

174

THE EARLY JUSTICES OF THE PEACE  
IN DELAWARE

by

Joseph Anthony Palermo

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Approved: H. Clay Reed  
Professor in charge of thesis  
on behalf of the Advisory Committee

Approved: John A. McMurran  
Chairman of the Department of History

Approved: C. E. Buckenell  
Dean of the School of Graduate Studies

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## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION. . . . .	1
CHAPTER I    ENGLISH COUNTY COURT . . . . .	3
Origin. . . . .	3
Qualifications. . . . .	4
Duties. . . . .	5
CHAPTER II    ESTABLISHMENT OF COURTS. . . . .	12
Nature of Business. . . . .	18
Justice Administered. . . . .	21
CHAPTER III   DUTIES AND RESPONSIBILITIES OF A JUSTICE OF THE PEACE. . . . .	26
CHAPTER IV    CONCLUSION . . . . .	72
BIBLIOGRAPHY . . . . .	76
APPENDIX . . . . .	78

## INTRODUCTION

During the colonial period on the South River, the magistrate and his court attained the highest honor and respect. He maintained a position of loyalty and integrity and people came to him with their trivial as well as their most serious problems. Community life was centered around this court; it was the chief agency of county government.

What has happened to this prominent position of the magistrate? Was his importance lowered because of his non-attendance at the quarter sessions; was he over-burdened with work; were the duties and jurisdiction of the office not clarified?

Whatever the reason or reasons, the prominence of the magistrate, or the justice of the peace, through the constant amending of the constitution, has been reduced until the office has become a comparatively insignificant part of the judiciary system in Delaware. There was a period when the chief executive of the state of Delaware was officially called "President, or Chief Magistrate"\*

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\*H.C. Reed. Delaware A History of The First State, V. I, p. 279.

later, the title of chief executive was changed to that of governor. Following this change the name of magistrate gradually has taken a position of less importance.

An attempt has been made to follow historically the course of events of the office of magistrate. The writer has endeavored to arrange with as much method and clearness as possible this historical review from the material available, abundant in certain areas and scarce in others.

## CHAPTER I

### THE ENGLISH COUNTY COURT

#### Origin

History reveals that "magistrates" were called by many different names, according to the language and customs of a particular country. In England during the medieval period from 100 to 1400, the position was known as that of the provost or the chief magistrate of a town in charge of the administration of the laws. Later, in 1606, it was specifically called "Justice of the Peace." In principle, its primary purpose was to administer justice between persons.<sup>1</sup>

Why were justices of the peace so called? Michael Dalton in his book entitled, The Country Justice stated:

They be Judges of Records, and with all to put them in mind (by their name) that they are to do Justice (which is to yield to every man his own by even portions, and according to the Laws, Customs and Statutes of this Realm) with respect of persons.<sup>2</sup>

According to Dalton, peace, in effect, is the amity, confidence and quiet that exist between men. Yet in our law, he says, peace is most commonly taken for an abstinence from actual and injurious force. For this maintenance of



the peace the office of justice of the peace was begun.<sup>3</sup>

#### Appointment

The justices of the peace were chosen by the crown, usually by the Lord Chancellor, who was likely to consult privy councilors, judges of assize, and sometimes lord lieutenants of the counties. They were of two kinds, ordinary justices and those of the "quorum" - men who had some special knowledge of the law and had perhaps attended one of the Inns of Court.<sup>4</sup>

The justices were drawn almost exclusively from the ranks of country gentlemen. In addition,

in all corporate towns the mayor, bailiff, and recorder, if there was one, and a varying number of the senior aldermen were ex-officio justices of the peace. But only boroughs in which there was a recorder had the privilege of holding their own quarter sessions.

#### Qualifications

The qualifications required were residence in the county, suitability of moral character, religious conformity, and the possession of lands or tenements worth twenty pounds a year.<sup>5</sup> In Delaware the Duke of York's laws required justices of the peace to be twenty-one years of age, free of scandal and "professing the Christian Religion."<sup>6</sup> In 1776, the constitutional fathers of Delaware, to avoid atheists from being "appointed to any office or Place of

Trust" insisted that only those who

profess Faith in God the Father, and in Jesus Christ his only son, and in Holy Ghost,

and to

acknowledge the Holy scriptures of the Old and New Testament,

would have access to said positions. On the other hand, clergymen of any denomination were barred from membership in the legislature and from holding any civil office. This disqualification was finally eliminated from the Delaware Constitution in 1897.<sup>7</sup> Thus, at that time, an innkeeper with little or no education, might become a justice of the peace and yet an educated man, who was a clergyman, could not attain that position

#### (Duties)

A single justice had men brought before him on many different charges, upon his own summons, or upon the initiative of a petty constable. He could punish men for drunkenness, for playing cards on the Sabbath, for refusing to work in the harvest; he could order a "sturdy rogue" or vagrant to be whipped.<sup>8</sup>

More exacting and significant than the judicial duties of the justice were his administrative labors. He, together with his colleagues who together formed the county court of quarter sessions, had to see to it that the constables pressed men for military service; they had to ex-

ercise control over markets and supervise the keepers of weights and measures.

