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THE ADMINISTRATION OF JUSTICE

IN MAGISTRATES' COURTS,

HAMILTON COUNTY, OHIO

A dissertation submitted in partial fulfillment
of the requirements of the degree of
Doctor of Philosophy
to the Graduate School of the University
of Cincinnati.

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CHAPTER ONE
AN ESSENTIAL HISTORY OF OHIO'S
MINOR JUDICIARY

Section 1. America's legal heritage from England.

Probably no area of organized American Life is more clearly indebted to a single foreign nation for its fundamental institutions and nomenclature than is that of political structures. This fact is especially true in the field of the law, the roots of which run back to the colonial period, thence across the Atlantic to the British Isles, and there far back into Anglo-Saxon history. American legal life and customs early became grounded in the English system; but while the names and ideas of legal structures were imported, the provincial patterns created from them departed so widely from the original that it may be truthfully said in many cases that the new forms had little save phonetic resemblance to the British counterpart. In a number of instances the British heritage is recognized in an exact duplication of nomenclature with a wide divergence in the content of the structure under that political classification.

Section 2. English influence in the evolution of inferior courts.

The evolution of the system of inferior justice in the United States demonstrates an interesting instance of this adaptation of British nomenclature and institutions to American life and needs. The minor judiciary of the

United States is an offshoot of the ancient office of the justice of the peace. This particular English form can be followed back at least to its rudimentary functioning in the early 14th century when knights were appointed to keep the peace in outlying districts. Under the Tudors the squire became an important person in the administration in the country. In fact the justices then were the "real men-of-all-work" in local government.(1)

(1) Cheney, European Backgrounds of American History. American Nation Series, p. 274.

As a royal officer the English squire had no civil jurisdiction, took his commission directly from the government, held an indeterminate tenure usually equivalent to life, and was a man of property.(2)

(2) Until 1906 a property qualification (ownership of land, or occupation of a house worth 100 pounds a year) was required of all save certain classes of appointees whose station was deemed a sufficient guarantee of fitness. No such qualification is now imposed. Ogg, English Government and Politics, p. 617.

Even in these early days comment was common on the office and activity of this dignitary. Perhaps the most frequently quoted is the statement of Lord Coke that "the whole Christian world hath not the like office, if truly executed." Less well-known and probably more enlightening, is the modification added by Lord Cowper to the effect that justices were "sometimes illiterate and frequently bigoted and prejudiced."

Section 3. The justice of peace transplanted to the colonies.

As might be expected the office made its early appearance in the colonies. By the Duke's Law of 1665, promulgated

for the provincial government of New York, the justice was commissioned to act with the same powers as those granted in Great Britain.(1)

(1) Pennington, The Justice of the Peace, His History.
22 Case and Comment 39.

In America the squires continued to discharge a "great variety of duties connected with the support of the poor, the reparation of highways, the imposition and levying of parochial rates and other local affairs.(2)

(2) People ex. rel. Lawrence v. Mann, 97 N.Y. 530

Yet in this yeasty period of American development the office acquired its own peculiarities to such an extent that its similarity with its English model was reduced to little more than that of nomenclature.(3)

(3) "Little more than the name was brought from England."
Harley, Ultimate Types of Inferior Courts and Judges,
22 Case and Comment 3.

Section 4. Factors influencing American judicial organization.

The pioneer environment of the colonies interacted with the British legal heritage to produce the fundamental forms into which the American judicial system has been cramped. If the organization of the English courts at the time of the Revolutionary War be considered a basic factor in the conditioning of the legal machinery of the United States, a second of no less importance was the need of a hasty remodeling of the English common law and legislation into a common law for the embryo-nation at a time when little could be achieved in such a field by legislation. The courts could look to little beyond themselves. A third element at work in the transformation was the demand for the decentralization of the

administration of justice to everyman's door. (1)

-
- (1) See Alger, The Organization of the Courts, Annals of the American Academy of Political and Social Science; March 1928 p. 213.
-

The popular pressure for the establishment of a court in every backwoods settlement was accompanied by a desire to have the "semblance of economy." (2)

-
- (2) This factor obviously was inherent in a self-supporting fee system. Harley, *op.cit.*
-

The final factor, and it is of no small importance, was the scarcity of trained lawyers from whose ranks the personnel of the benches of the decentralized courts could be recruited, together with a wide-spread distrust of the "expert" attorney. (3)

-
- (3) "And it came to pass that almost everybody except a lawyer was thought of as the proper person to sit on the bench. Laymen were repeatedly appointed, and this practice continued with general approval until judicial affairs soon became nothing more than a bundle of wrongs and grievances bound up in faded red tape." 2 Green Bag 470.
-

Section 5. The settlement of Ohio

The character of legal institutions in Ohio was clearly impressed by the type and temper of the early settlers. Hence reference must be made to the social development of the territory beyond the seaboard. The settlement of Ohio was a part of the westward movement of population seeking more freedom or better economic opportunity. While it was difficult under pioneer conditions to cross the ranges from east to west, it was not so arduous to follow the valleys of the ranges running north and south. The topography of the region therefore guided many early migrants through Pennsylvania to the back country of the South. Thence they moved to North Carolina and later

opened up the way over the Wilderness Road to Kentucky and the Northwest Territory.

The peoples who slowly filtered through Pennsylvania into the great Northwest were as diverse in racial origins as in migrant motivation. Scotch Irish forced inward by the ⁱⁿtolerance of the coastal settlements sought personal and religious freedom. Small farmers, poor and more democratic than the southern plantation owners, drifted into the new lands to avoid the competition of slave labor. Germans fleeing the states along the Rhine in the first quarter of the 18th century found their way into Pennsylvania, along the valleys to the south, and finally into Ohio.

There were of course New Englanders at Marietta. (1)

(1) Early sessions of the Common Pleas Court in the territory convened September 2, 1788 at Marietta. It was not unusual to see a judge and jury seated under a tree awarding justice.-Atwater, History of Ohio, p. 177.

And soon after 1800 Quakers protesting against slavery moved into the free soil. The location of the early population as well as its origin can be judged from the fact that of the thirty-five members who assembled at the convention of 1802 all but two came from the southern and eastern part of the state, and men from Virginia, Kentucky, and Pennsylvania dominated the convention. (2)

(2) Ryan, The First Constitution, Ohio Archaeological and Historical Society Publications, Centennial Celebration, 1903, p.25.

Section 6. The Ordinance of 1787,

With a merging of their conflicting claims to inland territory into a common gift of rights to Congress, the seaboard colonies made it possible for the government under the Article of Confederation to provide for the political organization of the Northwest.

This was done under the provisions of the Ordinance of 1787.

While Ohio's legal development proceeded according to the Old English patterns, its immediate course was dictated by the experience and practice of its neighboring states. The Ordinance gave the Governor and the three Judges of the Northwest authority to select laws in force in various states and enforce them as legislation in the Territory. At the time local justices in Pennsylvania were appointed by the Governor of that state during good behavior, and in Kentucky by the Governor and Senate from a slate of candidates nominated by the local County Court. In 1790 the first County was established in the region and appointments made including the coroner and justices of the peace. The justices were commissioned by the Governor under the seal of the territory. (1) They were to meet

(1) I Chase - Chapter 2, Sec. 2. Laws of 1790.

four times
a year in a "general quarter sessions of the peace."

Three squires comprised a quorum. (2)

(2) I Chase - Chapter 2, Sec. 4.

Individually justices could certify after a preliminary hearing men to the quarter sessions or to the general court. The criminal jurisdiction of the quarter sessions extended to "all crimes and misdemeanors in the county where punishment does not extend to life, limb, or imprisonment for more than one year or forfeiture of goods and chattels or lands and tenements to the government of the territory".(3)

(3) I Chase - Chapter 2, Sec. 9.

Out of sessions the same gentlemen could hear and determine according to the course of the common law "petit crimes and misdemeanors, wherein the punishment shall be by fine only and not exceeding \$5.00, and to assess and tax costs." (1)
(1) I Chase Chapter 2, Section 7.

The justices appointed their own constables annually, the town clerk, and in quarter sessions the overseer of the poor.

In 1798 the criminal jurisdiction of magistrates was further defined to include authority "to punish by fine all assaults and batteries not of an aggravated nature and to recognize rioters, disturbers of the peace, and to bind offenders to the circuit court of quarter sessions and to bail felons." (2)

(2) I Chase - Chapter 77, Section I. This statute was adopted from the laws of Massachusetts.

Section 7. The beginning of civil jurisdiction in Ohio justice courts.

The divergence of the judicial institution of the justice of the peace from the English patterns in the direction of growth as a unit of minor court organization began in Ohio in the year 1795. In that year Governor St. Clair and the three judges of the territory met at Cincinnati for three months' work on the drafting of a complete system of statutory jurisprudence. They saw fit to include in their scheme "A law for the easy and speedy recovery of small debts". (3)

(3) I Chase - Ch. XL p. 143. Laws for the same year provided for the appointment of constables by the justices in quarter sessions. Previously the justices had appointed the constable individually and annually.

This statute gave the squire civil jurisdiction on petty claims up to twelve dollars, appeal of cases below five dollars being forbidden. A law of 1799 revised the jurisdiction

to include "every action for debt" within the township where the delinquent resided.(1) No appeal was permitted on cases

(1) I Chase Ch. C, Sec. I, p. 233.

below two dollars (2) while the constable was allowed to

(2) Ibid, Sec. 14.

settle the case with the defendant upon service of the summons.(3)

(3) Ibid, Sec. 5.

Section 8. Early territorial difficulties with the justice of peace.

It is generally assumed by the writers that the evils of highly decentralized justice associated with the squire's court grew up with the concentration of population. A corollary of this opinion is that the system was perhaps fitted for pioneer and sparsely settled regions. Yet early Ohio records indicate that there were difficulties from the very beginning.

Governor St. Clair, for example, in addressing the House of Representatives on Wednesday, September 25, 1799, said:

"It has been the practice in some of the counties to make the authority of every constable co-extensive with the counties; and a heavy mileage for the service of process has been allowed them, to the great oppression of the more indigent part of the community, and defeating entirely the intention of subjecting small demands to summary decision.

Constables ought to be confined to particular precincts, beyond which they should have no authority: and the subdivisions of the counties, commonly called townships, should form those

precincts, and ought not to be more extended than that a person could travel conveniently from end to end of them in the course of a day." (1)

(1) Journal of the House of Representatives of the Territory of the United States, North-west of the River Ohio, 1799. Cincinnati. From the Press of Carpenter and Findlay, Printer to the Territory.

The following year the Governor again addressed the legislature on the same subject in these words:

"A difficulty, Gentlemen, has occurred in executing the law for the trial of small causes, which should be removed. The jurisdiction of every justice of the peace is limited by that act, to the township in which he resides, and his writs, precepts, and processes, shall run in and through such township and may be executed therein; and nowhere else: hence it has been supposed that the inhabitants of one township in the same county are not bound to obey a subpoena to give testimony issued by a justice residing in another township in the same county, and that the justice is not warranted in issuing such subpoena; and plaintiffs have been defeated in their demands and defendants in their justification from the want of their witnesses, arising from this cause, and obliged to pay costs.(2)

(2) Wednesday, November 5, 1800. Journal of the House of Representatives of the Territory of United States, North-west of the Ohio River. Second Session. Chillicothe. Winship & Willsi.

From these passages it can be inferred that there was difficulty in establishing the proper territorial jurisdictions of the squires and a not uncommon practice of working up excessive fees. Just 112 years later words were spoken in the constitutional

convention which were not entirely foreign to the ideas which Governor St. Clair expressed. To quote:

"Justices of the peace elected in the outlying townships of Cuyahoga county have established offices in the business portions of the city of Cleveland; a large number of collectors and hangers-on have spread over the city stirring up litigation, often not without the knowledge and consent of the justices, who reward their efforts by appointing them as special constables in all cases brought by them into court, and allow them fees, not infrequently exorbitant, for their various services, at the expense of the litigant." (1)

(1) Quoted in Forbes v. Bottom et al. 20 ONP 449.

Section 9. The justice of the peace in the State of Ohio.

By 1801 the population of the region which is now Ohio was large enough to justify the organization of the section into a state (1). The first Constitutional Convention assembled

(1) The Northwest ordinance provided that when the population of the division of the territory was 60,000 it might be set off as a state.

at Chillicothe on November 1, 1802. The Constitution as there adopted vested the judicial power of Ohio in a supreme court, courts of common pleas for each county, "in justices of the peace and in such other courts as the legislature may from time to time establish." (2) A second section declared that

(2) Art.III. Sec. I.

"a competent number of justices of the peace, shall be elected by the qualified electors in each township in the several counties and shall continue in office three years, whose powers and duties shall, from time to time, be regulated and defined by law."(3) Thus the magistrate became a Constitutional

(3) Art.III: Sec. 2.

officer through the provisions of Ohio's first fundamental law. (1)

-
- (1) In the case of State ex. rel. v. Redding, 870.S.388, it was held that these sections made the justice of the peace a constitutional officer.
-

The legislature established the maximum civil jurisdiction of the justices at thirty-five dollars and limited their activity to their own township⁵. Criminal jurisdiction, however, was coextensive with the county. By May 1, 1854 the civil jurisdiction was fixed at a maximum original jurisdiction of \$100. and a jurisdiction concurrent with the common pleas court up to \$300. (2) For seventy six years the limits of

-
- (2) 52 Ohio Laws 100
The jurisdiction was raised from \$35. to \$50 by the third assembly (1803-4) and from \$50. to \$70. by the seventh assembly (1808-9); and in 1831 limited to \$100. (29 Ohio Laws 171)
-

civil jurisdiction have remained unaltered. (3)

-
- (3) The justice of peace continued to be a Constitutional officer by the Constitution of 1851. See Art. IV. Sec. I. Also under the section as amended October 9, 1883, But it ceased to have a Constitutional basis by the Art. IV. Sec. 9 as amended in the same year.
-

Section 10. The justice of the peace as the basis of Ohio's Minor Courts of Justice.

One hundred and thirty years have elapsed since Governor St. Clair made his statements to the territorial legislature. During all these years the office of justice of the peace has persisted tenaciously in Ohio's jurisprudence as a rudimentary organ of "home rule". Upon its ancient foundations have been created municipal courts in efforts to mitigate some of the evils for which the system had become notorious in and adjacent to large cities. (1)

-
- (1) The ramifications of the office in Ohio's political

structure can be suggested by the fact that in Page's 1926 Ohio General ~~Code~~^{Code}, there are three pages in the index devoted to the supreme court, two pages devoted to the court of appeals, seven pages to courts of common pleas, and the significant total of twelve to the courts of justices of the peace.

Section 11. Steps in the reorganization of inferior justice in Hamilton County.

While the steps which have been taken to alter the system of administration of inferior justice have taken the same general lines throughout the state, there have been some minor differences in the special legislation. In as much as this study deals in detail with the system as it operates in Hamilton County this section will be devoted in particular to the changes which have been made by the legislature in this region. The abuses to which the administration of minor justice was subjected aggravated the public mind for decades, yet the first step toward the reformation of the venerable system in Hamilton County was taken in 1891 when an act of legislature made the squire in first grade cities of the first class a stipendary magistrate at a salary of \$2500 a year with \$750 for clerk hire.(1)

(1) 88 Ohio Laws 522. For the steps in this legislative change see Revised Statutes Sec.621; 83 Ohio Laws 168; 94 Ohio Laws 19; 95 Ohio Laws 537.

This effort at reform was unsuccessful largely because the unlimited countrywide jurisdiction in attachment cases permitted outlying squires to operate within Cincinnati limits. The city squires found their jobs sinecures because the bulk of the legal work went to the country justices who had downtown offices connected with collection agencies.

In these courts the attorneys could be satisfied that there would be no costs taxed upon the plaintiff under any conditions.(1)

(1) There were five justices in the Cincinnati township. All costs and fees collected were paid to the city treasurer who in turn paid the salaries.

The volume of business built up by some of these squires boosted their annual incomes in a few rare cases as high as \$10,000, in a number of cases as high as \$8,000, and incomes of \$4000 were not uncommon.(2)

(2) These days were recalled to the writer by a squire who participated in the activities. Now he is operating outside the city but he remembers the time when he had a "beautiful" office with a tile floor in a downtown bank. "On balmy June days couples candidating marriage lined the walls."

The second step at adjusting the machinery for the administration of inferior justice followed a decade later. Through a maneuver in the Constitutional Convention of 1912 the authorization for the justice of the peace was eliminated from the fundamental law of the state and the organization of the minor judiciary was left entirely dependent upon act of legislature.(3)

(3) Art. IV Sec. 9 which related to the office of justice of the peace in the Constitution of 1851 was repealed by a referendum vote: Yes, 264,832;No. 252,936.

This section was repealed because section 1 of Article IV as adopted in the same referendum vested the judicial power of the state in a supreme court, court of appeals, court of common pleas, courts of probate, and such other courts inferior to courts of appeals as may from time to time be established.

Had section 1 failed of ratification, the section 9 would then have been operative. This merely provided that a competent number of justices of peace should be elected in each township "until otherwise provided by law."

Thus it can be seen that the Constitutional status of the squire was to be abolished, if not by one clause, then by another.

Discussion over the clauses proposed to be inserted in the Constitution as recorded in the debates of the 1912 convention clearly indicates that the intention of the delegates was to make possible a flexible system by which the organization of minor courts could be adjusted by statute according to local opinion and to fit local needs. A few quotations from the debates will emphasize this point as well as indicate the chief arguments which today are advanced in defense of maintaining the magistrate courts in tact.(1) _____

(1) Mr. Read: Now it is claimed by some of those who say that justices of the peace are abolished that the dropping out of the words "justices of the peace" in this amendment has the effect of abolishing this office,---In Summit County alone it is claimed that this proposal will lose us a thousand votes.(II Debates and Proceedings, Ohio Constitutional Convention, 1912,p.2086.)

