. The various attempts to legislate through constitutional provisions can hardly be described as successful. This is a power to modify the machinery of government; it does not directly affect substantive rights. In other words, the proposed extension of power relates only to the organization of the minor judiciary system. After the adoption of the proposed amendment, an act or acts creating a minor judiciary system could work out the suggested details. The system would then be subject to change, if change became necessary, by an amending act.

It has been suggested from time to time that the office of justice of the peace be abolished and that it be replaced by an entirely new type of magistracy. It is not clear what could be gained by such action in Pennsylvania. The office is ancient and it is deeply imbedded in Pennsylvania's legal system. Abolition of the office would be to discard the results of centuries of experience. What is needed here is to remove the obstructions and to modernize the machinery so that the system will have a chance to work efficiently. The reforms proposed must conserve and rest upon the results of past experience.

While present laws relating to the jurisdiction of the minor judiciary require some clarification and the rules of procedure before these courts should be reduced to a consistent code, the basis of the reform of the system is nevertheless the reform

and modernization of the court of the justice of the peace. This foundation once soundly established, the rest will follow in due course.

II Jury Trials Before Justices Of The Peace In Criminal Cases

Criminal procedure before the minor judiciary in Pennsylvania is generally admitted to be in need of revision. This procedure has grown up during a long period of time and in a very irregular manner. Additions and alterations have been made to meet some immediate need without much attention to how the changes would affect the system as a whole. Many local acts relating to procedure before the justice of the peace were passed in response to demands from a particular locality. As a result, the system is burdened with much irregular, obsolete and inconsistent matter of which it should somehow be relieved. Some obsolete local acts could be repealed without disturbing the general form of procedure. Anything that can be done in the way of repealing obsolete acts, or local acts, or acts which should not be part of an orderly system of criminal procedure, would be a step toward simplification and clarification and will make later general revision easier. Such a repealing act would be sufficient to remove from the books the obsolete system of procedure which permits trial of offenses and misdemeanors in a number of counties before a justice of the peace and a jury of six. The basic act was known to old justices of the peace as the "Erie County Act." To this unusual system, your attention is invited.

In Erie County, Pennsylvania, before a justice of the peace in one of the townships, a complaint is made, by an aggrieved person, in which it is alleged that the defendant did commit an assault upon the deponent and did then and there beat and illtreat the deponent, in brief, a charge of assault and battery. The justice issues his warrant and the defendant is brought before him. From this point on the case may proceed in a number of different ways.

The complaint is then "fully read aloud in the hearing of the defendant or party accused" and he is afforded an opportunity to plead. If he enters a plea of guilty to the charge against him, the justice will proceed to inquire into the circumstances of the case, so far as he shall think best for a proper understanding of defendant's guilt, and then pass sentence upon the defendant. This sentence will be of the same character and will have "the full force and effect of a sentence pronounced by the court of quarter sessions," and the defendant will be committed to the county jail until the sentence is complied with. The case is now at an end.

Or, assuming the same facts, when the defendant is brought before the justice, he may "plead not guilty to the offense charged and shall at the same time signify his determination to be tried before a jury of six, before the said justice." In this event, the justice will enter the plea and determination upon his docket and take bail for the appearance of the defendant at the monthly session of the justice's court; or if the defendant is unable to secure bail, the justice will commit him to jail to await trial. The justice then issues a venire to the constable "commanding him to summon six good and lawful men, citizens of said township, city or borough, having the

qualifications of electors therein, who shall be in nowise of kin to either defendant or complainant, nor in any manner interested." The jurors to be summoned are chosen by the justice writing in a panel the names of eighteen persons, from which panel defendant and complainant alternately strike names until each shall have stricken six, leaving the required six jurors. The manner of trial in use in the court of quarter sessions, the same rules as to the competency and credibility of witnesses, the same forms of oath, and the same control of the jury over costs, apply in this trial just as they do in the court of quarter sessions. "The verdict of this jury is final and conclusive upon all questions of fact involved therein." When the verdict is "guilty" the justice shall proceed to pass sentence upon the defendant according to law, and with the like effect as if the defendant had pleaded guilty or had been convicted in the court of quarter sessions. The proceedings can be reviewed on a writ of certiorari from the court of common pleas and from the judgment of this court an appeal lies to the superior court.