It devolved upon them to vote suitable pensions or lump sums for maimed soldiers returning from wars, and to vote money for those who had suffered heavily from fires -- a kind of county insurance.<sup>9</sup>

The necessities of the aged and feeble were constantly being called to the attention of the justices.

In time of economic distress the justices gave a good account of themselves. For example, if the grain crop failed and the prices of bread soared, the justice might go as an individual into the market and buy grain at as low a price as possible and then sell it for less to the poor at his own personal loss. They prevented monopolists from raising prices and fined those who did.

During the meetings of the quarter sessions the justices tried those accused of murder, theft, witchcraft, cheating, failure to attend church, and many other crimes which a sixteenth century Englishman might commit. The majority of offenses were usually some form of larceny.

In addition to these many duties much of the time of the Justices while at the quarter sessions was spent on matters of road construction, footpaths, causeways, ferries and bridges.<sup>10</sup>

Punishments varied. Vagrants were "burnt thru the

gristle of the right ear."<sup>11</sup> Milder forms of punishment were stocks, floggings and jail. However, hanging was common.

In Devonshire in the midwinter session of 1598, out of 65 culprits tried, 18 were hung.<sup>12</sup>

The sessions sometimes offered an accused a short cut to justice. Once a fellow was charged he could "put himself on the country," which meant his trial was postponed for the petty jury at the next session, or he could submit to an appropriate fine without any trial. Having paid the fine, the accused was free to go without actually being convicted.<sup>13</sup>

The weakness of the quarter sessions, says Note-stein, was that in a large number of minor crimes the sheriff or the constable reported that the man he was looking for could not be found. Unless the man pleaded to the indictment he could not be convicted. Writ after writ would be sent out against him and if he never appeared, he would be finally outlawed, which could not be considered severe punish for the ordinary man. Some of those who never appeared may have hidden in remote alehouses or in the homes of friends. But so many men were reported as not found that one suspects the constable and bailiffs were skillful in failing to find men.<sup>14</sup>

The quarter sessions had the atmosphere of a court

of law with the sheriff, jailer, jurors, witnesses, bailiffs, constables, and coroners presents, depending on the nature of the case. The meetings at the quarter sessions were not always quiet and orderly.<sup>15</sup>

The justices, as individuals and as members of small groups sitting together, varied in their ways of doing business from county to county, and even within counties. They were not always as apt in their duties as they should have been, but then there were reasons. They had to administer an increasing body of statutes, many recently passed. Those statutes imposed new duties and were often vaguely stated. Only slowly could justices become skilled in what they could or could not do; some were cautious and others inclined to take matters into their own hands.

When the justices of the quarter sessions were uncertain about the proper procedure in a case, they could refer it to the itinerant judges at the assizes. Cases could not be appealed, but they could be moved by a writ of certiorari. The justices looked to the assizes for guidance. They were expected to attend the assizes (where they were given seats of honor) to watch the great judges in action, and to learn what laws were at the time most in need of enforcement.

Proceedings were considered legal if only two justices of the peace were present. Obviously then, the country

gentlemen came to the quarter sessions when it suited them and stayed away when it did not, although some records show the continual presence of certain justices at the quarter sessions. At the quarter sessions were the keeper of the records, the clerk of the peace, and appointee of the keeper of the records -- usually a lawyer who drew up and read indictments, wrote orders, kept lists of licenses and tables of wages and prices, and carried on the necessary correspondence with the central courts.<sup>16</sup>

As the name implies, the court was held four times a year, in January, early spring, mid summer and October. Adherence to the meeting times and places varied. In Middlesex, England, in one year the justices had twenty sessions. In the West Riding of Yorkshire in 1598, there were ten sessions.<sup>17</sup> The time and place of the coming session would be decided by the justices in session. The sessions were to continue for three days, if need be, but usually lasted a little more than one day. Attendance at the quarter sessions were required by law, and under elizabeth's reign absentees could be punished or have their commission abated. However, this law was not always enforced and often attendance by the justices at the quarter sessions was poor. In 1608, at a meeting in Lancashire at Manchester only eleven justices were present out of the seventy in the county.<sup>18</sup>

It appears from the method of appointment, quali-

fications and duties of the justices of the peace that there were very little, if any, monetary compensations. Class distinction and probably favors from the Crown were the ultimate rewards for the justices' labors. On the whole, the justices of the peace were men of rank and dignity, performing laborious tasks, requiring much time and sacrifice of comfort with little or no reward.<sup>19</sup>

## Footnotes

<sup>1</sup>The Oxford Universal Dictionary on Historical Principles, Oxford, 1955.

<sup>2</sup>Michael Dalton, The Countrey Justice, p. 6.

<sup>3</sup>Ibid., p. 212.