Mr. Fess: If we want proposal No. 19 adopted we must overcome the prejudice that certain interests of the State are working against this Constitution, interests that do not care the snap of the finger for justices of the peace, but they are everywhere poisoning the minds of the rural section.(Ibid,p.2090)

Mr. Johnson: With about only three percent of the people understanding the Constitution what can we do? It is a simple matter to me; we take justices of the peace out of the Constitution and we put them in the hands of the legislature. (Ibid,p. 2090)

Mr. Peck: It is obvious there are times and places in the State where they do not desire to have justices of the peace and the number of these places is increasing. The constant tendency is to do away with them-----.

It is the intention of the judiciary committee to report an amendment putting the whole matter into the hands of the General Assembly.(Ibid, p.1776)

Said office(justice of the peace)is not abolished but minor court organization is vested in the discretion of the legislature. (Report of Special Committee relative to office of Justices of the Peace.II Debates 2117)

Mr. Harter, of Stark: I am opposed to the whole proposal. I believe the justice courts are the courts of the people. There is a great deal of business in the hands of the justices of the peace and this is the only place where a man not a member of the bar can plead his own case. (Ibid,p.1771)

Mr. Harter: I am opposed to having our minor courts taken out of the hands of the people. I think this is a lawyer's proposition. I do not want the power taken from the people of the state for the sake of the lawyers. Many of the best decisions that have been made have been made by justices of the peace. (Ibid p. 1772)

Mr. Johnson of Williams: I am not a lawyer, but a farmer, and farmers are noted for their common sense. The justice courts are the courts of the people. I want the justices left as a constitutional office. (Ibid, p. 1772)

The office of the justice of the peace therefore ceased to be a constitutional one on January 1, 1913 although the legislature reenacted the legislation pertaining to the courts. (1)
 (1) See 1913 session laws. Also in re Hesse 93 O.S. 230 and State ex. rel. v. Morse 94 O.S. 435

The 1913 legislature abolished the office of justice of the peace within the Cincinnati township so that by January 1, 1916 the squire as a stipendary magistrate within the city was a matter of history. Simultaneously with the abolition of the stipendary magistrates the jurisdictions of the five justices was combined into a municipal court which had enlarged jurisdiction in civil cases. (2)

(2) That the legislature may provide for the creation of municipal courts in municipal corporations and prescribe the procedure and practice before such court was decided in the case of Miller v. Eagle 96 O.S. 106

The upper limit of civil jurisdiction was fixed at \$600 in an effort to relieve the common pleas court of a large number of cases. With a few changes in the limits of

jurisdiction and the number of judges of the Municipal Court the inferior judicial structure of the county exists today as it was outlined to operate on January 1, 1913.(1)

(1) Referring to the apparent lack of scientific interest in the organization of the minor courts, Dean Pound asked: "May it not be that we have been assuming too lightly that what is not profitable for the lawyer is unprofitable for the law?" 26 Harvard Law Review 321.

SUMMARY

The title of the office of the "justice of the peace" was brought to America by the English colonists. In the home country this position was filled by gentlemen of property who were important appointees of the crown functioning in the local administration. Little but the name, however, survived the transplanting. Influenced by pioneer conditions and the character of a poor but independent population, the office of justice of the peace became an institution of rough and ready justice. Because there were few lawyers available for the offices and because of a prejudice against the "expert" the justice of the peace was habitually a layman. The fee-system gave a semblance of economy which appealed to the frugal tastes of the public. In such a historical setting the leading institution for the administration of minor justice was formed; it has clung tenaciously in American jurisprudence and today forms the basis of the organization of the minor judiciary of Ohio.

The first step in the adjustment of the functioning of decentralized justice in Hamilton County was taken in 1891 when the squires of the Cincinnati township were made stipendiary magistrates. The second step followed in 1912 when by

constitutional amendment the justice of peace ceased to be a constitutional officer. The third step was taken with the establishment of the Cincinnati Municipal Court. Since the acts of legislature in 1913 there has been little change in the essential structure of the minor courts as they exist in Hamilton County. There has been a period of eighteen years without a major alteration in the system.

CHAPTER TWO

MINOR COURTS IN HAMILTON COUNTY

Section 1. Divisions of county population.

The population of Hamilton County is 589,356.
 Of this total number of inhabitants 451,160
 reside within the City of Cincinnati, while
 138,196 are scattered in the rapidly growing
 territories satellite to the metropolis. (1)

(1) Ohio: Number and Distribution of Inhabitants
 15th census of the United States: 1930.

The population is distributed among the
 governmental units as follows:

Townships:

1.	Anderson	4,834
2.	Colerain	3,664
3.	Columbia	36,338
4.	Grosby	543
5.	Delhi	2,821
6.	Green	13,172
7.	Harrison	1,936
8.	Miami	5,294
9.	Milldreek. . . .	20,253
10.	Springfield. . .	25,460
11.	Sycamore	20,172
12.	Symmes	2,142
13.	Whitewater . . .	1,567

Cities

14.	Cincinnati. . .	451,160
15.	Norwood	33,411
16.	St. Bernard. . .	7,487

Villages

17.	Addyston	1,768
18.	Arlington Heights.	1,214
	(Springfield Tp. 540)	
	(Sycamore Tp. 674)	
19.	Cheviot	8,046
20.	Cleves	1,711
21.	Deer Park.	2,642
22.	Elmwood Place.	4,562
23.	Glendale	2,360
24.	Harrison	1,449
25.	Lockland	5,703
	(Springfield Tp. 2,732)	
	(Sycamore Tp. 2,971)	
26.	Madeira	1,162
	(Columbia Tp. 956)	
	(Sycamore Tp. 206)	
27.	Montgomery.	394
28.	Mt. Healthy	3,530
29.	Newtown	939
30.	North Bend.	597
31.	North College Hill.	4,139
32.	Reading	5,723
33.	Sharonville	1,811
34.	Silverton	1,193
	(Columbia Tp. 1,191)	
	(Sycamore Tp. 652)	
35.	Terrace Park	713
36.	Wyoming	3,767

(Population 1930 census; classification, Statistical Report of Secretary of State, 1928. Milford considered in Clermont County, 65 inhabitants being in Hamilton County, 1,850 in Clermont. Loveland considered in Clermont County, 782 inhabitants being in Hamilton, 30 in Warren and 1,142 in Clermont.)

Divisions have shifted slightly during the five years' period of the present study. Parts of Columbia Tp. were annexed to Cincinnati in 1925 and 1928. Parts of Green tp. were annexed in 1926 and 1930.

Section 2. Justice administered in thirty-six distinct governmental units.

From the standpoint of a study of the administration of justice in the so-called inferior courts (1) the significance of this

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- (1) The division of courts recognized at common law was superior or courts of general jurisdiction, and inferior, or courts of limited jurisdiction, --- Inferior courts derived their whole existence and jurisdiction from the statutes constituting them. Ex parte Roundtree, 51 Alabama 42, 44, 11 Cyc. 658.

distribution arises from the fact that minor court judges are elected in thirty-six independent governmental units. A total of fifty-five inferior court judges of varying qualifications as well as jurisdictions operate within these three dozen local governmental units. (2)

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- (2) This total includes:
- 7 judges of the Cincinnati Municipal Court. (The number was increased from five to seven by act of legislature in 1929. 113 Ohio Laws 631.)
 - 22 mayors acting in judicial capacity with powers of justice of the peace within corporation limits and as magistrate on village ordinance.
 - 26 justices of the peace. (The number of magistrates functioning within the county varies from time to time because of resignations, removals from township, and failure to qualify after election.

Total 55

Section 3. Differential gain of satellite areas.

The importance of a study of the organization and functioning of this highly decentralized judicial system at the present time is realized when one considers the fact that while the population of Cincinnati increased 12.4 per cent in the decade 1920 - 1930, the population of Hamilton County jumped 19.4 per cent. Thus, in a period of ten years, there was a differential population growth of seven per cent in favor of the outlying areas. (1)

(1) Ohio: Number and Distribution of Inhabitants, pp. 4, & 6-8.

The differential gain in the case of Norwood was 21.4 per cent. These facts are illuminating because they indicate the direction of growth and stress the need for intensive study of the problems of metropolitan and regional government. From the standpoint of the judicial structure, this trend prompts the question as to whether the decentralized system of justice is adequate to cope with the situation.

Section 4. An outline of jurisdiction.

An outline of the jurisdictions of these courts in thirty-six governmental units reveals the fact that the powers overlap to such an extent as to make the situation very complex. A justice of the peace has exclusive original jurisdiction in civil actions where the debt or damage does not exceed \$100 and concurrent jurisdiction with the court of common pleas in actions for the recovery of sums not exceeding \$300. (1)

(1) General Code, Sec. 10226.

Cases on trespass to real estate may be heard where damage does not exceed \$100. (2)

(2) General Code, Sec. 10231.

In ordinary civil cases the jurisdiction of the squire is limited to the township where he is elected and resides. (3) In twelve

(3) General Code, Sec. 10223¹

instances, however, he may exercise county-wide jurisdiction, provided that the case

is tried in the township where he is elected.
 No squire, of course, by law can exercise either
 civil or criminal jurisdiction within the city
 of Cincinnati. (1)

(1) General Code, Sec. 1558-11.

Countywide civil jurisdiction includes
~~to~~ power:

1. To administer any oath or affirmation authorized by law to be administered.
2. To take Acknowledgements of deeds, mortgages, and other instruments of writing.
3. To solemnize marriages.
4. To issue subpoena for witnesses and coerce their attendance in causes or matters pending before them, or other cause or matter wherein they may be required to take depositions.
5. To try the action for forcible entry and detention or the detention only of real property.
6. To proceed against security for costs and bail for stay for execution of their dockets.
7. To issue attachments and proceed against the goods and effects of debtors in certain cases.
8. To issue executions on judgments rendered by them.
9. To proceed against constables failing to make returns, making false return, or failing to pay over money collected on execution or attachment.
10. To try the right of claimants to property taken in execution or attachment.
11. To act in the absence of the probate judge in the trial of contested elections of justices of the peace.
12. To try actions against other justices of the peace. See General Code 10224.

The mayor of a village has the same civil
 jurisdiction within the corporation as the

justice of the peace (1), is entitled to the same fees, and must keep the same kind of dockets. (2)

(1) General Code, Sec. 4548

(2) General Code, Sec. 4550

Thus the jurisdiction of the justice of the peace is concurrent with that of the mayors of villages in cases involving not over \$100 and both the mayor and the squire have concurrent jurisdiction with the common pleas court when sums between \$100 and \$300 are involved. The population of the cities and villages of the county, exclusive of Cincinnati, totals 95,271, so that the original exclusive jurisdiction of the squires is limited to only 42,925 persons who live outside incorporated areas. In civil cases, then, when the amount involves \$100 or less there is one judge for approximately every 2510 inhabitants outside Cincinnati. (3). This

(3) In the case of Montgomery, one judge for each 98.5 persons.

surely is a decentralized system for the administration of justice. Contrast this situation with that in Cincinnati where seven judges care for 451,160 or one judge for each 64,451 inhabitants.

To summarize the foregoing jurisdictions, it may be said that 95,271 persons in the county may be proceeded against where the amount prayed is

\$100 or less (1) either in a justice of the peace court or (2) in a mayor's court, while \$2,925 may be reached by action only in a squire's court. But in cases between \$100 and \$300, choice of tribunals in which to bring suit is increased with the addition of the common pleas court.

The situation is further aggravated by the countywide jurisdiction granted in attachment and garnishments in which cases there is a choice of twenty-six squires' courts. (1)

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- (1) Of course, no squire has jurisdiction within Cincinnati. See Art. IV, Sec. 9 of constitution.
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The whole situation is yet more complicated by the fact that there is no finality to the judgment of a mayor or squire in a civil case. The court is not a court of record and hence it is impossible to go up on error. (2) Following

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- (2) The justice of peace court is not a court of record within the meaning of Art. IV, Sec. 6 of the constitution giving the court of appeals jurisdiction to entertain error proceedings from courts of record. 11 Ohio Jurisprudence 803.
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a judgment by the squire, the defeated party may file an appeal undertaking, take a transcript of

the squire's docket, and have the entire case heard de novo in the common pleas court. (1)

(1) Cases under §20. may ~~not~~ be appealed ~~where jury trial was had~~. General Code, Sec. 10,354. ~~Cases involving §1.00 have been appealed.~~

Overlapping, conflicting, and provisional jurisdiction up to this point becomes somewhat involved; the act of ^{the} legislature in 1929 increased the jumble. (2)

(2) 113 Ohio Laws 640 enacting Senate Bill 234.
See General Code Sec. 1558-6a

^(GC. 1158-6a)
By this statute the Municipal Court of Cincinnati was given countrywide jurisdiction to (1) issue executions on its own judgments, (2) enforce collection of its own judgments, (3) hear all cases where one or more defendants reside or "are served with summons" within the city of Cincinnati, (4) try actions for the replevin of property, (5) hear all actions, criminal, quasi-criminal, civil and preliminary, in which justices of the peace have or may be given jurisdiction co-extensive with the county.

The significance of this enlargement of municipal court jurisdiction is very great when it is realized that the court can take jurisdiction by serving the summons within the city limits. The power to try countrywide cases of replevin brings the volume of chattel mortgage and installment cases within the scope of the court, while power to hear misdemeanor cases and recognize or discharge felons brings the criminal work of the entire county within the province of the downtown court. This statute so clearly overlaps the entire jurisdiction of the justice of the peace that it is entirely possible for the work of the squires to be practically wholly absorbed. In short, ^K by means of this statute it is possible for the justice of the

peace courts to be killed off by a process of starvation.

SECTION 5 Criminal Jurisdiction.

The justice of the peace, excluding Cincinnati, has criminal jurisdiction throughout the country on view or sworn complaint to cause a person guilty of a felony or misdemeanor to be brought before him. In the case of a felony he may turn the offender over to the grand jury or discharge him after preliminary hearing. In misdemeanors he may try certain classes of cases which the law empowers him to hear and where the defendant waives jury trial in writing, or where the defendant is arraigned on charge

made by the injured party and he pleads guilty(1).

- (1) When a person charged with a misdemeanor is brought before a magistrate on complaint of the party injured and pleads guilty thereto, such magistrate shall sentence him to such punishment as he may deem proper according to law, and order payment of costs. Otherwise he shall discharge him from custody. If the offense charged is a misdemeanor and the accused in a writing subscribed by him and filed before or during the examination, waive a jury and submit to be tried by the magistrate, he may render final judgment. See General Code Section 13433-1. Also Swans Treatise (27th ed. 1930) p. 863-864.

He may also entertain complaints against the peace and issue search warrants.(1) It is interesting to note

(1) General Code Sec. 13422

the special jurisdiction granted to the squire.(2)

- (2) Chief among this class of cases are the following:
- 1.- Adulteration or deception in sale of dairy products and other food, drink, drugs and mediums.
 - 2.- Prevention of cruelty to animals and children.
 - 3.- Abandonment, non-support, or ill-treatment of child by parent.
 - 4.- Abandonment or ill-treatment of child under sixteen by its guardian.
 - 5.- Employment of child under fourteen in vocation injurious to health, morals, or life.
 - 6.- Regulation, restriction or prohibition of the employment of minors.
 - 7.- Torturing, unlawfully punishing, ill-treating, or depriving anyone of necessary food or shelter.

- 8.- Selling, giving away or furnishing of intoxicating liquors as beverages or keeping a place where such liquor is sold or given away.
- 9.- Shipping, selling, using, having unlawful quantities of illuminating oil in mines.
- 10.- Sale, shipment, or adulteration of commercial feeds.
- 11.- Use of dust creating machines in workshops and factories.
- 12.- Conducting pharmacy or retail drug or chemical store, or dispersing therein of drugs and chemical or poisons.
- 13.- Failure to keep a clean bakery, confectionery, creamery, dairy barn, hotel, milk depot etc.
- 14.- Violating of law in relation to the inspection of steam boilers.
- 15.- Prevention of short weights and measures.
- 16.- Violation of any law in relation to the practice of medicine or surgery. See General Code 13422.
- 17.- Violation of any law relating to the filling or re-filling of registered containers by other than the owner, or defacing the ownership marks thereon.

Section 6. The importance of the justice of peace. <

Upon the statute books, the justice of the peace still is an important official in township government. His duties range from the appointment of township trustees in case of vacancy(1) to the performance of the duties of coroner in
(1) 113 Ohio Laws 10

holding inquests in case the coroner is absent from the county or there is a vacancy in the office.(2)

(2) General Code 1745.

If the odor of a dead body becomes offensive, the squire can order the sexton to inter the corpse and if this gentleman neglects to perform his duties within three days, the justice can deputize a householder to bury the body at the expense of the township trustees.(3) He can further collect \$10 for the
(3) General Code Sec. 3470

first offense and \$25 for subsequent offenses from an owner who permits a stallion, jack, bull, bear, or buck to be at large. (4)

(4) General Code Sec. 5808

Section 7. A statement of a problem.

From the facts presented in the foregoing sections it clearly can be seen that the organization of the inferior courts of justice in Hamilton County is highly decentralized and confused. Statutes ^{making possible} providing for the virtual strangulation of the squire's court are operative. An immediate problem is the study of the organization and operation of the justice of the peace courts of the county, for the reform and simplification of the judicial machinery depends upon what is done with this office. While the problem is acute in Hamilton County, it exists in the other counties of the state as well, and a detailed analysis of the workings of the squire's court will result in the gathering of data which will be of importance throughout the state. To present facts which will give a detailed picture of the manner in which the justice of the peace courts in Hamilton County are operated is the purpose of this report.(1)

- (1) Ohio has 2272 elected justices. One out of six has not qualified to act. Data compiled from Ohio Rosters of township and municipal offices, 1929-1930.