A third situation may develop. The defendant may plead "not guilty" and there rest. Under the statute, if he does not at the same time "signify his determination to be tried before said justice, the justice shall proceed with said defendant as if this act had not been passed." This means that the justice will hold his preliminary hearing and bind the defendant over or discharge him as the situation may require. In a case charging assault and battery, compliance with the *Act of* 1919, P. L. 306,[2] would, of course, be necessary. If defendant wishes to be tried before the justice and a jury of six, he must signify his determination at the same time his plea is entered; if he does not do it at that time, he cannot do so later.[3] This discloses one of the chief characteristics of this form of trial; it can be used only when the defendant himself demands it.

Now, the foregoing outline of procedure will seem strange to any lawyer who has not had occasion to examine it particularly. It is, in fact, a somewhat simplified description of a system of criminal procedure found in the statutes of the Commonwealth of Pennsylvania and remaining in full force and effect in a considerable number of counties.

This form of criminal procedure was authorized by an act approved May 1, 1861, entitled "An Act to change the mode of criminal proceedings in Erie and Union Counties."[4] This act provided "that the several justices of the peace of the counties of Erie and Union be and they hereby are authorized to hold monthly courts, with jurisdiction to hear and determine" the several offenses and misdemeanors described in certain specified sections of the Criminal Code of 1860.

The provision relating to monthly courts was later repealed but the provisions of the act, with this modification, were extended by various supplementary acts to the counties of Armstrong, Beaver, Bradford, Butler, Clarion, Crawford, Forest,

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2 PA. STAT. ANN. tit. 62, §§ 1925 - 1931 (1941).
3 Com. v. Nelson, 79 D. & C. 65 (1952).
4 PA. STAT. ANN. tit. 41, § 724 (1954).

Lawrence, Lehigh, Luzerne, Mercer, Northampton, Northumberland, Perry, Pike, Snyder, Venango, Warren, Washington, Wayne and Wyoming. The same system, with some further modifications, became effective in Indiana, Potter, Tioga and Susquehanna counties. The system created by the acts is still the law in the enumerated counties.

The offenses and misdemeanors described in the specified sections of the *Code of* 1860, are blasphemy, disturbing public assemblies, public indecency, cruelty to domestic animals, selling unwholesome food, divulging telephone and telegraph conversations, assault and battery, larceny, fraud on boarding house keepers, malicious mischief to windows, doors, bells and signs. Charges of affray and violations of the liquor laws in Bradford and Mercer counties were later brought within the system. Repeal of the *Code of* 1860 and some amendments have introduced some uncertainty as to inclusion of some of the offenses. Jurisdiction in charges of larceny was limited to cases where the value of the goods stolen did not exceed ten dollars. Complaints charging these offenses in the counties mentioned above may still be disposed of before the justice of the peace under the terms of the act.

Many details of trial and its results are contained in the act and its several supplements and amendments.[5] The act, the numerous supplements and amendments and the cases growing out of this legislation, form an intricate and technical body of procedural law.

Let us look further at the first situation, that is, where the defendant enters a plea of guilty. If the procedure provided by the local act were properly fitted into the ordinary system of procedure, it might serve a useful purpose by disposing of many cases without permitting them to reach the court of quarter sessions. This would be a matter for consideration upon a revision of the system of criminal procedure. The authority conferred upon the justice of the peace by the local act overlaps the jurisdiction over the particular offenses vested in the court of quarter sessions. The procedure also creates a neat trap in which to involve an unwary prosecutor or a justice of the peace who is not familiar with these local acts. Suppose a complaint filed before a justice of the peace in one of the counties where the local act is in effect, charging an offense described in one of the sections enumerated in the act. Suppose also that the defendant, guided by astute counsel, enters a plea of guilty, and there rests. If the justice is familiar with the local act and understands this procedure, no question will arise; he will listen to evidence, sufficient to enable him to determine the degree of guilt, and then proceed to sentence the defendant. This supposition, however, is somewhat unrealistic. This local procedure has not been in use for many years; it may fairly be said to be obsolete. Few justices of the peace have any knowledge of the fact that such a system exists, much less a knowledge of its intricate details. Assuming this to be the case, that is, that the