<sup>4</sup>Wallace Notestein, The English People on the Eve of Colonization, p. 211

<sup>5</sup>Ibid., p. 212

<sup>6</sup>Charter and Laws of Pa., p. 102.

<sup>7</sup>H. Clay Reed, "The Delaware Constitution of 1776," p. 31, Footnote 99.

<sup>8</sup>Notestein, p. 217.

<sup>9</sup>Ibid., p. 218.

<sup>10</sup>Ibid., p. 226.

<sup>11</sup>Edward Cheyney, A History of England, Vol. II, p. 333.

<sup>12</sup>Ibid., p. 333.

<sup>13</sup>Notestein, p. 217.

<sup>14</sup>Ibid., p. 217.

<sup>15</sup>Cheyney, p. 330.

<sup>16</sup>Ibid., p. 327.

<sup>17</sup>Ibid., p. 324.

<sup>18</sup>Ibid., Op cit.

<sup>19</sup>Ibid., p. 340-341.



## CHAPTER II

### THE ESTABLISHMENT OF COURTS

Following the conquest of the Dutch settlements on the South River by the English in 1664, the people in these settlements were allowed to retain their magistrates or justices as well as the schout, burgomasters and other officials which were stated by the Swedes and the Dutch. The justices and other civil officers continued with their duties but were subordinate to the local English military commander until such time as an English civil system, in conformity with the Duke of York's could be introduced.<sup>1</sup>

Thus, the justices functioned under the surveillance of the local military commander and in accordance with instructions issued from time to time by the Governor and Council of New York.

The next development in the office of schepen, or magistrate, was after the Dutch regained the territory in 1673. The governor at the time issued an ordinance for the selection and functioning of schepens, or magistrates.<sup>2</sup>

In an ordinance issued from Fort Willem Hendrick, dated October 1, 1673, there were several articles explain-

ing the duties and authority of the schepens. The schepens through the agency of the schout were to see that the Reformed Christian religion was maintained. The judicial power of the schepens was defined, as reported in Dr. de Valinger's Development of Local Government in Delaware 1638-1682,

[All cases relating to the police, security and peace of the inhabitants; also to justice between man and man shall be finally determined by the Magistrates of each of the Villages, to the amount of, and under Sixty florins, Beaver, without appeal; in case the sum be larger the aggrieved party may appeal to the meeting of the Sheriff and Councilors delegated from the Villages subject to this jurisdiction, for which purpose one person shall be annually appointed from each Village, who shall assemble in the most convenient place to pronounce final judgment to the amount of fl. 240 Beavers, and thereunder. But in all cases exceeding that sum, each one shall be entitled to an appeal to the Governor General and Council here (Fort Willem Hendrick).<sup>3</sup>

For a number of months during the years 1673 and 1674, the Dutch regained temporary control of their former possessions in North American. The provisions of the Treaty of Westminister, concluded in February of 1674, caused the return of these settlements to the English.<sup>4</sup> Sir Edmund Andross reappointed those magistrates who were in office at the time of the reconquest of the Dutch.<sup>5</sup>

By September 22, 1676, Colonel Richard Nichols had accomplished the codification of the laws known as the Duke of York's Laws. With their publication, the local

government in the various settlements under the Duke's authority began to assume more definite proportions.<sup>6</sup>

The changes made on the Delaware by the Duke of York were few. These changes were for the most part legal rather than civil. Practically every article contained the same regulations that were in force here when the Dutch were in control. The justice could leave the bench when he was concerned in a case, thus, causing no trial to be heard for lack of a sufficient number of justices on the bench. In addition, fines levied on any of the justices for neglect of their duty were very seldom ever carried out. The eldest justice was to preside in the absence of the Governor, who rarely attended the meeting of the court. Finally, the fees of the justice of the peace were also stipulated.<sup>7</sup>

In Delaware the judicial system of England was gradually, though prudently, introduced by the royal governors. One of them was Governor Edmund Andros, who in his "Instructions" issued on September 25, 1676,<sup>8</sup> noted that there were to be three courts, one at New Castle to meet monthly, one at Upland and one at Whorekill. The latter two courts to meet quarterly.<sup>9</sup>

The courts were to consist of justices of peace, whereof three to make a coram and to have the power of the Court of Sessions, and to decide all matters under twenty pounds without appeal.

About twenty pounds and for crime "to life, limb or banishment," an appeal was admitted to the Court of Assizes.