SUMMARY

Justice in Hamilton County is administered in thirty six local governmental units by fifty-five judges in minor courts. The system is so highly decentralized that in some cases there is one judge for every 9915 inhabitants. The jurisdictional limits of these various courts is confused and overlapping. The situation is aggravated by a recent statute which gives jurisdiction to the Cincinnati Municipal Court which eventually may mean strangulation to the smaller courts scattered about the country. The entire scheme is further entangled by a practice which allows a case already reduced to judgment to be appealed and tried de novo by the common pleas court for actual cases involving only \$1.00.

CHAPTER IIITHE PERSONNEL OF THE BENCH

SECTION 1 - The "Justice of the Peace" defined.

A justice of the peace is a "judicial officer of special and limited jurisdiction, both civil and criminal." (1)

(1) Turner v. Roby 3 N.Y. 193

Definitions quite generally emphasize the historically primary functions of the office associated with the keeping of the peace and pass over too hastily the actual situation which presents the squire as a magistrate chiefly concerned in the adjudication of small claims. (2)

(2) Instances of antiquated definitions are found at every hand. For example:

"A judicial officer vested with authority to prevent breaches of the peace, jurisdiction in minor cases, and power to commit for trial for more serious offenses."

(2 Cyclopaedia of American Government 273)

"An officer having certain judicial powers for the purpose of preventing breaches of the peace, and causing the arrest and commitment of persons violating the law."

(Cochran's Law Lexicon, 3rd ed. p.165)

"A public officer invested with judicial powers for the purpose of preventing breaches of the peace and bringing to punishment those who have violated the law."

(4 Words & Phrases 3907; identical definition, Cyclopedic Law Dictionary 521)

"A judicial officer of inferior rank, holding a court not of record, and having usually civil jurisdiction of a limited nature, for the trial of minor cases, to extent prescribed by statute, and for the conservation of the peace and the preliminary hearing of criminal complaints and the commitment of offenders." (35 Corpus Juris 448; identical definition 24 Cyclopaedia of Law and Procedure 402)

In Hamilton County the justice of the peace is a fee-supported judge specializing in the collection of minor debts, and having convenient criminal powers of increasingly limited scope.

SECTION 2 - The Squire as an integral part of judicial organization.

To speak of the justice of the peace as a judge and to consider the personnel of the bench in terms of magistrates is unconventional. Characteristically and popularly the office has a stereotyped connotation.(1)

(1) The following quotations represent such ideas, and the conceptions are not limited to laymen, Said Blanford, J.-"A justice of the peace is generally a man of consequence in his neighborhood; he writes the wills, draws the deeds and pulls the teeth of the people; also he performs divers surgical operations on the animals of his neighbors. The justice has played his part on the busy stage of life from the time of Mr. Justice Shallow down to the time of Mr. Justice Riggins. Who has not seen the gaping, listening crowd assembled around his honor, the justice, on tiptoe to catch the words of wisdom as they fell from his venerated lips?

"And still they gazed,
And still the wonder grew,
That one small head
Could carry all he knew."

Benheim Brothers & Co. v. Baldwin, 73 Georgia 594.

Dean Pound tells of a shoemaker, whom he knew in his boyhood, raised to the bench. Bested in an argument, the magistrate hastened to his office to prepare contempt papers against the debaters who had been so indiscreet and disrespectful as to argue with THE JUSTICE OF THE PEACE. When advised of his incapacity to cite a man for contempt of court because of a mere argument in the shop, the magistrate stretched himself to his utmost height and exclaimed: "I want you to understand I am a Justice of the Peace and as such am always an object of contempt." The story is also current of a justice who, when asked to charge the jury, replied: "Gentlemen, this has been a long and tedious trial for me; I'll have to charge you fifty cents apiece."

Not only are magistrates as a class lightly regarded by the public; they hold no high opinion of each other.(2)

(2) Expressions illustrating this statement were recorded during this study.

"The magistrate is an inferior judge in every sense of the word. To be known as a squire is to injure one's

reputation as an attorney of the first rank."
"The law ought to be changed to get some respectable men in office."
"Justices like those ruin the good work justices like myself do."
"They ought to throw every one of the damn rats in the river."

Yet the approach to the study of this legal institution must be through consideration of the magistrate as an integral part of the American judicial system. As one squire informed a prominent member of the Cincinnati Bar who directed him to call at his office to revise a judgment in harmony with the dictates of law, the justice of the peace "is as much a judge as Charles Evans Hughes, or even Stanley Struble himself." (1)

(1) The justice advised the lawyer that he was always willing to extend consultation privilege, but owing to his limited time, appointments must be made through his secretary three weeks in advance. The attorney ceased his effort to guide judicial discretion.

The opinion of this country justice was entirely well founded. (2)

(2) While the magistrate must be classed as a judge, it is interesting to note that only one state in the Union has requirements as to learning as a qualification for the office. Only in Louisiana is a justice required to be able to read and write the English language correctly. (Louisiana Constitution, 1921. Art. VII. Sec. 47.) In Ohio he need only be an "elector". Constitution, Art. XV., Sec. 4; 960.S.172/
The only other restriction is that he can not be sheriff, county auditor, county treasurer, clerk of the Court of Common Pleas, county recorder, prosecuting attorney, or probate judge. General Code, Sec. II.
Though a judge in every sense of the word, the justice of the peace may also be a legislator, not being disqualified by virtue of judicial office from being a member of the General Assembly. General Code, Section 15.

SECTION 3 - THE NUMBER OF JUSTICES OF THE PEACE.

During the five years covered by this study, (1) a total of

(1) 1921 through 1925 inclusive.

forty-nine justices of the peace have qualified with the clerk of the Hamilton County Court of Common Pleas and have had their names officially recorded in a book especially devoted to this purpose. Of this number, ten qualified to succeed themselves, leaving thirty-nine individual incumbents. During the same period there have been six men who acted as justices of the peace under color of title by election or appointment, the^{se} officially not qualified, on the clerk's book. (2)

(2) If a justice refuses or neglects to enter into bond within ten days after taking the oath of office, or "neglects or otherwise refuses to otherwise officially qualify himself," his office becomes vacant. General Code, Sec. 1722. Of twenty-six squires listed by the Secretary of State as elective officers in Hamilton County in 1930, five were unqualified.

While these men have not qualified though elected or appointed, one attorney qualified without election. (3) (4)

(3) On December 9, 1925. The error was quickly brought to the attention of officials. In a letter dated December 18, 1925, addressed to Frank Lewis, Clerk of the Court, by William Marschheuser, deputy clerk of the Board of Deputy State Supervision and Inspector of Elections of Hamilton County, acting upon the advice from the Secretary of State, the clerk of the courts was notified to correct his record "So as to show that Mr. ----- is not empowered to exercise the duties of the office of Justice of the Peace."

(4) In 1930 five elected squires neglected or refused to qualify, according to report of the Secretary of State, though one succeeded himself and continued to act. (A judgment which is rendered by a justice of the peace after his term of office from the date of his commission has expired and before a new commission is issued to him for his new term is a nullity and "enforcement thereof will be enjoined." Bushnell v. Koon, 8) C.C. (N.S.) 163)

In addition three magistrates were actively handling cases although neither the clerk of the court nor the Secretary of State had any official knowledge of the fact.

SECTION 4 - The Term of Office in Fact.

The justice of the peace is elected for a term of four years. (1)

- (1) General Code, Sec. 1715. See also Constitution, Art. XVII, Sec. 2; Revised Statutes, Sec. 565; and 66 Ohio Laws 142, originally the term was three years. See Constitution of 1802, Art. III, Sec. 11.

ms TD During the five years of study forty-five individual men handled cases as shown by the docket books of twenty-six courts examined. Their average term of service was slightly over two years and seven months. The distribution can be seen in the following frequency table:

Period	Frequency	Per Cent	Cumulative Per Cent
Less than one year	7	.15	.15
Less than two years	5	.11	.26
Less than three years	12	.27	.53
Less than four years	9	.20	.73
Less than five years	4	.09	.82
Less than six years	8	.18	1.00

SECTION 5 - The Causes of Brief Terms.

The result of this brevity of tenure is discontinuity in the administration of justice. Speaking in terms of the average a magistrate is in office scarcely long enough to become acquainted with the details of his office. Litigants and attorneys are confused as to the identity and location of a squire in a particular township. The causes for the ephemeral period of office may be seen in the following table which classifies the magistrates according to reasons which explain

the interrupted terms.

- 1 Magistrate merely ceased accepting cases.
- 1 Magistrate was forced to resign under charges of malfeasance, misfeasance, ^{or} non-feasance preferred by the state examiner.
- 9 Magistrates died.
- 7 Magistrates were not re-elected either because of refusal to run as candidates or because of defeat at election. Their terms expired.
- 10 Magistrates were serving out elected or appointed terms beginning during the period of study.
- 8 Magistrates served the entire five years.
- 13 Magistrates resigned. (1)

(1) "All resignations of justices of the peace shall be made to the clerk of the court of common pleas. Only three of these thirteen resignations were so made. Swan, Ch.I, Sec.10. General Code Sec.1718."

SECTION 6 - Spasmodic Justice.

If the character of the terms of office is intermittent and leads to discontinuity in the administration of justice, the operation of the courts is likewise spasmodic. Examples illustrating this statement give particular emphasis to the problem.

Anderson Township - One magistrate, though re-elected to serve until 1933, moved to Cincinnati. No successor appointed.

Docket of a second court jumps from November 18, 1918 to April 1, 1926.

Colerain Township - One magistrate whose term expired in 1929 ceased operations early in 1927.

Another magistrate whose term expired in 1925

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handled but one case. An elected successor handled no cases and promptly resigned. An appointed successor handled one case, was frightened and resigned. An appointed successor handled cases to the end of 1929.

Crosby Township - The docket jumps from June 4, 1920, to October 15, 1924. The third case recorded is dated March 24, 1928.

Green Township - The docket jumps from October 3, 1924 to January 18, 1926.

Harrison Township - The docket jumps from June 8, 1922 to March 20, 1925. The elected magistrate ceased operations on December 28, 1926, and resigned in June 1928. An appointed successor heard one case on April 4, 1929, and ceased operation. He was not bonded and resigned. The township trustees could find no citizen to consent to appointment to fill the vacancy. A second elected magistrate qualified but never served.

Whitewater Township - An elected magistrate whose term expired in 1929 ceased operations on May 28, 1927, but acted again on February 5, 1930.(1)

(1) The reference in all instances above cited is to civil dockets which are a better index of the continuity of operation than the criminal records.

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SECTION 7 - Record of Bonds

Bonds of magistrates and constables are filed with township treasurers, or with township clerks where there is no treasurer. (1)

(1)

General Code 1721. "The officer with whom such bond is filed forthwith after the filing thereof shall notify the clerk of courts in writing"--- and this clerk shall make entry thereof. General Code, Sec. 1722.

Technically the township officials should notify the clerk of Courts of the filing and approval of bonds recorded in the several townships. (2)

(2) These bonds are nearly all uniformly fixed at \$1000 for justices and \$500 for constables. Justices' bonds may range from \$1000 to \$5000 in the discretion of township trustees. General Code 1722.

As far as the courthouse record is evidence, twenty-four out of forty-nine magistrates are serving without bond. This statement must at once be supplemented by the State examiner's report which declared all bonds approved and filed with township clerks. (3)

(3) See Reports, Department of State, Bureau of Inspection and Supervision of Public Offices, Justices of the Peace, 1925-1927. These are on file at the office of the County Auditor.

In reality only one magistrate during the period surveyed acted while unbonded. He handled only one case.

Hence the technical error lies in the neglect of township officials in reporting and in the failure of county officers to request the report for the sake of a complete and centralized

record of those engaged in the administration of justice.

SECTION 8 - Political Party Membership

Though a judicial officer elected on a non-partisan ticket, the justice of the peace is a party man and is run as a candidate selected by the party in the several townships. (1)

(1) Names of all candidates for election to any judicial office must be placed on a non-partisan ballot in the order of the rank of the office, "without any party designation of any kind." General Code, Sec. 4785 - 102.

Of the forty-nine justices regularly qualified, thirty-five have been Republicans, twelve Democrats, and two Independents.

In view of the non-partisan character of the magistrate's office, a curious custom prevails at the office of the clerk of courts in eliciting party affiliation at the time an elected squire qualifies himself. The record of certification of qualification is kept in a large book of printed forms. Upon signing their names, the justices are requested to write vertically on the narrow left margin of the page their names, addresses, and parties. (2)

(2) The following is an example of their marginal entry:
George Dumler, Mt. Healthy, R.R.13 Republican.

This data is purely extraneous to the printed form. There is no statutory authority for the practice nor any place provided for such information on the printed form. The men who sign do so from custom or upon request. Even the deputies who make the request do not know why the data are required. (3)

(3) The state examiner advises he has been curious about the same entry. One magistrate who has been qualifying since 1906 refused to sign his party when he requalified on December 26, 1929.

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In the absence of definite motive for this custom, the writer suggests that the custom may have arisen in the desire of Republican sheriffs to take their criminal business to Republican justices of the peace.

SECTION 9 - Occupational Classification of Magistrates.

The justice of the peace calling is an avocation supplementing a vocation. It is significant, therefore, to note the professional occupation of the magistrates. These

follow:	Lawyers-----	16(1)	Carpenters-----	2
	Clerks-----	4		
	Merchants-----	3		
	Farmers-----	3		

(1) Including one lawyer and school teacher; one lawyer and railroad man; one lawyer and filing clerk.

One each: mayor and building and loan clerk; mayor and real estate dealer; cattle and real estate dealer; retired fire marshal; retired flagman and clerk; accountant; printer; direct mail advertising executive; physician; photographer; inventor; painter; county road inspector; county employee; electrician; professional justice-administrator; executor; and collector; no occupation or unknown.

SECTION 10 - Age Distribution of Magistrates

A study of the age distribution of justices who have served during the half decade being analyzed shows that fifty per cent of the officers were under fifty. The following table

indicates the classification:

<u>AGE</u>	<u>NUMBER</u>	<u>PER CENT</u>	<u>CUMULATIVE PER CENT</u>
30-39	6	.13	.13
40-49	17	.37	.50
50-59	9	.20	.70
60-69	7	.17	.87
70 & over	6	.13	1.00

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SECTION - 10 - Educational Qualification

Twenty-four of the squires were graduates of high schools while ²¹~~eighteen~~ were not. Of the graduates of high schools fourteen were also graduates of law schools, while sixteen were members of the Bar.(1)

(1) Ohio Bar - 14; Indiana Bar, 1. Of the graduates of law colleges thirteen attended the Y.M.C.A. Night Law, one the College of Law, University of Cincinnati.

Two of the attorneys also were graduates of Liberal Arts Colleges (2)

(2) Yale University and St. Xavier College were represented.

One justice was a medical college graduate while another attended business college. To summarize the educational qualification the following table is included:

College Graduates-----	2
Members of the Bar -----	16
Graduates of Law Schools-----	14
Graduates of Medical College--	1
Graduates of Business College-	1
High School Graduates -----	24
Less than High School Education	21

SECTION - 11 - Why Men are Magistrates

While it is difficult to isolate the motives which prompted the men classified in this chapter to become candidates for the office, there are four reasons which are apparent in varying degrees.

(1) Some men covet the distinction of the title.

(2) The majority of men desire to supplement the income from a regular vocation by the fees of the office.

- (3) The office has value as a "feeder" for legal business.
- (4) A few citizens consent to run to fill out the party ticket.

An instance of the filling of the office through appreciation of its distinction is that of a cattle trader and real estate dealer who declined the town clerkship on the party ticket, but half-jokingly intimated his desire to be a Justice of the Peace. He was at once supported by the Democrats and elected. Satisfied with the mere title of the office he was reluctant to qualify but did so at the request of attorneys. According to his own testimony he spent days of worry and "sleepless nights" in thinking about deciding cases. When requested to bring his dockets to the state examiner his courage was at low ebb. This magistrate is typical of a class.

The desire to supplement the income from a regular vocation by the fees of the office prompts both laymen and lawyers to enter the work. In general these men are disappointed with the niggardly compensation which is inevitable in all but the few largest townships. This profit motive obviously has the danger of influencing the magistrates and their constables to overreach themselves. The office in three of the townships has been almost completely demoralized during the period of study because of the avaricious character of a few ex-justices. Reasonable men are reluctant to succeed to an office held in popular disfavor.

Ambitious young men studying law at ~~the Y.M.C.A.~~ night or recently graduated from the Y.M.C.A. Law School make the most typical candidates for the office. (1)

(1) While ~~the~~ magistrates holding office during the years under study were under thirty years of age, three were elected while in their twenties, two becoming public officers soon after reaching their majority. Several squires were elected before completing their law training.

Often before, quite generally soon after, admittance to the Bar this class finds its way into the judicial brotherhood. The fees smooth the rough path to establishing a law practice, and the contacts with litigants prove to be excellent advertising.

In some of the townships there is a feeling that the office is continually held by men who are new comers to the township. Though the writer has found this opinion generally unfounded, it expresses an attitude held by some trustees and established families who have been associated with politics for many years.

SECTION 13 - Same: Dummy Candidates

"Dummy Candidates" may be defined as men whose names are placed upon the ticket to enable the party to present a complete slate to the voters.

These men capitulate to party pressure, are elected and typically refuse to qualify, or influenced by township trustees to do so neglect to exercise actively the powers of the office.

During the period of study this type of candidate represents one out of five.

The experience of one township is representative of the problem involved in the selection of "dummy candidates".