[5] PA. STAT. ANN. tit. 42, §§ 392 to 397, and §§ 724 to 741 (1930); SADLER, CRIMINAL PROCEDURE §§ 127 to 138 (2d ed. 1917); VALENTINE, SUBORDINATE COURT PRACTICE § 404 and §§ 436 to 445 (1934).

justice does not know of this local law, he would then act under the general procedural law. He would ignore the plea, as a plea, since usually a plea in such cases has no effect other than as an admission of guilt. A preliminary hearing would be held and defendant, since he admits his guilt, will probably be bound over for appearance in the court of quarter sessions. If the charge is assult and battery, he will, of course, comply with the *Act of* 1919. Defendant may give bail for his appearance, or he may wait in jail. After the justice has filed his transcript and the record is safely lodged in the court of quarter sessions, defendant's counsel, at some stage of the proceedings in the court of quarter sessions, will move for the discharge of his client for the reason that the court of quarter sessions does not have jurisdiction. Since the objection is to the jurisdiction of the court, it can presumably be raised at any stage of the proceedings. On this objection it is difficult to see how the court could do otherwise than grant the motion. The justice assumed jurisdiction; the defendant complied with the act when he entered the plea of guilty; the only course then open to the justice was to pass sentence after hearing enough testimony to satisfy himself as to the degree of guilt. Thus, by the somewhat anomalous procedure of pleading guilty to the charge against him and then awaiting the event, the defendant has secured his discharge in the court of quarter sessions. What can be done in these circumstances? This would be an interesting technical study.

The second situation, where the defendant has entered a plea of not guilty and signified his determination to be tried by the justice and a jury of six, also presents some interesting features. The supreme court held that the act is not in violation of the constitution because the defendant need not be tried by this unusual jury system unless he himself demands it; he will be tried in this way only when he "signifies his determination" to be so tried.[6] The court makes it clear, however, that the jurisdiction of the justice rests, not on the defendant's consent, but on the act of assembly. When he demands trial in this manner he waives the right to have his case presented to a grand jury and passed upon by a jury of twelve. It is also worthy of note that the legislature, in prescribing for these trials the same formal procedure and the same rules of admissibility and competency of evidence which are in effect in the court of quarter sessions, manifests a higher degree of confidence in the legal learning and capacity of the justice of the peace than do the appellate courts when they repeat the well known legal fiction to the effect that the justice of the peace is not presumed to be learned in the law but can perform the duties of his office if he be gifted with a modicum of common sense. Since no formal record is required either of the testimony or the conduct of the case, it is not clear how erroneous admission of evidence, wrongful instructions to the jury or other technical defects in the conduct of the trial are to be brought before the court of common pleas on certiorari.

The acts are constitutional. While they have gradually passed out of use and are neither generally known nor generally understood by justices of the peace of

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6 Lavery v. Com. 101 Pa. 560 (1882).

the present day, they are still the procedural law in the counties to which they apply. The fact that they are obsolete does not make them invalid. They now encumber the books, occupying many sections of the digests and many pages of text books. This is a source of confusion and uncertainty. One of the purposes to be aimed at in any effort to reform the system of criminal procedure is clarification of the procedure; it will be a step in this direction to remove this obscure and obsolete system from the books. The acts should be specifically repealed. Before this is done, however, each act should be checked with the court and bar in the county affected to make certain that its repeal does not disturb some local situation which may have grown up around the act. There should be only one system of procedure dealing with these offenses. Where the statutes are obsolete, as seems to be the case here, complete and outright repeal is the obvious remedy. The repeal of these local laws would be a small but important contribution to the clarification and simplification of our criminal procedure.