Matters under the value of five pounds along with matters of equity were to be determined by the court without a jury, unless desired by the parties.<sup>10</sup>

The Courts of Sessions were to have jurisdiction in all cases of treason. Some of the provisions for punishment were peculiar, although in strict accordance with the law of England. For example, the statute against stabbing passed in the first year of the reign of King James was extended here. This took away "the benefit of clergy" from the prisoners. For,

disabling the tongue, putting out an eye, slitting the nose, cutting off the nose, or cutting off or disabling any of the King's subjects,

the criminal was to suffer death, as in the cases of felony. Burglary was punishable by death whether the intent of killing or stealing was evident or not. The burning of a home or buildings, not inhabited, but containing property, was also made a capital crime. Persons concealing robbers, burglars, felons, or thieves or receiving or buying known stolen goods from them, or being convicted of the same were to be "burnt with a T upon the braun of the left thumb," which "marks were to be made by the Goaler in open court, as is usual in Great Britain." Perjury was punishable by a fine of forty pounds, one half to go to the

governor for the benefit of the province and the other half to the offended party. All offences were to be tried by juries.<sup>11</sup>

In regard to the courts on the Delaware, including that at Upland, an able writer states:

These courts possessed both criminal and civil jurisdiction. In criminal matters their powers were about equal to those of our courts or Quarter Sessions, while in civil cases, not involving more than L20, the judgment of each Court was final.<sup>12</sup>

The justices appointed by Governor Edmund Andros to hold the first court at New Castle were John Moll, Henry Ward, Ffoppe Outhout, John Paul Jacquet, Gerret Otto.<sup>13</sup> The first session of the Court for the transaction of business found all the justices present. It was held at New Castle on November 28, 1676.<sup>14</sup>

John Moll, an early English settler in Delaware, was elected chairman of the court at its first meeting. The position of chairman then included the job similar to the presidency of the New Castle County Levy Court and first Chief Justice of Delaware as it exist today.<sup>15</sup>

The courts in those days combined the duties of the present County Levy Court with their judicial functions.

The justices would, at their Quarter Sessions, or at a Special Session, calculate the expenses of the county

and set a rate of assessment for this purpose. Some of the expenses of the county were supporting the poor, which had priority, paying the salary of assemblymen, building of prisons, or repairing them, paying bounties for wolf-heads, etc.<sup>16</sup>

The New Castle Court, 1676-1681, was the most important body on the river.<sup>17</sup> Only one unpleasant incident marred Mr. Moll's service. In 1681 Abraham Man, in open court, impeached Justice Moll, declaring he was not fit to sit as judge. Mr. Man was ordered to give one hundred pounds security and to prove his charge at the next term of court.<sup>18</sup> Mr. Moll withdrew as justice during the investigation and trial, but Man's charges were proved baseless and Justice Moll resumed his position on the bench on November 1, 1681.<sup>19</sup>

The justices with their legislative, judicial, and civil powers were not unimpeachable. Walter Wharton, 1678, one of the justices of the New Castle Court, was fined ten pounds and costs for non-attendance.<sup>20</sup> Walter Wharton was in 1671 "Surveyor General on the west side of the Delaware," and in 1673 he was selected as one of the appraisers of the Island of Tinicum in the celebrated suit of Jenffro Armgardt Printz, the daughter of Governor Printz. In the same year, after the reconquest by the Dutch, he was re-appointed Surveyor General. He was a justice of the peace

at New Castle in 1678 and died about at the end of that year.<sup>21</sup>

Although Governor Andros avoided setting up any agency representative of the people of the whole river, which might conceivably come into conflict with his personal sway over the Delaware Colony, he nevertheless kept the courts local and strictly subordinate to his authority in New York. He wished them to act with the freedom and self-reliance of English courts in the many small matters which came before them. His ordinance of September, 1676, was designed to complete the anglicization, already partially effected, of the Delaware Courts, and to sweep away the last remaining vestiges of Dutch practice.<sup>22</sup>

The ordinance of 1676 made a "high Sheriff" of the river an English sheriff instead of a Dutch schout.<sup>23</sup> In August, 1676, however, the Council in New York, realizing the inconvenience of being judge and prosecutor, resolved that the Delaware sheriff should not preside over or have any vote in the court. The new status of the sheriff was to act as principal officer of the court, higher in rank than, the justice of the peace, or magistrate. Thus, the sheriff became the servant rather than the master of the court.<sup>24</sup>

#### Nature of Business

The courts' authority, together with its justices, was extensive but closely controlled by the governor. The courts could make all necessary by-laws or orders, but they were valid only a year and had to be reported promptly to him.<sup>25</sup> They could levy taxes, but not without his prior approval.<sup>26</sup>

An important part of the business of the courts at New Castle and at Upland in the early colonial days was the ear marking of hogs to prove ownership, since the animals were allowed to run at large. Owners would petition the court to have the earmarks of their hogs registered to prevent theft.<sup>27</sup>

In regard to marriages, it was lawful for any minister or justice of the peace to join the parties in marriage, provided that the said parties should purge themselves by oath before the minister or justice that they were not married to any other living person. Should it later be proved that either or both of the parties committed perjury and thereby attained a double marriage, the offending party or parties should be bored through the tongue with a red hot iron.<sup>28</sup>

There were no provisions for divorce as we know it, but if either the man or woman were convicted of falsifying the marriage oath, the other was free to marry.<sup>29</sup>