"It is very difficult to get any one to run for Justice of the Peace in this township, with the result that the voters just fill in some names when they vote. It is twice as difficult to get anyone to qualify and then it is three times as difficult to get any one to act after they have qualified."(1)

(1) From a letter transmitted for the purpose of this report by an attorney on behalf of a township trustee. This township

has a population of 1,567. Originally it had one squire. The number was increased to two by petition to the probate judge. At the present time the township has officially two offices to be filled. Curiously enough it now has three magistrates officially elected to hold two offices officially created. The terms of the three squires all expire December 31, 1933.

An excerpt from the letter of the attorney mentioned above is interesting in this connection.

"The situation in the western part of the county has been in a mess as far as the law for the people in minor cases is concerned ever since I can remember. Many years ago Mr. _____, lawyer, made an application for an increase in the justices of the peace in the township. This matter came on before Judge Lueders. He declared an additional justice necessary. In some manner one ----- was appointed justice. It was my contention he failed to qualify properly before the township trustees. He did not intend to practice his justiceship in the township but established an office in the Bodman Building, Cincinnati, and obtained jurisdiction by levying attachments in cases not involving anyone from his township. This thing went along until both the squire and his constable, -----, were arrested and indicted. Upon trial the justice was acquitted but the constable was convicted."

SECTION 14 - Political Influence of Magistrates.

With the exception of a very few justices who were veterans of local politics, the magistrates had, during the period of this study, little positive influence within the inner circles of party politics. Politically the office is not desirable; practically it entails no party prestige. Each party, nevertheless, likes to keep the office in its own hands. In one township at least there is a gentleman's agreement between Republicans and Democrats to maintain one magistrate from each party in the position.

While the magistrate typically has little direct political influence, his activity soon leads to a considerable acquaintance with the more humble party of the community. Hence he is capable of having a possible negative influence of some importance.

SECTION 15 - The Constable; His History.

Like the name "justice of the peace", the "constable" was bequeathed to American governmental lexicons as a part of the English legacy. The survival of the title illustrates how firmly social life is embedded in tradition and how curiously the process of human living transforms the content of an historic word. The "Constable" is a symbol of French ^{derivation} ~~deviation~~. The "Constable of France" was the first officer of the crown and had the chief command of the army. It was his duty to regulate all matters of chivalry.(1)

(1) The office was suppressed in 1627.

In England also the name early acquired dignity, and the Lord High Constable was one of the highest officers of the crown, commander-in-chief of the forces, and keeper of the peace of the nation.(2)

(2) In England the office fell into disuse except on solemn occasions with the attainder of Stafford, Duke of Buckingham, in the reign of Henry VIII. "The office of Lord High Constable", according to Blackstone, "hath been disused in England, except only upon great and solemn occasions - as the King's Coronation and the like." Quoted in Encyclopaedia Britannica, Ninth Edition.

The Statute of Winchester (3) ordaining every citizen to have

(3) 13 Edward I, st.2. chapter 6

armor according to his condition to keep the peace required that in every hundred and franchise two constables be chosen to make the view of armor twice a year, and that they shall present before justices assigned such defaults as they do see

in the county about armor, and of the suits, and of watches, and of highways." These gentlemen were "high" constables and were appointed by the court of the hundred.

The petty or parish constable, from whom the American edition more accurately descends, united two offices-- the ancient one of head-borough or tithing man, and the modern one instituted about the reign of Edward III of assistant to the "high" constable. Beside their general duties in the preservation of the peace they were charged with the execution of warrants and the service of summonses.(1)

(1) Considering what "manner of men were for the most part appointed to these offices", Blackstone thought it was well that they should be "kept in ignorance of the extent of their powers".

The petty constable came to be "the most active and conspicuous officer of the parish or township." (2)

(2) Cheyney, European Backgrounds of American History, p. 297.

In England the constable raised the "hue and cry" summoning out his neighbors by day or night to pursue offenders against the public peace. He whipped the rogues and beat the vagabonds and beggars. He forced laborers to serve during harvest and saw that innkeepers refused no travelers. He was also the warden of such arms and armor as each parish was supposed to keep in obedience to militia requirements. The chief part of the constable's duties, however, was that of acting as ministerial officer for the justice of the peace. Then, as now, he was "the tool and instrument" with which the squire operated.(3)

(3) Cheyney, p. 302.

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SECTION 14. Same: American Edition.

The constable still is the tool of the justice of the peace, and the profit of a court is in no small measure dependent upon the enterprise of this officer. Instead of caring for the armor of the militia, he cites petting parties to court for parking on main highways. Instead of keeping men at work in the harvest, he patrols the road for speeding motorists. Instead of raising the "hue and cry" he finds automobiles at large with only one light.

SECTION 15. Same: Age and Occupation of Constables.

Of twenty-eight active constables operating in 1929, the age distribution was as follows:

Age	Number	Per cent	Cumulative Per cent
20-29	2	.07	.07
30-39	7	.25	.32
40-49	5	.18	.50
50-59	7	.25	.75
60-69	3	.10	.85
70 and over	4	.15	1.00

The vocations of these public officers represent an interesting diversification:

Painters	-----	5
Carpenters	-----	3
Farmers	-----	3
Clerks	-----	2

one each: real estate agent; retired barber; truck driver;

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teamster; caretaker; expressman; janitor; road worker; marshal; collector; salesman; machinist; delicatessen proprietor; night watchman; and pipe-fitter.

SECTION 18 - Same: Special Constables.

Because both the constable and the justice are elective offices, it frequently happens that the combination does not work well together. In one case the magistrate did not know the name of the regular constable in the township.(1)

(1) The constable is a purely political office. The candidate runs on a party ticket. An example of party support is the following advertisement in the Hilltop Weekly of October 21, 1927:

These men have served you faithfully during
the past administration.

Re-elect them.

For Constable

Chas. Van Camp

John Robinson

Republican Candidates for Springfield Township Offices.

Special constables were operating in one out of every five courts during the period of study. The appointment of these constables, with rare exceptions, has been completely unauthorized by law and the practice has been criticized by the state examiner in his reports. One magistrate, for example, appointed two special constables to serve because the regular constable was a negro. Another squire employed his brother. One justice appointed nine special constables between March 4, 1926 and December 9, 1926. Five of the men were non-residents of the township. Still another engaged the services of a young man to curb traffic in "petting parties". He continues to operate in spite of the findings of the state examiner.

In a number of cases justices have appointed a well-known collector as special constable. As might be expected, these cases typically end on the record with the issuance of the summons. It is not an uncommon practice for magistrates to act as constable in service of the summons and collect costs for both judicial and ministerial duties. In one case the docket showed twenty-one consecutive cases in which the magistrate acted as his own constable. He proceeded in execution as well as in mere service of summons. In most cases, however, where the squire acts also as constable there is only indirect evidence of such dual activity.(1)

(1) For example, see Jenike, Chief of Police V. Preston, 36 Ohio Appel.369. In the appeal of a replevin suit to Common Pleas Court the same procedure was discovered. See Waddell v. Holsomback.

Section 3331 of the General Code, so frequently cited in the report of the state examiner, provides that a justice of the peace may appoint a special constable in four instances, namely:

- 1- Where there is no regularly elected constable in the township.
- 2- In case of the disability of the regular constable.
- 3- When the constable is party to a suit.
- 4- When from the pressure of official business the township constables are not able to perform the duties required by the office.

There is also a code provision explicitly excluding the appointment of a collection agent as special constable. Section 1732 provides that at the request of a party and "on being satisfied it is expedient, a justice of the peace may specially depute a discreet person of suitable age, not interested in the action, "to serve the summons or execution."

SUMMARY

A justice of the peace is a judicial officer of special and limited jurisdiction, both criminal and civil. Defined more realistically, the squire is a fee-supported judge specializing in the collection of minor debts and having convenient criminal powers of increasingly limited scope. The magistrate must be considered as an integral part of the judicial organization of the state although he need have only the qualification of an elector.

Though a judge he also may be a legislator. During the five years of 1925 through 1929 forty-five individual incumbents acted as squires in Hamilton County in twenty-six courts. Though the term of office is four years the actual period of tenure has been slightly over two years and seven months. Only eighteen per cent of the magistrates served during the entire five years of the survey. This brevity of service results in discontinuity and disorganization in the administration of justice in the minor courts. The situation is aggravated by the fact that in addition to short periods of service by the judges, some courts function only spasmodically. Bonds of magistrates are recorded according to statute in slightly less than half the cases. While a judicial office is technically non-partisan, magistrates are required to declare their party membership at the time they officially qualify. Republican squires outnumber Democratic ones almost in the proportion of three to one. Classified according to occupation,

magistrates are most typically lawyers, this class comprising more than a third of the whole number. Seventy per cent of the justices have been under sixty years of age, the most typical age group being that of forty to forty-nine years. Slightly more than half of the officers were graduates of high schools. In some townships it is difficult to secure candidates to run for the office^{of} justice of the peace. The constable is the "tool and instrument with which the squire operates". Constables frequently are not satisfactory as working associates in the eyes of the magistrates. Hence a practice of appointing special constables is prevalent.

CHAPTER IV

THE JUSTICE OF THE PEACE AS AN ENTERPRIZER

SECTION 1 The necessity of earning a living.

Like the chief justice of the Supreme Court the justice of the peace is confronted with a human and fundamental problem of earning a living. Like all other judges the magistrate is supported for the purpose of determining whether or not circumstances as alleged in petitions or complaints are those "in which the public force will be brought to bear upon men through the courts". (1)

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- (1) Mr. Justice Holmes has defined law as a "statement of the circumstances in which the public force will be brought to bear upon men through the courts".
American Banana Company v. United Fruit Company
213 U.S. 347
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While it must be admitted that like all other men judges "work to eat to live", the almost sacred functions of the judiciary must be recognized as removing the business of administering justice from the codes and customs of the market. (2)

- (2) As regards lawyers this point of view is expressed in the preamble to the canons of the American Bar Association adopted in 1908: "It is peculiarly essential that the system for the establishing and dispensing justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men."
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Section 2 The fee system as an incentive to effort.

The office of the justice of the peace took form in America at a time when there was no appreciation of a genuine professional service in local government. The magistrate's compensation was made contingent upon the fees he could collect "because then as now it was more important to have the semblance of economy than its substance". (1)

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- (1) Harley, Untimate Types of Inferior Courts and Judges, 22 Case and Comment 3.
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Remuneration of minor court judges hence originally was based upon the principle of a sliding scale, "the more business, the more pay". In the year of 1931 in the State of Ohio such a scheme of judicial support still exists unaltered. Assuming that strict enforcement of the law is desired, the stimulus of the money motive to magistrate and constable should result in an aggressive and summary procedure in criminal actions. Inevitably such a system, especially in civil actions, leads to competition among the justices for volume of business and customer satisfaction. Such a system of competitive justice seemed ideal to Adam Smith. "Judges should compete with each other like merchants. Each one should strive to draw to himself the largest possible number of cases and earn his living by court fees and stamp duties. The one who did most business should receive the most pay. Fees should be withheld from the judges until the process was determined, in order to

incite the court to diligence and to expedite business." (1)

(1) Haney, History of Economic Thought p.214

A summary of opinion inevitable under the fee system, with reference to commercialized justice was contained in the 1930 Democratic platform in Ohio. (2)

(2) "We demand a cleaning up of the Justice of the Peace Courts of the State. - - - There has grown up, particularly in communities adjacent to large cities, a type of justice court constituting a menace to the peace and liberty of citizens, and breeding unwholesome disrespect for all laws with roving constables commissioned to steal out in the darkness of night and prey upon innocent citizens, to be brought in and mulcted for semi-blackmail in the form of excessive costs."

Section 3. Enterprise in minor offenses.

As a whole the justices of the peace in Hamilton County have conducted their courts in criminal matters reasonably. Even occasional sensations which find their way into the newspapers do not all reflect upon the integrity of the judges upon careful examination. The costs, as will be shown later, frequently run high, but not illegally high. Men, being human will always make mistakes; hasty ^{criticism} ~~erie-ism~~ of magistrates is unwarranted when one understands the difficulties under which a squire works. Unsatisfactory legislation is the real cause of many abuses which are attributed purely to individual wickedness. Yet there are just criticisms which

arise from the enthusiasm or stupidity of arresting officers, from the devoted zeal or officiousness of magistrates, and from the clear greed of combinations of constables and judges who have a machine for the production of money legally committed to their hands.

Section 4. Same: Instances of enterprise.

Instances of petty enterprise will indicate the nature of cases which cause comment. One Sunday two boys went to Indian Hill to the home of their parents to overhaul an antiquated motorcycle. In the afternoon one boy hitched his Ford to the motorcycle to tow it in order to see if the engine could possibly be started. To the surprise of the tinkers the motor did start. The rope was unhitched, and one boy at once drove the cycle into the yard. Just before entering the yard a constable cited the boys for driving a motor vehicle with a last year's license. The following day they were forced to go to court instead of to work. They waited four hours for a hearing at the magistrate's court. The constable did not appear against them, and they were discharged. Though the court made nothing from the case, the boys were inexcusably detained.

In another typical case a boy, eighteen, saw a bridle hanging on a fence post and took it home. He was arrested, given an immediate hearing on testimony alleged to be that of the prosecuting witness only, fined ten dollars and

costs which were \$18.64. Unable to pay, the boy was committed to the County Jail. He was released by writ of habeas corpus granted by Judge Stanley Struble in Common Pleas Court.

Other cases could be cited, not as typical of the general character of the criminal justice administered, but as typical of the cases where magistrates make mistakes which bring discredit upon them.

Section 5. Same: Automobile Cases

As will be shown later, a large amount of criminal business results from cases involving automobiles. Most of these cases fall within the classes of driving without proper head and tail lights, driving without proper license plates, speeding, parking on main traveled highways, operating trucks without public utility permits, and driving overloaded trucks. In most of the cases citations are made by deputy sheriffs and no constables fees are charged. In no instance has the study revealed a commercialized speed trap. (1) While this

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- (1) One magistrate assumed jurisdiction over village traffic light violations. He resigned. Two instances of commercialized auto courts were noted between 1921-1925.
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good record is due to the general feeling of good will toward motorists, the standard is maintained by court decisions in the county which hold a squire has no jurisdiction in reckless driving cases. During the last year at least two magistrates have watched court decisions closely

in an effort to find legal support for auto courts. They planned extensive activities, but were disappointed by the judgments handed down in Common Pleas Courts. (1)

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- (1) The following citation blank is a specimen of special forms which various magistrates have printed for themselves. This does not indicate extensive operations in automobile traffic.

Hamilton County, Ohio _____
Mr. _____

License No. _____ State _____

You are hereby summoned to appear in the Court of L. C. Strief, Justice of the Peace, California, Ohio

on _____ day of _____ at _____ M.

Note: This court is located on the A.&.P. Highway near Asbury Road. Route No. 7.

Constable of Hamilton County

Section 6. Same: Illegal parking

For three years one magistrate has been conducting an extensive business in automobiles parked on the highways without lights. A special motorcycle constable was appointed to patrol the roads of the township to "curb traffic law violations and petting patties. (2)

(2) Report of state examiner.

Appointment of such a constable is purely unauthorized. The state examiner called attention to this fact in his report of 1927 and again in 1929. (3)

(3) The writer presented the facts of this practice

to the prosecutor's office as a hypothetical case. He was informed that should the facts exist in a real case as stated the prosecutor's office would recover the costs paid to the constable as a claim of the county. He said that he would quickly discover such findings in the examiner's report himself.

The costs of these cases were taxed in many cases in a lump sum without itemization. The costs varied in amount from five to ten dollars, the average sum being \$6.51. (1)

- (1) Justice fee - \$3.76
Constable fee \$2.75
-

The entries were made in the civil docket, and criminal cases were scattered among the replevin, account, and detainer suits. (2)

- (2) Typical entries: "Parking without lights on Diehl Road, violating section 1214-13, General Code, Pleaded guilty and assessed court costs."
"Parking without lights and failing to appear."
\$5. for contempt.
"Unlawful trespass on highway of Diehl Road, also parking without lights. Pleaded guilty and was assessed court costs."
-

Between January 26, 1927 and February 5, 1929 this court earned \$1,065.50 in criminal costs (3) while fines amounting

- (3) Justice fees - \$586.15
Constable fees \$497.35
-

to \$90 were assessed, though only \$30 was collected. (4)

- (4) \$60 in fines suspended.
-

Every penny of the costs was paid. (1)

(1) The magistrate lives in Cincinnati but maintains an office in his township.

Defendants arrested while engaged in "petting parties", usually of a pronounced character, naturally are willing to pay any fine and cost to escape publicity. The magistrate has done much to clear the highways of this practice in his neighborhood and feels that he has saved many families from being broken by sharp reprimands and advice given to "petters".

SECTION 7.- Same: Liquor Courts.

Most extensive operations in liquor cases were carried on in village courts. (2)

(2) See *Edward Tamey v. State of Ohio*, 25 Ohio Nisi Pri^{or} Reports 580; also 273 U.S. 510.

It was pointed out that liquor courts were violating the fundamental principle of judicial authority so well expressed in the maxim: "No judge shall decide a case in which he has a direct, immediate, and substantial interest." From May 11, 1923 to December 31, 1923, the court in the village of North College Hill was reputed to have collected \$20,000 in fines. The distribution included:

- \$8,992.50 to the State of Ohio
- \$4,471.25 to North College Hill
- \$1,796.50 to the Prosecutor
- \$2,697.75 to Deputy Marshals
- \$ 696.35 to the Mayor in fees.

Only one justice court during the period of study was actively commercialized as a liquor court. In Milcreek Township a magistrate during 1926 engaged in extensive operations. Between March 4 and December 9 he appointed nine special constables. (3)

(3) Five of them were non-residents of the township.