This power, to perform marriage ceremonies, was lost by the justice of the peace through a law enacted in 1790. The law granted that ceremony only to the minister.<sup>30</sup>

The justices were empowered to "Settle the Rates of Liquor &C." an act passed on April 5, 1739. It also stipulated that

no justice keeping a public house should judge or determine anything relating to the said Act.<sup>31</sup>

Also, the justices were prohibited to meet at any tavern, public inn, or any other place, except his mansion or dwelling place, for the purpose of administering justice. In fact, they were not even permitted to visit these restricted establishments on the days that the court was in session. If they did attend, their punishment would be temporary suspension from executing the duties of the justice of the peace by the governor of the colony for the first offence; and for the second offence, the justice would be removed from office.<sup>32</sup>

The justices were fined eighteen pence and no more, if they failed "to make fair entries in Books &C." of the names of the plaintiff and defendant and the charge and cost.<sup>33</sup> In 1818 each justice was also required to keep court records, or dockets. These records were to show the cause of action, names of defendants, and plaintiffs, debts or damages involved, costs of the activities of the

sheriffs or constables in cases, judgments, and appeals taken.<sup>34</sup>

On Wednesday, June 7 (A.M.), 1769, according to the minutes of the House of Representatives of the government of the counties of New Castle, Kent, and Sussex, the House passed a bill whereby any one of the justices could collect small debts with ease and rapidity. A clause was added to oblige the justices of the peace to perform their duties under the "Forty Shillings and Five Pounds Acts."<sup>35</sup>

From these ordinances that were in existence at the time, one will observe that the justices of the peace or magistrates, exercised judicial, legislative, and some executive power before, during, and even after William Penn instituted the first general assembly in 1682. The justices held a very responsible position in the government of the "Three Lower Counties upon the Delaware."

#### Justice Administered

The cases heard by the justices at New Castle and Upland are of the same general character, those at New Castle being the more important. They included, as noted in the New Castle County Courts Records, suits upon tobacco sales, pages 11, 51, 58, 64, 152, 169; fence disputes, pages 29, 94, 164, 402; the issuance of land patents, pages 21, 95, 139, 167, 255; repairs to dikes, pages 25, 33, 59, 98,

100; decedent's estates, pages 94, 107, 193, 282; settlements of accounts, pages 42, 123, 140-141, 184, 187, and a few criminal cases, pages 69, 103, 106, 129-131, 155, 326, 421, 440.

There were many cases of slander. These were disposed of quickly by requiring the defendant, if guilty, to apologize, to give an open court confession, or to pay a fine, which was put into a fund for the care of the poor in each community. Some of these cases are listed on pages 75, 92, 403-404, 434, 435, 438, of the New Castle County Court Records.

The justice administered was of a rough and ready kind. It was rarely severe, always fitting, but sometimes difficult to understand. For Example:

John Johnson being Indyted ty the High Sher-  
rife in ye behalfe of our Soveraigne Lord ye  
King.

The sd John Johnson pleading not Guilty The  
examination thereuppon was read and Severall  
wittnesses sworn.

The Court did give the sd Charge to the Jury,  
whoe brought in their verdict vizt That the  
prizoner is Guilty of the fact . . .wee find  
not: but by the Evidence & whole Circumstances  
wee find his Intent to bee very evil.

The Court Conciedering uppon the whole mat-  
ter & Circumstances and weighing the Prisoners  
former ill behavior: Did order yt the sd John  
Johnson bee whipt twenty and one strokes or  
lashes; and afterward bee bound & give secur-  
ity for his good behaviur: Paying the Charges  
of his Imprizonment etc.<sup>36</sup>

The justices of the peace at Whorekill generally

sat informally at the home of one of the justices. After the division of Whorekill, St. Jones was established. Among the first magistrates were Francis Whitwell, John Hilliard, Robert Hart and Edward Pack. They received their commissions on May 18, 1680, and held their first court the following June, at the house of Edward Pack.<sup>37</sup> At this court the record shows that most of the business conducted was that of the granting of lands.<sup>38</sup> Also, appointments were made to fill the offices of sheriff, constables, clerk, deputy clerk, and overseers. The cost of repairs to "an old bridge at Little Creek" was discussed and the last item of business was a "earmark recorded for John Newell & John Willis."<sup>39</sup>

## Footnotes

- <sup>1</sup>Documents relating to the Colonial History of the State of New York, Vol. XII, p. 513.
- <sup>2</sup>Ibid.,
- <sup>3</sup>Leon de Valinger, Jr. The Development of Local Government in Delaware 1638-1682, p. 41.
- <sup>4</sup>Ibid., p. 39
- <sup>5</sup>Documents, Colonial History of the State of New York, Vol. XII, p. 513.
- <sup>6</sup>de Valinger, p. 124.
- <sup>7</sup>Ibid., p. 129-131.
- <sup>8</sup>The New Castle County Court Records, p. 8.
- <sup>9</sup>Ibid., p. 6.
- <sup>10</sup>Ibid., p. 6.
- <sup>11</sup>Laws of Delaware, Vol. I, p. 64-70.
- <sup>12</sup>Charter and Laws of Pa., p. 462.
- <sup>13</sup>New Castle Court Record, p. 9.
- <sup>14</sup>Ibid., p. 9.
- <sup>15</sup>J. Thomas Scharf, History of Delaware 1609-1888, Vol. I, Footnote p. 513.
- <sup>16</sup>Charter and Laws of Pa., pp. 233-234.
- <sup>17</sup>H. Clay Reed, "The Court Records of the Delaware Valley," p. 194.
- <sup>18</sup>New Castle Court Records, p. 458.
- <sup>19</sup>Ibid., pp. 494-496.
- <sup>20</sup>Ibid., p. 25; Ferrow, N.Y. History Records, p. 596; Hayards Annals of Pa., p. 454.
- <sup>21</sup>New Castle Court Records, pp. 144-145.
- <sup>22</sup>Reed, "The Early New Castle Court," p. 233.

## Footnotes (continued)

<sup>23</sup>deValinger, "The Development of Local Government in Delaware, 1638-1682," p. 39.

<sup>24</sup>Reed, "The Early New Castle Court," p. 243.

<sup>25</sup>New Castle Court Records, p. 6.

<sup>26</sup>Ibid., p. 7.

<sup>27</sup>Delaware Laws, Vol. II, pp. 621-622.

<sup>28</sup>Charter and Laws of Pa., p. 36.

<sup>29</sup>Ibid., p. 36.

<sup>30</sup>Delaware Laws, Vol. II, p. 976.

<sup>31</sup>Minutes of House of Assembly of the Government of the Counties of New Castle, Kent and Sussex upon the Delaware at New Castle - 1739, p. 16; Delaware Laws, Chapter 75, Section 9, p. 196.

<sup>32</sup>Delaware Laws, Vol. I, p. 1052.

<sup>33</sup>Minutes of the House of Assembly, 1739, p. 160.

<sup>34</sup>Delaware Laws, Vol. V, p. 323-326; 331.

<sup>35</sup>Charter and Laws of Pa., P. 219; Minutes of the House of Representatives, 1765-1770, p. 194.

<sup>36</sup>New Castle County Court Records, p. 88.

<sup>37</sup>Kent County Court Record, p. 1; Scharf, p. 518.

<sup>38</sup>Kent Records, p. 2.

<sup>39</sup>Ibid., pp. 2-3.

### CHAPTER III

#### THE DUTIES AND RESPONSIBILITIES OF A JUSTICE OF THE PEACE

##### Commission

The commission of justice of the peace or magistrate came from the Governor or Proprietary. The term in office was for one year or "to continue in their places dureing the Governours pleasure." They were to administer "justice to the Indians as well as Christians,"<sup>1</sup> and to profess faith in Jesus Christ."<sup>2</sup>

The new commissioners for magistrates or justices of the peace may be in one general order as was the case when Governor Edmond Andross reinstated all officers on November 2, 1674,

It is resolved and ordered that the Magistrates of Albany, Esopus & parts adjacent & Magistrates who were in place at the time of the Dutch coming here July 1673 be reestablisht for ye space of six months or further order.<sup>3</sup>

The oath of office could be administered to one person by the Governor and empowering that same individual to administer it to the rest of the candidates for justices of the peace. This type was given to Captain John Avery by Governor Andross:

Whereas you have this day taken your Oath as magistrate or Justice of the peace of the Court at the WhoreKill in Delaware Bay, for the Ensueing yeare, These are in his Majesties name to appoint and Authorize, You, at your arrivall there to administor the Oath to the others Joyned with you in Commission which done & haveing taken your place to act accordingly. Given under my hand, in Yew York this 12th day of October, 1678.<sup>4</sup>

The method most prevalent was that of issuing a commission to a group of five to eight elected men to serve as justices of the peace in each county of the Delaware. (New Castle Court, p. 3); (Upland Court, p. 35); Kent Court, pp. 92-93); (MS. Sussex Court, p. 277).

Occasionally, one person might be appointed by direct order such as Alexander Moleston (Turner, Sussex Court, p. 101) and Thomas Wynne. (Ibid., p. 113).

The oath of office was administered to the elected officers who may be present at the court by one person appointed by the Governor. A few appointees took the oath other than the commissioned date, Thomas Bedwell, George Robeson (Kent Court, p. 241) and John Robbison. (Ibid., p. 213).

Occasionally a justice refused to serve. Thus, in 1697,

Jonas Greenwood refused to act as Justice, being already Sworne the last Court to serve as a grand Jurior for six months.



At the same time,

John Brinckloe and Richard Willson refuse to act as Justices untill they ar fairly acquitted of the late report against them, made by John Bradshaw, according to the information of Samuell Burbary. (Kent Court, p. 93.