To facilitate the handling of cases the squire employed a prosecutor "for the State of Ohio" to act for a fee of \$25.00 per case. Obviously such appointment was unauthorized. Witness fees were taxed for special constables; overcharges in criminal costs ranged from \$1.00 to \$46.00.

In commenting upon the court the state examiner said:
 "This court apparently is far more deeply interested in taxing and collecting enormous costs for the justice and special constables, than in the collection of fines assessed in favor of the township, county, and state. A purely commercialized liquor court with interest centering more deeply on the collection of costs than benefits to the proper treasury in ~~xxx~~ collecting fines." (1)

(1) After this preamble the examiner reported "we must justly charge the justice with the following:
 nonfeasance
 misfeasance
 malfeasance
 extortion."

Among irregularities connected with the conduct of this court, the following were obvious:

1. Where docket entries were made at all, they were not made at the time of the transaction.
2. There was no evidence that the papers in the various cases were all preserved and filed.
3. In numerous cases fees were illegally taxed and collected.
4. Fines were collected and not paid into the treasury.
5. Moneys were collected from the defendant in criminal cases ostensibly where there was no record of the title, the action or vendition of judgment.

6. Money obviously had been received by the justice and his special constables in consideration of his abandoning a criminal prosecution or suppressing a proposed action.

The conduct of this court indicates the extent to which it is possible for a magistrate court to degenerate. While other squires' courts did not operate in this fashion the justices who had offices near the courthouse rotated in cooperating with the sheriff's office in liquor cases, the weekly fees in fortunate terms sometimes reaching \$75.00.

SECTION 8 - Enterprise in Civil Cases.

As will be shown below in treatment of court statistics, the bulk of the civil litigation of the county is concentrated in a few aggressive, well-managed, and efficient courts. While ordinary civil suits cannot be entertained by a squire outside his own township, the statute clothes the justice with county-wide jurisdiction in attachment and garnishment cases.(1)

(1) As pointed out above the county-wide jurisdiction in these cases has for years been a cause bringing the magistrate into disfavor. One constable from Whitewater township was convicted for his relations to a court conducted in the Bodman building prior to the establishment of the municipal court. Though indicted with the constable, the squire was acquitted upon trial. A magistrate still in office in an outlying township, formerly had a branch office in the Perin building. His expense account was as follows: Rent ----- \$100.

Weekly salary of brother
who managed business,
\$18.00 ----- \$936.
Weekly salary of special
constable \$12. ----- \$624.
Annual Expense ----- \$1660.

Receipts amounted to more than \$3000. Hence the magistrate, a professional man, had an augmented income with slight active effort on his part, Ordinary civil cases were tried by consent.

The accounts of some of the larger credit dealers are plums worth striving after. Though asserting advanced costs in each case, one magistrate charged no advances to certain favored plaintiffs. Should the plaintiff lose, the magistrate merely called the party by telephone and asked that the costs be remitted. Another magistrate offered the inducement of no advance costs in any civil case. Still another won accounts by the excellence of this administration.

Section 9. Same: Partnership with constable.

The racket of magistrate-constable partnership still continues to be worked. In one instance an outlying magistrate is associated in business with a professional collector in a downtown office building. (1)

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- (1) Upon being advised that his name was printed on a letterhead as a part of a firm name, the squire asserted that he was being imposed upon and had never given his assent to such proposition.
-

The following is an instance of the method used. An Italian boy, who was the sole support of a crippled mother, called at a Reading corporation for his weekly wage. He was informed that the wages were "tied up". No twenty per cent demand had been served upon him. He had had no notice of the court proceeding. The boy employed counsel who approached the cashier and was ^{told that it was} a customary practice to hold up money upon order of a particular collector. The counsel ascertained that the writ issued from a court in an outlying township. He confronted the squire with the case and was told no such case was handled

by the court. This allegation was reduced to writing by the magistrate for counsel. The affair was taken to the prosecutor. The prosecutor's office called the collector's office by telephone. The party answering answered to the name "Judge" and immediately the real magistrate was called in the township and he also answered to the name "Judge". The prosecutor's office proceeded to reprimand the gentlemen for their practice.(1)

(1) Prosecution, according to the prosecutor's office, was dropped because counsel for the defendant in the garnishment case did not wish to press the charges.

Such procedure in the conduct of magistrate's courts is not new. It is merely interesting to know that it still continues.

A magistrate confided to the writer that he was taking cases involving resident negroes of Cincinnati. The negroes, he said, gladly came to his court to escape a more serious fate. They were told by a collector that a case was pending against them, that it could be settled easily in the township court, and that if proceedings were instituted in Municipal Court a big police man with brass buttons might grab them. The extent of this business cannot be estimated because no record is kept of such cases. "I can't fill up the book with all that damn little stuff", said the squire.

Section 10. Matrimonial specialists

The performance of the marriage service is a very profitable activity when volume of business can be obtained. One justice with office in the Second National Bank Building, for instance, had over nine hundred weddings in his first two

years of office. While the statute establishes a fee of three dollars this official makes an effort to collect five. A few other squires in the neighborhood of the courthouse succeed in getting a decidedly lesser number of ceremonies. (1)

(1) One magistrate said he was approached by employees of the courthouse to know if he would like to have weddings come his way on a split-up basis

The desire to obtain some of the profitable marital business led one squire to make careful estimates as to the possibility of succeeding with an office space in the Temple Bar Building, which he said he could obtain for \$35 a month. (2)

(2) To date the bureau has not been opened.

Section 11. Convenient Squires.

Downtown lawyers find it convenient to have a squire handy. By arranging with a justice cases may be tried in the privacy of the attorney's office. (3)

(3) The fact that the parties to litigation before a justice have consented to his holding court outside of the township for which he was elected does not confer jurisdiction outside of such township. See K.B.Co. v. Brenner, 11 OH N. P. 657. This decision was affirmed without opinion by the Circuit Court and this decision was affirmed without opinion by the Supreme Court. See Brenner v. K.B.Co. 89 O.S. 441. Magistrates allege that they get around this decision by hearing the case, but rendering no judgment until they are safe within the boundaries of their own townships.

A docket entry of this type of case is as follows:

Francis J. Wehner v. Montgomery Garage Company. Attorney for the plaintiff and attorney for the defendant appeared by agreement in the office of Matthews & Matthews, "Cinti", and trial had and therefore found by me that plaintiff had the right of property and possession of said goods.

Section 12. Advertising the business.

Advertising is one of the weapons of business competition.; it is not absent in the judicial trade. Many of a squire's interests develop from personal contact in the regular course of business. Other methods are also used. One magistrate appeared before a senior class in the Y.M.C.A. Law School and addressed the prospective bar candidates. (1) He told the

(1) The instructor was absent at the time.

men not to belittle practice in a justice of the peace court. He promised they would profit by remembering his tribunal of justice.

Many lawyers have received the following business card:

Administrator - - - - - Executor - - - - - Collections
 Phone MElrose 7851
 John Doe, Jr.
 Justice of the Peace
 St. Bernard-Elmwood-Norwood

The reverse side of the announcement contains these statements:

Marriage Ceremony, any time
 any where by appointment

Represent you in Mayor or
Justice Courts 159-NE-593

Specializing in cases without Publicity
if desired

Legal accountant for Trustees,
Referees, Estates, etc.

County Wide Jurisdiction in attachments,
Garnishments, and Replevins. (GC 10224)
 Court - any evening by appointment.

Another justice presented his name in the press:

Notary Public
and
Justice of the Peace
John Doe
6934 LaBoiteaux Avenue
North College Hill
Phone: Clovernook 7794-Y (1)

(1) Hilltop Weekly, August 4, 1927

Section 13. Judicial office and legal business.

The duties of the magistrate bring him into contact with the processes of the law. Whether he be laymen or lawyer, the squire comes to have contacts of a legal character and to be regarded as having a knowledge of the intricacies of court mysteries. It is not strange to see even ex-magistrates, educated for example as railroad brakemen, acting as administrators of estates, collecting accounts, and representing parties in magistrates' courts. Not infrequently a squire is able to build up a considerable business as a result of being known as a magistrate. The following card is illustrative of this point

John Doe
Notary Public
Writes Insurance Examines Titles
Draws Deeds, Wills, and Mortgages
Everything in the Line of Notary
Work at Reasonable Prices
Automobile Bills of Sale a Specialty
20 Years Experience

Section 14. Same: Collections.

The major business of the magistrates' courts is the collection of small claims. It is not surprising, therefore, to find a considerable collection agency business attached to the squire's office. (1)

-
- (1) The attorney general has rendered an advisory opinion that it is not improper for a justice of the peace to operate a collection agency provided he does not collect his own accounts in his own court. See advisory opinion No. 2034, June 26, 1930
-

Many cases a magistrate is able to settle without trial. In such cases compensation tends to have the nature of a commission rather than a judicial fee. Collection letters quite generally are written on official letterheads. The following note is typical:

Court Held In John Doe Fridays
Township Hall Justice of the Peace 7 P.M.

Dear Sir:

Mr. Richard Roe has filed a suit in my court for the recovery of \$13.12 which he alleges is due him for potatoes sold you on March 8, 1927.

If you will call at my office and settle this obligation, you will save yourself trouble and keep down the costs of this action."

Lawyers frequently ask the magistrates to assist in the collection of accounts. The following letter by a prominent firm of Cincinnati attorneys is representative:

Phone Smith and Collins 601-6D2
Canal 0001 Attorneys and Counselors at Law Bank Bldg.
June 16, 1928

Re: Arthur Baehr Co.

vs.

Ben Kerkhoff

Dear Sir:

On June 23rd we wrote to you giving

you the information we had obtained from Constable Jones, but as yet have received no reply from you.

Can you kindly get in touch with us within a few days, advising us what steps you deem proper at this time?

In making this request, we want you to bear in mind that you may handle this claim on the basis of an associate attorney rather than a squire and if any collection is made you will get a part of our fees. It may be collected by means of dunning or threatening or appealing - use any method you desire."

Mail order houses use the squires quite freely, addressing letters merely to the justice of the peace of a particular township. While a few squires refuse to act as collectors, the majority will accept this type of work. Commissions range from ten to fifty per cent depending upon the difficulty of extracting money from the debtor. One magistrate estimates his income from a single mail order house at \$200 a year.

Even when litigation proceeds in due course the squire not infrequently feels himself closely associated with the plaintiff's interests. The following letter is typical evidence:

May 2, 1927

Gentlemen:

I beg to advise you that I have located Richard Glasier, service has been had upon him, and the above entitled cause of action has and is set down preemptorially for the 3rd of May, 1927, at 5 o'clock P.M., at my office for hearing, your presence will not be at all necessary in this matter, he don't deny the claim and will not contest the cause I don't think.

I am in hopes that we will not experience any great difficulty in making this collection, will keep you advised as to further developments in the matter.

It is difficult to determine the extent to which magistrates try cases in their own courts in which they personally are interested as representatives of the plaintiff. Some squires are very scrupulous about the matter; others admit pressing claims in their own tribunal. "Why not?" asked one judge, "Either they owe the money or they don't. There is no question of law involved."

Instances of such practice have been found. In one case a justice was charging costs against the defendant and a collection fee against the plaintiff.

Section 15. Same: "Feeding the law practice."

The office of justice of the peace is also desirable because it "feeds the law practice". Persons with legal problems make the acquaintance of the squire, bring their business to him. As a whole the squires dispense advice gladly and often without any charge. They build up an increasing circle of friends.

In two cases the office is admitted to add \$3000 a year to professional legal practice income. In several cases the sum is over \$1000. On the other hand, one attorney considers that he lost business by virtue of the office.

Section 15. The office as useful in business.

The powers of a justice of the peace sometimes have value to men in the conduct of their own particular business. The following letter indicates the manner in which private

and public interests may merge in the person of a
part-time judge:

December 19th, 1927

Dear Sir:

Referring to your savings account book No. 1174, from which your mother withdrew \$20.00 under date of September 19th and, by so doing, the account was overdrawn \$16.41 which has all come about through your having withdrawn \$20.00 by request of Mr. Edw. Dixon some months ago without the knowledge of your mother.

Under date of November 21st the Board called upon me to make this amount good to the association which I have done and I am in turn calling upon you for a like amount as I have bills and expenses of my own to meet without standing the expense of others.

I shall expect either a money order or cash from you by not later than next Monday evening, December 26th and failure to comply will result in other legal steps for collection or prosecution for overdrawing your account with this institution.

I trust that you will render further action unnecessary by complying with the above request.

Respectfully,
John Blank
Justice of the Peace

Summary

Functioning as a justice of the peace is one method of earning a living. The business of administering justice, however, has inherent characteristics which make it necessary to maintain standards higher than those of the market, While the fee-system of judicial compensation may be considered as an incentive to diligence, it also is conducive to methods designed to increase personal income at the expense of poor debtors and petty law violators. The law places a machine legally in the hands of squire and constable which may be used in such a way as to disgrace the name of the courts of justice. There is competition among a few leading squires for the large accounts of credit establishments. The traditional partnership between constable and squire s still continues to be in evidence. Performance of wedding ceremonies is a means of increasing the income of the office. One squire averages 450 weddings a year.

The magistrate proves to be a convenient adjunct to offices of downtown attorneys in that he holds court by consent of parties outside his township. Personal solicitation, direct mail circular, and newspaper display are means of advertising particular courts. The office is desirable as a means of entering legal business of the type of collection, administration of wills, and the drafting of bills of sale. The collection of accounts is

an almost universal appendage of the magistrate court,
the court often proceeding as a private-public agency.
The attorney who is also a justice finds that the office
proves to be a "feeder" for legal business, the specific
value being estimated to reach as much as \$3000 annually.

CHAPTER V

THE JUSTICE OF THE PEACE PROCESS.

SECTION. 1 Normal Legal Procedure.

Normal legal procedure in the magistrate courts may be illustrated by showing the steps in the handling of an ordinary civil suit.

The plaintiff files a bill of particulars with the squire. Immediately a summons, returnable not less than five nor more than seven days before the date of trial, is issued to the constable. The defendant may appear to contest the suit. If he does not appear within one hour after the hour set for the hearing, judgment may be rendered against him by default. The judgment may be enforced by a writ of execution issued to the constable within ten days after the decision. The constable then has thirty days to collect the judgment or return the writ unsatisfied. Appeal may be made to common pleas court within ten days after judgment. The filing of a bond double the amount of the judgment and costs being necessary to delay execution until the case can be heard de novo by the Superior Court.

SECTION 2. Same: Character of Trials.

The trials are generally carefully conducted, inadequate knowledge of the legal principles involved often being more than offset by a practical common sense and desire to do justice at all costs. True, there are occasional instances of inadequate hearings but these are the exceptions to the general condition.

A number of Cincinnati attorneys, however, and many of them of excellent reputation, merit severe condemnation for their desire to take advantage of the weaknesses of honest squires. (1)

(1) "It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance". Canon of Ethics of American Bar Association adopted in 1908.

Instead of aiding the court, some lawyers feel their mission is to confuse, amaze, or counsel the judge. One attorney asked a justice to come to his office to revise a judgment. One conscientious magistrate made a docket entry as follows: an attorney "states that he was present as a friend of the court and advisor of the court. I thereupon informed him that I did not need any of his advice and then rendered a judgment in favor of the Coal Company for \$13.00 and \$6.00 costs".

In a case involving a note one attorney declared the instrument "was not worth the paper it was written on". He supported his contention by Latin maxims.

"We speak the English language in this country" said the judge. "We all understand it except when we are trading horses. You understand that language; I doubt if you understand what you just said. But you will understand what I am going to say. This note says: 'On June 17, 1927, I promise to pay to A.H. Kennedy or order eleven dollars and fifty cents.' "By my calendar it now is July 10th. The promise was to pay. The promise was broken. The judgment is for the plaintiff. And this is the way we use the English language out here."

SECTION 3. Laymen on the Bench.

The justice of the peace is called upon to make application of a multitude of laws. As pointed out in a previous chapter slightly less than a third of the magistrates in the five years of study were members of the Bar. Yet only one man has been found in the course of the study who felt incompetent to handle the juristic phases of the office.(1)

(1) This one man had resigned office.

One newly elected squire called upon a veteran justice and attorney to discuss the problems of office. "Of course I don't need any advice on the law", he asserted. "What I wanted to ask was about what kind of a filing system you use."

"We live in a complex commercial and industrial age which has developed a highly technical and specialized body of legal precepts and enactments peculiar only to a period of maturity of the law".(1)

(1) Pound, Outline of Lectures on Jurisprudence, 3rd ed., see discussion pp. 40-43.

In contrast with this point of view of Dean Pound, the opinion of a retired railroad man and magistrate is interesting. "The decision of cases is very simple. There is no question of law involved. Either the defendant owes the money or he doesn't; that is the only question."

"Blackstone", said a retired farmer and squire, "points out that all law is based on reason and common sense. That

being so we need experienced men in the office."(1)

(1) Interesting comments on this phase of minor court organization were made in the Constitutional Convention of 1912. For example:

Mr. Harter: I am opposed to having our minor courts taken out of the hands of the people. I think this is a lawyer's proposition. I do not want the power taken from the people of the state for the sake of the lawyers. Many of the best decisions that have been made have been made by justices of the peace.

Mr. Johnson: I am not a lawyer but a farmer, and farmers are noted for their common sense. The justice courts are the courts of the people. See Debates and Proceedings Ohio Constitutional Convention of 1912. Vol. II, p. 1772.

The discussion was relative to whether the squire should or should not be a constitutional officer.

When one considers that the legal reference library of the magistrate, excluding the lawyers of course, consists of a genuinely out-of-date Code or Swan's Treatise, one appreciates the difficulty under which the justice labors. One also becomes conscious of the grave problem which arises in connection with the adequate administration of the law.(1)

(1) Said Bleckley, J.: "In a justice court local government is realized in its last analysis. The tribunal is our primary, most rudimentary organ of home rule. It is the ne plus ultra of judicial simplicity." Atlanta and W.P.R.R.Co. v. Hudson, 62 Ga.679.