At times no apparent reason was given. In 1700,

Simon Irons, Henry Moleston, John Robbison being also present, the attest was by William Rodeney offered to them, thereby to qualifie them as Justices, accordinge to the commission aforesaid, but they excused themselves, from Acceptine the same, and soe were not Qualified. (Kent Court, p. 166).

A single justice of the peace had many duties and responsibilities in addition to his regular position on the bench. He accepted and executed them the best way he knew how in the maintaining of peace and order in his particular precinct. These duties were orders of execution or laws handed down by the decisions of the higher Court, the Governor, or the Proprietary on the Delaware.

#### Appraiser

One of the duties was that of an appraiser appointed by the court in each county in which at times, he as a justice of the peace, was a member. (Kent Court, pp. 129, 142, 159, 268, 293, 323, 330.) The appraiser did not necessarily have to be a justice of the peace, he could be a layman as long as he was "Sufficient, honest and discrete person."<sup>5</sup>

The execution of appraisement had to be "made by four men appointed by the Court"<sup>6</sup> and this was later changed to three persons,<sup>7</sup> in fact, in Kent County in 1704 all three public appraisers were justices of the peace namely, Henry Molleston, Evan Jones and Thomas Bedwell. (Kent Court, p. 293.)

The specific duty of the appraiser was that of evaluating monetarily the estate, (New Castle Court, pp. 284, 297) chattels, (New Castle Court, p. 282) goods, (New Castle Court, p. 43) and animals (Kent Court, pp. 104-105) of persons who died intestate and those who did have a will at times never had a true value of their goods to be divided among their heirs. (New Castle Court, pp. 42, 107, 217). Occasionally, in an estate where there were creditors, after the appraisal was made, a public auction was held to satisfy the creditors and the items not sold would be left to the heirs or to the state. (New Castle Court, pp. 111, 123). At times, the appraiser would become lax and the court would remind him of his duty and the due date of an appraisal. (New Castle Court, p. 156, Kent Court, p. 284).

The appraiser was compensated at "two pence in the pound only of the goods appraised" and later the laws were changed to add "that the said appraisers be allowed two pence the mile for Journey fees" or commonly known as

traveling expenses.<sup>8</sup>

Generally the justice of the peace would accept the position with honor and serve it well. There is one instance where the justice of the peace did ask the Court to be released of his duty as an appraiser with no apparent reason. This was when Justice Robert Bedwell wanted to be replaced by his brother Thomas Bedwell, a layman. The court did comply with his request. (Kent Court, p. 226).

#### Overseer

Another position that the justice of the peace held in a minor role aside from the county court, yet very vital to the affairs of the local community, was that of overseer.

According to the Duke's laws eight overseers were to be appointed for a town but this was later reduced to four.<sup>9</sup> They were to serve for one year after sworn in by the justice of the peace by taking the oath pertaining to that office.<sup>10</sup> This was a position in local government in which one had to accept, for the Duke of York's Law stated,

That whosoever (being duly elected ) shall  
refuse to serve as an Overseer shall pay the  
same fine, as is appoynted for a Constable  
refuseing to serve in his office.<sup>11</sup>

The fine for not accepting the position of Constable was five pounds, which was used to defray the expenses of the

town. This seem to be an unjust fine for in the absence or death of an overseer and the person who would then be appointed by the remaining overseers should he refuse to serve, he was assessed a higher fine as stated in the Duke of York Laws:

If any one Overseer shall happen to dye during the time of his office it shall be Lawful for the Rest of the Overseers by the Major voate to choose another in his place and the person so chosen, upon Refusal of the said office shall forfeit to the Town ten pounds towards the defraying of the Towns Charges.<sup>12</sup>

The specific duty of the overseer was to act in concert with the constable as, an assessor;<sup>13</sup> commit guilty persons to prison in the absence of a justice of the peace;<sup>14</sup> and, together with another overseer, hear and decide matters relating to their town affairs which are prescribed by law.<sup>15</sup> The duty in which he had sole power, given to him by the county court, was that of building highways and bridges plus the automatic employment of the inhabitants in the immediate area of the project. If he failed to summon the inhabitants to work on the roads he was liable to a fine of five pounds to the court. If the inhabitants after receiving a proper summons failed to appear to work on the day and the time stipulated, they were to be fined twenty shillings a day for each day they did not report to work on the highway. The fines, collected by the overseer, were then used for the maintenance of the roads and bridges.<sup>16</sup>

Specific cases in which the County Courts assigned justices of the peace as overseers in their individual counties. Sussex County:

Justice Samuel Gray appointed overseer of the highway for Lewis precincts. (M.S. Sussex Court, p. 450).

Justice Robert Clifton appointed overseer of the highway for Rohoboth precinct. (M.S. Sussex Court, p. 450).

Justice John Stokely was appointed by the court to be overseers of the highways from the flat lands on to the Indian River. (M.S. Sussex Court, p. 603).