Some of the laymen make serious efforts to render lawyer-like opinions in approved form and following the principle of stare decisis. The following opinion is characteristic of a type rendered. This particular case had been taken under advisement.

Dr. H.H.Hayes v. Dr. O. J. Wood.

The only question in this case is as to who is liable for damages in a rear collision of vehicles.

In the case of Joseph Yerrowitz vs. Phil Kraus, for a like accident on the Harrison Pike, Lester G. Hipps for the plaintiff and R.E.Simmons, Attorney for defendant, the court found for the plaintiff, saying: It is the duty of a driver to avoid colliding with that in front of him. I therefore find for the plaintiff in the sum of \$5.25 and costs.

3/18/26

John Doe, J.P.

In another case a magistrate rendered a unique ruling on the operation of the statute of limitations. In answer to an action on a debt the defendant pleaded the statute. In reply the plaintiff alleged that the defendant had been absent from the state for almost half of the statutory period and that the claim was therefore a debt which made a case at law, the running of the statute being suspended during the defendant's legal absence from the jurisdiction. In rendering the decision for the defendant the justice laid down the rule that a debt is a debt but six years are six years in the course of a man's life. A man who contracted a debt at forty-two would certainly be forty-eight in ~~years~~ six years whether he lived in Ohio or in Indiana. The plaintiff was guilty of "laches" and could not now complain that his own unreasonable delay in pursuing a legal remedy forfeited his right to judgment. The law was made to act in such cases and hence judgment must be rendered in favor of the defendant.(1)

(1) The plaintiff did not appeal because the sum involved did not justify that procedure. The claim was for \$10.00. Costs amounted to \$6.15 and were assessed against the plaintiff. See General Code Sec. 11228 and Sec. 11222.

The decision was clearly wrong, One can see, therefore, that it is possible for the small creditor or for the small debtor to receive injustice and be unable to afford to prosecute the suit in a ~~Superior~~ Court to secure justice.

SECTION 4. Customary Modifications of Judicial Process;

Justice by Negotiation.

The actual process of settling cases is very different from the scheme laid out in the General Code. After a claim is declared before the magistrate, as a general rule the squire either calls the defendant by telephone or writes him a letter stating the cause and amount of the action and suggesting that an immediate settlement will avoid the proposed suit, while keeping down costs at the same time to a minimum. If the defendant acts upon the advice of the court, he pays his debt to the squire and the case is settled. In this manner a speedy handling of litigation is effected without delay. Only two courts maintain that all cases are run through the legal process for settlement without resort to the method just mentioned. Other justices assert that they resort to the practice only when they are friends of the defendant. In spite of these possible exceptions, the settlement of cases by informal notification is one of the most common of all practices found in magistrates' courts.

The number of cases handled by the various courts in this way is difficult to estimate because only in rare instances is there a court record of such litigation. The percentage of cases thus missing on the dockets has been estimated in various courts by various magistrates as ranging from ten to thirty percent. Two active magistrates did not make a single civil docket

entry for an entire year, although they handled as many as six cases each during the period.

SECTION 5. Costs in Cases Settled by the Squire.

Because of the fact that cases settled by the squire without legal procedure beyond the filing of the bill are generally unrecorded, it is difficult to estimate precisely the means of compensation in these cases. There are, however, four specific manners in which the magistrate obtains his reward.

In the first place, he may tax the costs against the defendant according to the legal fees. In such instances there are no constable fees, and the whole suit is settled generally for two dollars or less. The reference to legal fees, however, is misleading because the costs are dependent upon docketing and issuance of process. (1)

(1) Costs in a case being settled before trial would be	
Docketing bill of particulars ----	\$.50
Indexing entries and papers -----	.20
Issuing summons-----	.40
	\$1.10

Since no record is kept of such cases the squires are free to establish their own price for such work.

In the second place, the justice may tax the costs against the plaintiff, remitting to him the difference between the sum paid for advance costs and the actual costs.

In the third place, the squire may receive a collection fee. Sometimes this is \$5.00 flat, sometimes a percentage. Often no charge is made and whatever the

creditor feels is due the justice is paid to him as a gift.

In the fourth place the squire may render his service without any charge at all. In all fairness, it must be admitted that the justices of the peace do some work for which they receive no reward and no thanks.

SECTION 6. Same: Criminal Cases.

It is indeed surprising to find this customary method of settling cases extended to criminal cases. The following letter embodies an illustration of the method referred to:

"January 6th, 1926

Dear Sir:

I hand you herewith an itemized account of the -----Garage for repairs to an automobile of Wm. Black with whom you collided on New Year's morning.

Mr. Black has sworn to a warrant charging you with a certain offense; however, I have suggested to him, before serving the warrant that he give me an opportunity to get in touch with you first with a view of having you settle his damage to the extent of \$108.14, believing that you will desire to do the right thing in the matter.

I shall be glad to extend to you until Saturday, January 9th, 1926, in which to settle the matter with me and in the event I do not hear from you at that time, will place the warrant in the hands of my constable for service.

I trust that you will take advantage of the privilege of settling outside of court and avoid court action on the charge made in the warrant which is serious.

Respectfully,

John Doe,

Justice of the Peace."

Numerous examples could be cited of magistrate method.

Here is another case.

"November 28, 1924

Dear Sir:

I have in my possession a warrant for your arrest charging you with having given a check for \$92.00 which check was returned unhonored.

Before turning the warrant over to my constable for service, I am taking the liberty of writing you in the matter in the hope of having you settle it outside of court, thereby eliminating unnecessary expense on your part as well as the notoriety.

I shall extend to you until next Thursday in which to remit to me direct in the form of a certified check, cash or money order for the amount in question and sincerely trust that you will take advantage of this final extension of time in which to make good and by so doing eliminate further trouble and complication.

No further notice will be given you in this matter but warrant to be served after next Thursday in the event the above is not complied with.

Respectfully,

Adam Smith,

Justice of the Peace."

Magistrates are able to settle many cases by methods such as the ones just cited, considering themselves as "peace officers". A number of squires count their work well done when the controversy is settled by negotiation. The costs are kept low. Neither complainant nor defendant is compelled to waste the time necessary for a trial. Generally there is a sincere desire on the part of the justice to handle the case with as little hardship to the defendant as possible. There is always the suspicion, however, that the squire, either consciously or unconsciously considers himself as a personal agent of the plaintiff or complainant. This suspicion is heightened when one realizes that the results a court effects

largely determines the volume of litigation built up.

SECTION 7. Criminal Process by Negotiation.

To illustrate the problems and difficulties of a squire, the confusion which results from decentralized justice, and the process in the settlement of a type case the following extended correspondence is presented:

On October 2, 1926, an automobile driven by a negro collided with another machine in the late afternoon. The vice-mayor of the village where the accident occurred directed the holding of the car for the negro's appearance in court on October 6, 1926 at 7 P.M. The negro, meanwhile, injured in a cutting scrape in another village, failed to appear for trial. The case was continued indefinitely and the defendant's machine held to assure the negro's appearance in court.

On November 2, 1926, the case was taken up for the defendant by an attorney who made effort to locate the court in which the action was pending.

Law offices

W.B.Allen. November 2, 1926.

Dear Sir:

I was informed you are a Justice of the Peace in -----village, Hamilton County, Ohio. Some thirty days ago a Mr. Jones had an accident there. A collision with someone else in your town and his automobile, namely, an Oldsmobile Touring was taken possession of by the constable. Mr. Jones says on account of an attachment made against it by the man who owned the other automobile.

Mr. Jones came to this village and about two days thereafter was badly cut in an affray with another colored man and has been confined to his house ever since. He tells me that he sent Henry O'Geese to the village and that Mr. O'Geese said that upon application by him the attachment against his car would be released.

I went to the mayor of the village on October 28 to ascertain if the attachment proceeding was brought before him and he said that none was

instituted in his court and he thought probably that the proceeding was before you.

Will you kindly inform me if such is the case of the present conditions and what will be necessary to release Mr. Jones' property as far as the court is concerned?

Respectfully yours,
W.G.Allen.

The Justice of the Peace who received this letter knew of the case and referred the communication to the proper magistrate. The latter answered as follows:

November 8, 1926

Dear Sir:

Your letter of the 2nd instant addressed to Mr. John Blank has been referred to me for answer.

Mr. Jones' car is being held by the constable of this township upon attachment of Mr. Howard Kennedy who suffered damage to the extent of \$107.45 to his automobile as well as for his appearance in my court on a reckless driving charge. He was informed at the time of the accident when he should appear but he failed to do so and I take it for granted that it was due to the outcome of the cutting scrape.

However, if Mr. Jones will call and take care of the costs plus the storage charge will endeavor to have the matter dismissed if agreeable to plaintiff.

Very respectfully,
John Smith, J.P.

At the same time the magistrate addressed the following letter to the owner of the damaged machine.

November 8, 1926

Dear Sir:

I have been advised that you suffered an accident on the Pike resulting in damage to your car to the extent of \$107.45 by reason of a colored man running into you and that his car was held for his appearance in court here on a charge of reckless driving.

His attorney is requesting the release of the car and shall appreciate your advising me if you desire to prosecute him on the above mentioned charge and, if so, will set an evening for his appearance but in the event you do not care to go further, will arrange to dispose of the matter.

Very respectfully,
John Smith, Mayor.

A few days later the magistrate sought the advice of the prosecutor concerning the disposition of the automobile.

November 11th, 1926

Dear Sir:

Will you kindly favor me with an opinion as to what disposition I am to make of an automobile held by my constable under section 12626 left in his custody by the owner in lieu of a cash bond or personal undertaking for his appearance in court and who failed to appear at the time fixed.

Yours very respectfully,
John Smith
Justice of the Peace.

The squire obtained from the commissioner of motor vehicles the name and address of the owner of the car corresponding to the license number of the attached machine. The defendant's attorney was then notified as follows:

November 20th, 1926

Dear Sir:

Referring to my letter of the 8th instant relative to Mr. Jones' car which is being held by the constable in the absence of either a cash bond or personal undertaking, to secure his appearance in court on Wednesday, October 6th, 1926 at 7P.M., the case having been continued indefinitely and the constable directed to hold said car for his appearance. I am now fixing the time for hearing on next Wednesday, November 24th at 8 o'clock P.M. at the Town Hall in this village and will respectfully suggest that you kindly have your client present to answer a charge of reckless driving as well as a violation of Section 12618.

Yours respectfully,
John Smith,
Justice of the Peace.

To this notice the defendant's attorney sent this emphatic reply:

November 23, 1926

Dear Sir:

Referring to your letter of November 20th, 1926, relative to the car of Mr. Jones, in which you informed me that you have fixed

his case for hearing next Wednesday I desire to say first, that a continuation indefinitely in a justice's court works a dismissal of the case.

If the complainant has any claim against Mr. Jones he can bring a suit and serve Mr. Jones properly. Certainly there has been no service in this case by him.

Secondly, it will be physically impossible for Mr. Jones to attend your court on Wednesday, November 24th. Mr. Jones is unable to leave his house at this time and will probably not be able to do so within the next two weeks.

I reported to Mr. Jones what your constable said to me when I went to see him. That was, that if he would pay the money due the constable for costs he would release his car and allow it to be brought away without further trouble. If any change other than that is determined upon by you I desire to notify you now that Mr. Jones will take such action as he thinks best under the circumstances.

Respectfully yours,
W.G.Allen.

The magistrate then communicated with the negro's physician who replied: "In my opinion he is able to appear in court at any time you may see fit to call him."

The case was called, judgment rendered on a reckless driving charge for a \$25.00 fine plus costs amounting to \$14.85.(1)

(1)	Justice of the Peace ---	\$6.20
	Constable -----	8.65
		<u>\$14.85</u>

This is the docket record. The correspondence indicates costs of \$20.15.

The fine was remitted upon agreement of the defendant to pay costs on the installment plan. The defendant following the trial wrote to the judge:

Jan. 7, 1927

Mr. Smith

I am writing these few Lines To Let you know that i am Out of work and have not the money just now to Send on my find but just soom as i get to work i will paid it i did want you to Think That i was'nt going to paid so I thought i had better drop you these lines.

Mr. Willie Jones
116 Clay street.

To this friendly letter the arm of the law made
this reply:

January 10, 1927

Dear Sir:

Your letter of the 7th at hand and I note wherein you state that you are out of work and without funds to meet the first payment on your costs despite the fact that you promised that you was a man of your word etc. and that you would take advantage of my offer to you.

Its up to you to make good and as a rule I do not extend time to anyone and will expect you to meet the first half of the costs, \$10.00, on or before January 20th and the balance, \$10.15 by not later than February 15th. No excuse of any kind will be accepted by me and the whole matter is now up to you.

Failure to ~~xxxx~~ comply, will result in my constable coming after you again immediately after the 20th and, in the event he does, it will mean the county jail for both fines and costs in the two cases.

I trust that you will render such steps unnecessary by carrying out your own agreement.

Respectfully,
John Smith.

This letter elicited an immediate response.

Jan. 12

Dear Sir: Got your Letter you wröte to Mr. Jones Well, Mr. Jones got Job of work out of town this week and They get three paid on 22 which is Saturday you said to have some By the 20 which on Thursday So he ask me to write and tell you he would send the \$10 on saturday. He said he want to get it paid as you Had been mice to hãm Sorry he did Have it to pay befo now i dont want you To think he try to get of paying because he is not there is no work here of any kind for man. So please give him till Saturday and you will get it.

Mrs. Willie Jones.

On Saturday the defendant paid as he promised, writing:
 "I am in closing a money order for \$10.15 which i thank
 you ever much for waiting on me for."

Mr. Willie Jones.

The squire issued the following receipt:

"Received of Wm. Jones the sum of Ten and 15/100
 being a partial payment, of costs assessed in
 the court of John Smith, J.P., leaving a balance
 of \$10.00 due and payable on February 15th, 1927."

The negro defaulted on the second payment. The
 magistrate then wrote:

February 16th.

Dear Sir:

I failed to receive the final
 installment of costs last night of \$10.00
 which in accordance with your agreement
 and as per my receipt to you of January
 24th became due and payable yesterday the
 15th.

I do not expect to tolerate the
 putting off the final payment any longer
 and unless I receive remittance by return
 mail will turn the matter over to my
 constable together with a commitment to the
 county jail for fines and costs originally
 assessed.

I trust you will render this action
 unnecessary by remitting promptly and not
 be mislead by your legal representative.
 Final Notice.

Respectfully,
 John Smith, J.P.

The negro again replied:

Feb. 22

Dear Sir:

I am in Closing \$5,00 on the Rest
 of my find Will send the other Just soon as
 i get It as i and out of work now oblige

Mr. Wm. Jones

The whole case seems to end five months after its
 inception with the following letter:

March 7

Dear Sir:

Inasmuch as I failed to hear from you on the 1st together with balance due of \$5.00, I have now referred the matter to my constable who will be in your village about the middle or the latter part of the week unless you remit before that time.

Of course his trip will mean additional expense in the form of court costs on your part. Sorry you have made this necessary but I am more than anxious to dispose of this matter and this method now seems our only recourse.

If you desire to avoid the additional expense, you will remit at once.

Yours very truly,
John Smith, J.P.

After five months of heckling procedure the squire collected \$15.15 costs; the State of Ohio received nothing. The process of negotiation, it will be seen, can become involved and bring discredit upon the whole system of the administration of justice, however good the intention of the squire may be.

SECTION 8. Squire and Village Relationships. tho

Even[^] a squire is a township officer, he is a state representative functioning within a local area.

He generally is located in a village and uses good judgment in referring the majority of criminal cases originating within the village to the mayor. Sometimes, however, a conflict between mayor and justice arises.

The following docket entry will illustrate the point:

Oct. 5, 1926 - Defendant appeared in court, and the court realizing that the state's witnesses will not return to testify on account of fear of mob violence and the attitude of the mayor and police department of the village of Elmwood Place in protecting the law violators who so shamefully assaulted the state's witnesses, the court hereby dismisses the cause of action without prejudice

and with no damages having been suffered by the defendant from arrest in said course of action.(1)

(1) The defendant died in the General Hospital shortly after this entry was made.

Occasionally new constables have to be taught their own sphere, but in general relations proceed harmoniously. In the case of one of the larger corporations the magistrates were told to cease holding their courts in the City Hall because they had become "a genuine nuisance".

SECTION 9 - Sidelights on the Magistrate's Process.

Twenty-six courts do not operate without occasional events of headline interest. One magistrate sentenced two boys to the reformatory and suspended the sentence to scare their parents.(1)

(1) He was aware of his legal disability to pronounce this judgment but thought it a wise method of emphasizing the seriousness of the case. Section 1569 of the General Code provides that if a minor under the age of 18 is arrested and brought before a justice of the peace, it "shall" be the duty of the squire to transfer the case to the juvenile court.

In another case the same magistrate pronounced a judgment equally effective, and equally foreign to the statute. The case involved two juveniles. The squire sent the constable for a yard of hose. Taking his pocket knife he cut the rubber in half, gave a part to the parents of each boy and advising a good flogging, the case ~~was then dismissed~~.

Two families of foreigners had an argument over a dog's continued barking. They came to court, the magistrate took the case under advisement. Finally he rendered this

decision: "The law in America will not tolerate such petty bickering as you all have been found guilty of, You must promise to be friends. Go home. Have a home brew party. Live and die in peace."(1)

(1) This was in 1927, the Eighteenth Amendment still being an instrument of national policy. The party was staged, according to the judge. Both families now are fond friends, he says.

One docket contains this entry in a case involving breach of public peace:

"After hearing the testimony of the defendant, the plaintiff, and the witnesses, I found that all were equally guilty and the defendant and plaintiff were both placed under a \$100 peace bond and fined half of the costs each."(2)

&

(2) The case was appealed.

In still another case a boy was arraigned for spreading carpet tacks on the highway, much to the displeasure of the Cincinnati Automobile Club. The sentence of the court was rendered by a representative of the Club who "gave the defendant a lecture and said the defendant was to pay \$5.00 damages at the rate of \$.25 a week and report once a week for 20 weeks."

Perhaps the exercise of judicial wisdom which qualifies a magistrate as a rival of Solomon is found in the case involving the ownership of a flock of chickens.(3)

(3) The specific charge was "receiving stolen chickens."

Following the filing of the complaint, the court took into custody fifteen Plymouth Rock and two White Rock hens. The magistrate decided to compromise the problem of ownership. The court decided to turn the flock loose at twilight. If the chickens found their way into the chickenhouse of the defendant and went "on the roost in a natural way", they were to be the property of the defendant. If they acted "strangely and failed to find the coop, they were to be returned" to the complainant. At dusk the "Constable, assisted by a deputy sheriff", released the birds. Seventeen found their way to the defendant's roost "in a natural way". "Thus the case was decided". (1)

(1) Judge Struble reversed the judgment.

Interesting events sometimes occur in the levying of execution. Some courts have an almost perfect record for executions unsatisfied; others have a better record. In one case a squire levied upon one of the four wheels of a farmer's wagon. He took the wheel into custody. Shortly the farmer, finding he could recondition his wagon more cheaply by buying back the wheel on constable's sale than at a dealer's store, paid fifteen dollars and again had a four-wheeled cart.

In another case a squire levied on a team owned by a negro. No bid was received for the animals at a constable's sale. At last information the team was being boarded and had already consumed the value of one horse in feed.

In still another case two special constables came from their township to Cincinnati in a truck determined to collect costs due them from a finance company. They were proceeding to transfer the furniture from the office to their truck when their demand for money was met.

A magistrate said to his constable one day: "John, we'd better hold down on the costs. I can see trouble ahead." "Don't worry", replied the constable. "It's easier to knock 'em down than boost 'em up."

"And that's true, I'd never thought of that", the magistrate confided to the writer.

The citizens of one township held a public meeting one night to petition for the cancellation of the commission of a squire. The squire attended and when the petition was produced for signature arose and said: "My constable is at the door. The first person who signs will be fined fifteen dollars for contempt of court." The meeting disbanded. The squire still is operating.

Section 10. Annoying delay caused by squires

As pointed out above, promptness is one means of building up volume of litigation. Customer satisfaction is the best advertisement in the judicial as well as commercial business. The squire, however, is not a full-time official. His court is his hobby, not his profession, consequently he frequently is overworked and is for various reasons unable to attend promptly to his legal duties. Letters such as the following are not uncommon:

Dear Sir:

It is important that you reply to ours of March 20th and give us the information as requested. This matter has reached a point where our clients are accusing us of stalling,

and they have threatened to withdraw this matter and all other matters from our hands unless immediate action is given in this instance.

Wont you please, therefore, comply with our request?

Delay sometimes also is found in the payment of money received by the court to the plaintiff or his representatives. The following communications illustrate this point:

Dear Sir:

In the case of Litmer v. Parchman your docket indicates there is due my client the sum of \$11.19, which you collected from the defendant.

In the case of Wm. Kreimen et al v. Henry Meyers, your docket indicates there is due my client the sum of \$7.00 which you collected from the defendant.

In the case of Wm. Kreimen et al. v. Jos. Baumgartner your docket indicates there is due you the sum of \$2.30 as additional costs which the plaintiff is liable for, deducting the above \$2.30 from \$7.00 there is still due Mr. Kreimen \$4.70.

Still acting as the agent of Mr. Litmer and Mr. Kreimen I am asking that you at once send me your check in the total sum of \$15.89.

Be advised that unless same reaches us on or before the close of business Saturday of this week we will commence action on your bond in the proper tribunal Monday, November 4, 1929.

SECTION 11. The Justice as a Patient Listener.

Throughout the county the justices perform a significant function in being^{and} impartial and patient listeners to tales borne by excited principals, interested relatives, and officious intermeddlers. Very often the squire is a practitioner of psychotherapy; he effects a catharsis by calming emotional^y and analyzing the facts of a situation. In civil as well as in criminal difficulties he acts as a sort of foster father to a portion of each community which craves a sympathetic friend. In counseling men and women and children who come to him the justice of the peace plays an important part in the lives of many citizens.

Each squire spends many hours each year patiently listening to stories and sincerely trying to adjust difficulties in such a way as to accord permanent satisfaction to the parties concerned. For such public service the magistrate receives no pay, often no thanks, and frequently much blame. The squire merits public commendation for his efforts in such circumstances.

One magistrate resigned in disgust because of the necessary hours he spent hearing other people's troubles and wholesale gossip. "The Justice of the Peace", he declared, "ought to be a woman. A man has enough self-respect to keep his nose out of other people's business."

SUMMARY

A common practice of adjudication by negotiation exists in the justice of the peace courts of Hamilton County. The normal legal procedure involving a bill of particulars, summons, trial, and judgment is considerably modified by the customary method. Adjudication by negotiation is found in criminal as well as in civil cases. While the magistrates are generally sincere in their efforts to act as "peace officers" and achieve agreement without a formal trial, the practice gives rise to the suspicion that the squire consciously or unconsciously considers himself the personal agent of the plaintiff or complainant. Where trials are held, the justices as a rule exercise a considered judgment, though they do not always render decisions in strict conformity with established principles of law. The law libraries of the magistrates in themselves are a handicap to adequate judgments, consisting typically of an out-of-date General Code or Swan's Treatise. The colorful administration of justice by the squire is not a matter of legal history, but an everyday occurrence. In a quiet way squires do much good in acting as patient listeners to the troubles of the community. For this service they merit commendation.

CHAPTER VI

Court Quarters and Organization

Section 1. The places where courts are held.

The justice of the peace in Hamilton County is a judge without an officially established court house except in two instances where court convenes in township halls or rooms provided for the convenience of township trustees. As a result, the squire is compelled to provide his own quarters or rely upon the kindness of village officials in holding sessions in village halls. (1)

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- (1) "In any township in Hamilton County in which there is no township hall or other public building belonging to the township, each justice of the peace may provide himself with a suitable office at an annual rental not to exceed fifty dollars, which shall be paid from the general township fund by the township treasurer upon the certificate of the justice, countersigned by the township clerk."
General Code, Sec. 1750.

The squires uniformly support their own courts. The villages which permit the magistrates to hold sessions in village halls uniformly make no claim for rental against the township.

During the period of study courts were held in quarters as follows:

- | | |
|---|--|
| 7 | in village or township halls, or
council chambers; |
| 9 | in private residences; |
| 6 | in private court houses; |
| 2 | in law offices; |
| 1 | in real estate office. |
| 1 | in a general store, on the front
porch or in the parlor." |

Section 2. Same: Descriptions of court quarters.

The squire, having been created by the legislature and then permitted to shift for himself, is typically thrown upon his own resources to provide quarters for his work. (1)

-
- (1) No doubt the inadequate public provision for permanent court quarters arises from the desire for economy in local government plus the attitude that a squire can hold court anywhere. The fee system is probably related in motive to the arrangement whereby a justice establishes his own court house. The fee system is an American contribution to the organization of the minor courts. It was not a part of the English system. A good discussion of this point is found in Chief Justice Taft's opinion in *Tumey v. Ohio*, 273 U.S. 71 L.ed. p.754-755. In arguing this case counsel for the defense contended that "in Ohio in the economy which it is found necessary to maintain in the administration of justice in the inferior courts by the justice of the peace, the only compensation which the state and county and township can afford is the fees and costs earned by them, and that such compensation is so small that it is not to be regarded as likely to influence improperly a judicial officer in the discharge of his duty."

Ibid, p. 755.

The courts which are held in village or township halls are conducted in a formal and professional manner. In contrast to these are those held around the coal stove, in the dining room, parlor, or kitchen of private residences. Under such conditions an air of informality prevails. When the cases come on for trial in a lawyer's office there also is an atmosphere of informality. In one court the parties gather about a long table in a law library. The constable enters shortly before trial, places the papers at the justice's place

and takes the mace from a drawer and places it ready for use. (1) The judge enters, calls the court to order, and

(1) The mace was the gift of the Optimist Club.

proceeds in a very careful manner to analyze the facts at issue. The actual hearing is characterized by the easy attitude which prevails throughout the trial as all parties sit around the table. Informality is blended with sufficient ritual to maintain the dignity of the tribunal.

Quite different from instances just cited is the court at a general store. The audience, witnesses, and parties sit on soda fountain chairs, counters, and pickle barrels. The whole trial tends to have the nature of a community festival on a small scale. (2)

(2) To maintain the dignity of their office several justices freely punish offenders for contempt of court. One squire fined a colleague of his township \$25.00 for contempt, and then reduced the bill to \$15.00 when he was advised the maximum fine for such a charge was \$20.00. One party was fined \$5.00 twice in succession for emphasizing that fact that the justice was "a damn liar".

Section 3. Same: Private Courthouses.

One of the most humanly interesting factors in the conduct of magistrate courts is the existence of private court houses. Very often the squire displays considerable ingenuity in designing his building and expends a sum for its construction in excess of the earnings of the court for

an entire year. One retired carpenter erected a substantial structure immediately after election. He rented the ground floor for a pool room and soft drink establishment and reserved the concrete cellar for his own purposes. The basement he planned carefully, providing for a waiting room, a consultation room, where the judge might sit in chamber, and an inner tribunal fitted with the magistrate's bench and seats for parties. He fitted the doors with glass and made partitions a combination of wood and glass.

To add to the effectiveness of the institution a large signboard was erected declaring that here was located the

"J U S T I C E O F T H E P E A C E".

A retired fire marshal spent more than a hundred dollars in improving the attic of his barn to serve as a court. The site of the building is ideal for a civic center, the hill upon which it sits overlooking the "beautiful Ohio".

Soon after election another justice began to clear out a small white grainhouse for his tribunal. In the summer months this squire holds court in the evening on his front lawn. He has had an electric ~~light~~ spotlight located on a pole to illuminate the scene. Here on fair summer nights the community gathers to see the law enforced. Upon one occasion, according to the squire, more than two hundred persons attended a forcible entry and detainer trial which had aroused the interest of the township.

Sometimes the attendance at hearings taxes the capacity of the rooms. One magistrate displayed his ingenuity by constructing his court house as an annex to a small garage where he kept his Ford. He designed a movable partition so that when the crowd grew too large for the annex he could back out his automobile, make the wall between the annex and the garage vanish, and have an ample audience room in the garage. (1)

Still another magistrate who ^{for} nearly forty years had been stationed in a little shack as a railroad gateman erected his court house on the opposite side of the tracks. The structure is a white, little building of one room. As one lawyer said, the squire could interrupt the administration to go out and flag the crossing and then return and resume the state's business. (1)

(1) For a picture of the location of the courts about the county see the map included herein.

SECTION 4. The Hours Court is Held.

To a considerable extent the hours when courts commence are fixed to accommodate lawyers. In some cases the time is arranged so that the attorney may "drop in" on his way home for dinner. In others the evening is selected because the squire does not feel that the administration of justice should be allowed to interfere with the regular work of the world. A few judges have no other alternative since they are salaried employees with fixed hours of work in Cincinnati.

One lawyer, however, experimented to find the most satisfactory hour. He said the evening proved best, the default judgments declining considerably. Other squires claimed to have found no difference in the percentage of appearances as a result of the time of day at which cases were called. The following table will indicate the diversity in day and hour when courts convene:

<u>DAY</u>	<u>NUMBER OF COURTS</u>	<u>HOURS</u>
Any Day	10	Any Time
Monday	2*	7 P.M. *
		7:30 P.M. *
Tuesday	4*	10 A.M. *
		6 P.M. *
		7 P.M. *
		7:30 P.M. *
Wednesday	2	4 P.M.
		Evening
Thursday	3	4 P.M.
		5 P.M.
		7:30 P.M.
Friday	8	10 A.M. *
		4 P.M.
		6 P.M. *
		7 P.M.

<u>DAY</u>	<u>NUMBER OF COURTS</u>	<u>HOURS</u>
Friday	8	7 P.M. 7:30 P.M. 7:30 P.M. * 8 P.M.
Saturday	1	8 P.M. *

* Courts marked with an asterisk are held more than once a week. Needless to say court is not held if there are no cases to be tried, often courts will have no sessions over a period of weeks.

Only one court is held in the morning, only three are held in the late afternoon. All other sessions which come at stated times are held after six o'clock. It can be seen that each court has its own individuality, yet the lack of standardization is sometimes confusing. In general terms it may be concluded that the work of the Justice of the peace begins when the rush of the day's work comes to its end.

SECTION 5 - Systems of Advance Cost.

"Justice of the Peace Courts are the courts of the people. They are the poor man's court. In them justice is administered cheaply and simply."

Such is a common attitude toward the minor courts as conducted by magistrates. No generalization could be more untrue than that these courts dispense justice "cheaply". Litigation in these courts is expensive from beginning to end. In the courts which handle the bulk of the business of the county systems of advanced costs have been established which successfully preclude

trifling litigation. (1)

(1) The statute provides that when a person intending to bring an action before a justice of the peace is "a non-resident of the township in which he intends to commence such action, the justice may, previous to his issuing process, or at any time before trial, require such person to give security for the costs of the suit." See Swan's Treatise, Chapter III, Sec. 1; General Code Sec. 10483.

The following table presents the system of costs as recorded during the study:

<u>Ordinary.</u>	<u>Attachments</u>	<u>Garnishments</u>	<u>Replevin</u>	<u>Forcible.</u>	<u>Criminal</u>
<u>Civil</u>				<u>Entry</u>	<u>Warrants</u>
<u>Suits</u>					
None	None	None (2)	None	None	None
None	None	None	None	None	None
None	None	None	None	None	None
None	None	None	None	None	None
None	None	None	None	None	None
None	None	None	None	None	None
\$2.50	None	None	\$2.50	None	None
\$3.00 (1)	\$2.50	None	\$3.00	\$2.50	None
\$3.00	\$3.00	None	\$3.00	\$3.00	None
\$3.00	\$3.00	None	\$3.00	\$3.00	None
\$3.00	\$3.00	None	\$3.00	\$5.00	None
\$3.00	\$3.00	None	\$3.00	\$5.00	None
\$3.00	\$3.00	None	\$5.00	\$5.00	None
\$3.00	\$3.00	None	\$5.00	\$5.00	\$2.50
\$3.00	\$5.00	None	\$5.00	\$5.00	\$5.00
\$4.00	\$5.00	Depends on	\$5.00	\$5.00	\$5.00
\$5.00	\$5.00	mileage	\$5.00	\$5.00	\$5.00
\$5.00	\$5.00	\$2.00	\$5.00	\$5.00	\$5.00
\$5.00	\$5.00	\$2.50	\$5.00-10.	\$5.00	\$5.00
\$5.00	\$5.00	\$2.50	\$6.50	\$5.00	\$5.00
\$5.00	\$5.00	\$2.50	\$7.50	\$5.00	\$5.00
\$5.00	\$6.50	\$2.50	\$7.50	\$5.00	\$5.-\$10.
\$5.00	\$7.50	\$2.50	\$7,50-10	\$6.50	\$7.50
\$5.00	\$7.50	\$3.00	\$10.00	\$7.50	\$10.00
\$6.50	\$10.00	\$3.00	\$10.00	\$7.50	\$10.00
\$7.50	\$10.00	\$3.00	\$15.00	10.00	\$20.00
		\$4.50			

(1) An additional cost of \$3.00 must be advanced before the squire will levy execution.

(2) Five courts will not accept garnishment suits.

The table shows that the average advance costs of filing cases in courts which have definite price schedules are

roughly: Ordinary Civil Suits -----	\$4.25
Attachments Suits-----	\$5.10
Replevin Suits -----	\$5.85
Forcible Entry & Detainer Suits --	\$5.00
Criminal Warrant -----	\$6.90

It must not be supposed that the various magistrates hold inflexibly to their announced costs. As suggested previously, they may be "knocked down" entirely for the benefit of certain favored customers. They may be waived in cases which arouse the sympathy of the judge. Friends of the justice may not be charged at all, and in two cases advance costs are not charged to residents of the township. On the other hand one magistrate who has a price of \$7.50 will return the suit if it is accompanied by a check for only five or six dollars. Quite generally the squires use advance costs as a scarecrow to frighten away complainants or plaintiffs who have cases which the magistrates do not want to handle. "Passing the buck" is common where the case is a difficult one. One prominent man changed his party allegiance in an effort to elect a "public officer" who would handle a case for him. One of the magistrates concerned confided to the writer that he could have issued the warrant requested if the complainant had insisted, but "he had rather not." (1)

(1) The case involved the enjoyment of a summer home after midnight. In surrounding cottages riotous early morning parties were held disturbing the peace of the neighborhood. The

magistrate did not desire to tackle the problem. Appealing to the sheriff the gentleman was told there was no state law under which to proceed. The man then asked the aid of a political boss and demanded to know what the sheriff was paid for. He was told the sheriff was chiefly employed at the court house in handling routine affairs. The politician advised the gentleman to "sell out and get out". "A land of liberty surrendered to the bootleggers", the man explained.

One squire who charges twenty dollars for a warrant refused to issue the writ to a resident of the township who demanded it. The complainant appealed to the prosecutor; there was an exchange of suggestions "to read the code" between the two officials. The warrant did not issue.

SECTION 6. Methods of Paying the Constable.

It would be difficult to find an elected American public officer who has less positive connection with organized government than the constable.(1)

(1) It should be mentioned that the constable can not always be found. "Not being able to find the elected constable, I appointed Edward Burns to make the service in this case." reads one docket entry. One squire arrested his own constable and locked him up to sober off. Another magistrate sent a half dozen special constables of a colleague to jail for a short time. A number of justices do not hold a high respect for their own constables. A few constables can hardly write their own names. Township trustees determine the number of constables to be elected. The term of office is two years. They are ministerial officers in justices' courts within the township in civil cases and within the county in criminal cases. Also "he shall apprehend on view or warrant and bring to justice all felons, disturbers, and violators of the criminal laws of the state, and suppress all riots, affrays, and unlawful assemblies, which may come to his knowledge, and generally keep and preserve the peace in his county". General Code, Sec. 3540,-5.

The income of a constable depends almost entirely upon the business given him by a squire in his township, as pointed out previously in one out of five courts the regular constable is not used. In some cases the township constables are not

all personally known to the magistrates. The squire may use his discretion in selecting one of the elected officials to aid him. Again, he may attempt to distribute his work evenly among the several township constables. Several officers may work out of the same court.

In two courts the magistrates paid the constables when each writ was returned. In practically all courts the squire sacrificed his own compensation for the interests of the constable and made himself a residual claimant.

In four courts the constable was paid his entire costs when the cases were settled irrespective of whether the costs were paid or not. In all other courts the constable and squire got together occasionally, figured up their accounts, and settled up with each other.

Section 7. Court records

The record in judicial proceedings is the written history of the proceedings and transactions of the court "kept as a perpetual memorial thereof." (1) The

(1) Rood, Judgments, Sec. 12

records in the justice of the peace courts consist of minute entries in a docket of whatever is done in a particular case from the issuing of the original process to the return of satisfaction on the execution. Records being permanent public documents bearing witness to the manner in which the public force has been brought to bear upon men, it is unnecessary to observe that they should be carefully compiled and preserved. Legislation has made ample provision for adequate records and adequate compensation for keeping the records. According to statute the dockets must contain the title of each action in which a writ is served, the date of the writ and the time of its return, a minute of orders of arrest or attachment together with the affidavit upon which the order was made, the nature of the bill of particulars, (2) which of the parties, if

(2) When not of too great length the bill must be entered on the docket.

either of them, appears at the trial, the authority by which each continuance was made, the names of jurors, (3)

(3) This entry must also show which party demanded

the jury, the names of jurors who appeared and were sworn, and the names of witnesses.

exceptions to the ruling of the justice, on questions of law taken by either party, the verdict of the jury, the judgment of the justice, specifying the items of cost included, and the time when rendered, the issuing of execution and the return of a statement of money paid to the justices and by whom, the minute of transcripts issued, the time of notices of appeal and the undertakings entered into, the undertaking for a stay of execution and the time of giving it, and the satisfaction of judgment. (1)

(1) See General Code, Section 1724

The cases on the docket must be numbered progressively and correspond with the number on the papers relating to each case. The entire papers in each action must be kept together in packages of convenient size and filed. (2)

(2) Swan's Treatise, Chapter XIX, Sec. 1

The civil docket book is furnished to the magistrate by the township trustees. The criminal docket may be purchased by the squire from fines collected. (3) The typical

(3) He may also spend not more than \$20.00 for a suitable desk and not more than \$5.00 per annum for necessary blanks and stationery.
General Code, Section 1742.

docket entries exhibited in this chapter indicate the completeness of the forms provided for the records. During 1929 two justices began to use loose-leaf records which could be prepared on a typewriter. One squire spent over fifty dollars having his own docket forms printed to please his own fancy. In one township the first case in the docket was dated 1883. In January 1931 the book was not half-filled. Another docket began in 1897 and was not a quarter filled at the time the data was gathered for the present study. Several records run back to 1920 and 1915.

The entries, so the General Code advises, "must be made under the title of the action to which they relate, and at the time when they occurred. (1)

(1) General Code, Section 1725

In practice the entries are made whenever the squire or his family have a few spare minutes. Wives and children do a considerable amount of clerical work. A few magistrates permit their cases to accumulate until something happens to force them to bring their records up to date. One occasion a justice sat up all night to make his entries and have them ready for the perusal of an interested party the next morning. The call of the state examiner for the records stimulates a few judges to feverish clerical activity. As a consequence of the dilatory manner of keeping official records the dockets

frequently have cases following in the sequence of March 21, 1929, December 3, 1928, January 3, 1929. One squire delighted in finding blank pages in old dockets and entering his cases. He achieved such serial order as June 10, 1925, December 6, 1930, June 12, 1925. (1)

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- (1) The dockets sometimes contain progressive ideas of phonetic spelling such as "reck" for wreck, "wreckless" driving for reckless driving, and "reseat" or "recite" for receipt, and "sertin" for certain.
-

In two instances the work of the present study was delayed from four to six months by squires who asked a little time to get their "books in shape".

The compensation for keeping the docket complete and making entries promptly seems to be sufficiently adequate so that one might reasonably expect carefully kept court records. For instance the following fees may be, and typically are, charged:

For docketing the petition or bill of particulars	- \$.50
For indexing, plaintiff and defendants, usually	- .20
For pronouncing judgment and docketing	- .80
For making itemized cost bill on the docket	- .50
	\$2.00

It can be observed from the sample docket pages exhibited with this chapter that practically every fee of a justice is paid for an act "and docketing".

The papers of the cases are generally preserved. These include the bill of particulars, summons, affidavits, correspondence, and usually some memorandum of the disposition of the case, costs, and moneys received and paid out. In ten

courts these papers were found arranged in steel or wood filing cases. One squire filed the papers of each case in the docket book. Three kept the papers in desk drawers, being sometimes able to locate the proper documents and sometimes not, to their very great annoyance. In three cases the papers could not be located to assist in the gathering of the data for this study. In two cases papers transferred from squires to their successors were completely lost. In two other cases old bundles of "state documents" were located in out-of-the-way corners of township offices.

A few dockets, as will be shown later, were either lost or could not be located for examination.

Section 8. Examination and supervision of records.

The records of the justices of the peace are audited approximately every two years by the state examiners. (1)

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- (1) Examination of the records of justice courts by state auditors was instituted with cases dated 1915. In Hamilton County the state examiners have made four audits, the most recent being in the spring of 1927 and the late winter of 1929. Formerly the examiner personally visited the squires. Now the justices are ordered to bring their dockets and papers "promptly" to the court house.
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The bureau of inspection and supervision of public offices, according to the General Code, "shall examine

each public office. - - - On examination inquiry shall be made into methods, the accuracy and legality of the accounts, records, files, and reports of the office." (1)

(1) Section 284.

The state examiner in practice makes a careful study of the records to ascertain whether all fines collected have been correctly disbursed. If they have not been he makes a finding in his report. When notified of such finding the squires promptly pay the sums which the audit indicates are needed to correct the record. Ultimately the duty of recovering fines due the county would fall upon the prosecution^{or}.

The examiner also compiles the amount of criminal costs collected, uncollected and disbursed.

The examination of the civil docket has become a perfunctory one merely to see whether the book is correctly kept. When a complaint against a particular justice is filed with the bureau, however, the auditors make careful and detailed studies of the entire operation of the court. Such reports were made twice during the five years under study. The earlier reports were more complete than the ones in recent years. These included a study of the civil dockets in the same fashion in which that of the criminal dockets is made. An effort was made to determine the amount of judgments taken and the sum satisfied and collected. According to these

records only thirty-four cents out of every dollar of judgment rendered was satisfied. (1)

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- (1) The examiner admitted that the entries concerning satisfaction are not entirely trustworthy because entries of satisfaction are not made in every case.
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The percentage of satisfaction varied among the courts, ranging from fifty-two cents on every dollar down to as low as eleven cents. (2)

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- (2) These variations might be due to carefulness in making entries, effectiveness in execution, and discrimination in accepting cases which have slight possibility of netting any return to the plaintiff.
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The following exhibit is presented to give an idea
of the character of the examiner's report:

BUREAU OF INSPECTION AND SUPERVISION
OF PUBLIC OFFICE

Report of Examination of Office of John Doe, Justice of the Peace,
Sycamore Township, Hamilton County, Ohio.

Certificate of qualification and of bond on file with clerk of courts
as required under the provisions of Section 1722 G.C.

Bond in the amount of \$1000.00 on file with the clerk of Sycamore
township as required by Section 1721 G.C.

Term of office ends December 31, 1929

Period covered by this examination - February 15, 1927 to
April 3, 1929.

CRIMINAL DOCKET - Page 39-92:

Fines

Amount assessed		\$930.00
" suspended	\$360.00	
Delinquent - jail	<u>319.50</u>	<u>\$679.50</u>
Amount collected		<u>\$250.50</u>

Fines Disbursed:

1927, Dec. 1	Fish and Game Department	\$ 15.00	
1928, Apr. 4	Hamilton Co. P.O. #518	10.00	
" July 18	" " " 773	10.00	
" Aug. 7	" " " 7	17.50	
" Sept. 17	" " " 155	50.00	
" Oct. 11	Eegal Blanks, 1928	5.00	
" " 11	Hamilton Co. P.O. #357	5.00	
" " 16	State of Ohio, Receipt #2648	25.00	
" " 24	Sycamore Township	<u>25.00</u>	
" Nov. 27	Hamilton C.P.O. #755	<u>88.00</u>	<u>\$250.50</u>

Fines collected	\$250.50
" disbursed	250.00

Costs and Fees

Sections 1746 and 3347 G.C.

Costs and Fees (Continued)
Sections 1746 and 3347 G.C.

	<u>Justice</u>	<u>Constable</u>	<u>Total</u>
Amount taxed	\$344.75	\$259.71	\$604.46
Uncollected	102.85	51.26	154.11
Collected	<u>\$241.90</u>	<u>\$208.45</u>	<u>\$450.35</u>
Disbursed	241.90	\$208.45	\$450.35

Requirements of Section 1740 G.C., relative to the method of keeping the criminal docket have been fully complied with.

Itemized cost bills made up and entered on the docket. Section 1746 G.C.

Docket properly indexed. Section 1726 G.C.

Syzamore Twp.

CIVIL DOCKET:

The examination made of the justice's civil docket was merely one as to form and procedure.

The civil docket has been kept in full accordance with the provisions of Section 1724 G.C., and properly indexed as required under the provisions of Section 1726 G.C.

Itemized cost bills have been made up and entered on the docket as required by Section 1746-1 G.C.

Costs and fees taxed in accordance with the provisions of Sections 1746-1 and 3347 G.C.

Report filed with the county auditor as required under the provisions of Section 13431 G.C.

(signed) Frank A. Wells,
 State Examiner

Sycamore Twp.

The examiner comments upon the procedure in the various courts to encourage the squires or to assist them in correcting their errors. One of the purposes of the audit is to "protect the honest, well-meaning official who has made a mistake of the head and not of the heart." Typical comments will illustrate the nature of the examiner's criticisms:

"Manner and method of keeping dockets, civil and criminal, do not in any way meet the requirements of Sec. 1724 G.C."

"Many entries, apparently, are not made at the time of the transaction."

"In some instances fees have been illegally taxed in excess of the amount allowable under the law."

"Costs and fees for justice and constable have not been taxed in full accord with provisions of Section 1746 G.C. and Section 3347. In many cases costs have been overcharged."

"Criminal docket - No business since last examination.
Civil docket - No business since last examination."

"Good docket."

"Dockets obsolete form."

"Cost bills conspicuously absent in many cases."

"Cost bills not itemized."

"Neat and accurate dockets."

"Itemized cost bills not made up as required G.C. 1746."

"Commendations in high degree on part of justice - good dockets."

"Civil docket, obsolete, loose leaf, and illegal."

"The justice had done an immense civil business since the date of our last audit of his accounts and records, and is to be commended for the business-like manner in which he handled this work."

"Many errors found in addition of justice's fees and constables' fees."

SECTION 9. The State Examiner as a Counselor of Magistrates.

During the period of the present study Mr. Frank Wells was the state examiner in charge of the work connected with Hamilton County township offices. His capacity for sympathetic appreciation and constructive criticism has led him to be highly esteemed by the magistrates throughout the county. As a result he has been able to exercise a decided influence in raising and maintaining standards among the courts. The occasional criticisms which are made to him are carefully investigated. Squires are called into conference and advised as to how to improve upon their past conduct. In one case the examiner told a justice that the best thing he could do would be to resign.(1)

(1) The advice was not followed.

Unquestionable Mr. Wells exercises the only positive influence at work in Hamilton County for the guidance of these inferior court judges.

SECTION 10. The Prosecutor's Office in Relation to the Squire.

The prosecutor is the legal adviser for all township officers. (2) Questions of law and procedure may therefore

(2) General Code, Sec. 2917

be referred to him for an opinion. In actual practice, however, the squires rarely have occasion to ask his aid except in unusual circumstances. (1)

(1) As suggested before most magistrates consider themselves learned in the law.

Theoretically the state examiner's report is a record of the regularity and irregularity of magistrates' practices. Upon his findings the prosecutor's ~~xxxxxx~~ duty is to see that the irregularities are stopped and corrected. As pointed out above the state examiner does much to correct irregularities, that does not appear on a report. He does, however, make his findings, which generally are not taken seriously by the prosecutor's office. With the attitude that "you can't expect anything from a J.P." or "we have to work with those fellows", the reports are pushed to one side. Hence there is a laxity of control which leads a few squires to believe that they are in actual fact not to be held responsible for anything and can freely tell all critics to "go to hell.". (2)

(2) This boast was made to the writer: Another squire, who was found to neglect to itemize his cost bills, asserted that he told his superiors to hire him a clerk if the state wanted all records perfectly kept.

In a few instances the prosecutor's office called justices in for conference and gave stiff advice.

It has frequently been suggested that the prosecutor occasionally should call the magistrates together to discuss legal problems connected with their courts. Such

a conference was held during the term of Charles P. Taft,
11.(1)

(1) 1925-1927. The meeting did not seem to be fruitful. One squire said he did not understand what the discussion was about. Three obtained the impression that the justice of the peace was the most miserable of all public officers and were disheartened. Two thought they were told that mayors had more extensive jurisdiction than justices. They were irritated to learn this. Others believed they heard that the squire had no real power to exercise. When one considers that all adjudicated cases may be heard de novo in common pleas court, one can understand how this impression may have arisen.

SECTION 11. Official Bonds as Assurance of Competent Activity.

Every justice is under bond to pay over according to law all money which may come into his hands by virtue of his commission and to perform faithfully every ministerial act enjoined upon him by statute. (1)

(2) General Code, Sec. 1721. The bonds, as stated previously, range from \$1,000. to \$5,000.

During the five years covered by the present study no suit was brought against a magistrate's bond, although in a few cases such action was threatened. The bond is assurance that no party will lose money by dealing with irresponsible squires.

SECTION 12. The Justice of the Peace as an Orphan

The proper conception to form of the justice of the peace is that of an orphan, or perhaps better a foundling. The justices do not have any official connection with each other. In fact each squire knows only eight or twelve of his fellow judges at most. Hence there is no possibility ^{of} ~~for~~ the development of an esprit de corps and no machinery for common association and discussion.(1)

(1) Only one justice in Hamilton County belongs to the Ohio Justices' of the Peace Association. A meeting of this organization was held in Columbus in the fall of 1930. There are 2273 regularly elected squires in the state. The attendance at the Columbus meeting was thirty-five. Of this number three were lawyers. This latter fact was given the writer by the Hamilton County magistrate who attended. Prior to the issuance of the call for the meeting the writer had vainly tried to ascertain the names of the officers of the Association. No squires in Hamilton County knew these names; neither did the secretary of the state. The present officers are: Myron J. Penty, President, Cleveland; J.E.Chizek, Secretary, 1208 Ontario Street, Cleveland. No answer has been received from the Association officers in reply to the writer's request for the program of the Association.

As suggested before the squire generally is held in no high respect by the township trustees. He is not esteemed by attorneys. His ability is not highly regarded by his colleagues. He has only an irregular and sporadic connection with other officers of the government. Little supervision is exercised over his conduct. He is a law unto himself in locating his court, fixing the hours of trial, and establishing a system of advanced costs. The squire may truthfully be said to be a highly individualized, isolated, and relatively unclaimed public officer.

SUMMARY

In general magistrates are judges without official court houses. Consequently court is held in various places including village and township halls, private residences, "private courthouses", law offices, a real estate office, a and a general store. Considerable ingenuity is evident in personally designed private courthouses which a few justices constructed at their own expense. Justice of the Peace courts typically convene evenings when the regular work of the world has ceased for the day.

Litigation in the courts is expensive, advance costs or filing fees averaging \$4.25 for ordinary civil suits, \$5.10 for attachments, \$5.85 for replevin actions, \$5.00 for forcible entry and detainer suits, and \$6.90 for criminal warrants. The constable settles up occasionally with the squire, though in a few cases the squires pay him when he has completed his work at various stages of the case. Court records consist of docket books and pouches of papers indexed according to serial numbers of the docket. The docket is prepared to give a complete record of the judicial proceedings, and adequate fees are provided for the keeping of the story of litigation. In actual practice the entries are made irregularly and incompletely. Supervision over the courts is exercised by the state examiner who makes biennial audits of the books and acts as a sympathetic counselor of the magistrates, and by the county prosecutor who technically should see that all irregularities reported by the examiner are corrected.

Official bonds are assurance that money collected by the various courts can be recovered by the parties to whom it belongs and that ministerial duties will be performed in such an efficient manner as to protect parties to controversies. In a sense the justice of the peace is a foundling, brought into the world by statute and election and then allowed to shift for himself with no organized association with his colleagues or other branches of the government.