Kent County:

Justices William Wilson for Duck Creek Hundred, John Brinkle for Dover Hundred. (Kent Court, p. 129). (1698).

Thomas Sharp for Little Creek hundred, Evan Jones for Duck Creeck hundred. (Kent Court, p. 192). (1701)

George Robbison overseer of the High Ways for Mispillion Hundred. (Kent Court, p. 243). (1702)

Mr. Henry Molleston for Mispillion Hundred; Mr. Thomas Bedwell for Murtherkill Hundred; Captain John Brinckloe for Dover Hundred; Mr. Evan Jones for Duck Creedk Hundred, Ordered that Warrants be Issued out of the Overseers for Clearing of the High Ways in their Respective Hundreds before the Eight day of October next. (Kent Court, p. 293) (1704)

Captain John Brinckloe for Dover Hundred  
Mr. Robert Bedwell Vor Murtherkill Hundred.  
(Kent Court, p. 323) (1705).

New Castle:

Doe with all Convenient speeds and Cleare a

good and pasable Highway from that said Staalcops house Round Christina Creeke to this Towne of New Castle, and doe appoint for overseer thereof Mr. Abram Man: whoe is desiered to see this worke Effectually done. (New Castle Court, p. 288.) (1678/9)

The justice of the peace, in his capacity as overseer of the highways, was given his assignment and instructions or warrants as they were more commonly called, to build a road or a bridge by the county court. He would be given a specific area such as

The inhabitants of the northside of Cristina Creeke, from the White Clays fall to the brandewyn Kill to be in one Company they to cleare from Cristina at Jan Staalcops Round the Cristina Creeke head to this Towne, and a bridge over Cristina head neare John ogle's Mr. Abram Man overseer. (New Castle Court, 365, 288, Kent court, p. 72.)

Then again he may receive a general order with a time limit in completing the road:

It is alsoe ordered that the said Overseers doe accordinge to Law cause the roads within their respective hundreds to be finished by the first day of November next. (Kent Court, pp. 87-88, 129, 243, 293.)

The time allowed to complete the roads was about two months; bridges together with their specifications, and how they were to be constructed, eighteen months.<sup>17</sup>

The overseer would be fined by the Court if he did not complete the repairs or the construction of the road in the time specified. (New Castle Court, p. 407). Thus, in turn, the overseer was in duty bound to see that the

inhabitants did their share of the work on the construction of the road. Sometimes the overseer had to turn into the court the names of inhabitants who did not report to work as ordered. (New Castle Court, p. 390)(C.H.B. Turner, Sussex Court, p. 116). The court would fine those people, and upon paying their fines, they would again be issued a warrant to work on the highway that is being constructed in their town or area. Very seldom were the people ever excused from this obligation. (Kent Court, p. 240, p. 243).

There was no specific regulation for compensation to the overseer. There was an instance when Justice of the Peace Abram Man as overseer, upon reporting a Jan Gerritzen for not working on the highway, Jan Gerritzen was fined four hundred pounds of tobacco by the court "to the use of the Overseer and ye rest of those that workt att ye highway." This may have been the manner in which a few overseers received some compensation. (New Castle Court, p. 390).

#### Fence Viewers

Another extra duty the justice of the peace would accept when appointed by the court was a fence viewer. The duty of appointing fence viewers was at one time the authority of the constable and overseers.<sup>18</sup> This was later changed to the jurisdiction of the county courts.<sup>19</sup> Two persons would be appointed yearly for each hundred whose primary responsibility was to see that the common fences

within their district were strong and inconstant repair. If any owners neglected to keep the fences in good condition he would be given a ten day notice in which to make the necessary repairs. If after ten days the fence was not repaired and two justices of the peace received sufficient proof of this, they in turn could order it done by any person or persons and the expenses paid by the owner.<sup>20</sup> (New Castle Court, pp. 29, 164, 402).

The fences had to be at least five feet high.<sup>21</sup> The purpose was to keep the cattle, pigs and other domestic animals from eating their neighbor's corn, vegetables or other produce, thus insuring peace among the people of the town.

Two examples of justices of the peace being appointed fence viewers are John Brinckle in 1702, for Mispillion Hundred (Kent Court, p. 226-227) and Charles Hillyard for Duck Creek Hundred in 1705. (Kent Court, p. 323). Both of them were located in Kent County.

#### Ranger

The only instances found in the early court records of justices serving as rangers are two from Kent County. In 1697,

A Commission from Governor Wm. Markham to John Curtis for to be Ranger of this County, was in open Court publicly read.



At a session in the following year it is recorded "that a Commission To Henry Moleston to be Ranger for this County was alsoe read." Both of these men were justices at the time. (Kent Court, p. 98, 119.) That rangers were sometimes over-zealous in the performance of their duties is indicated by the following law, passed in 1693:

Whereas Divers Complaints have been made against Rangers, It is hereby enacted by the authority aforesaid, That from henceforth no Ranger or other person within this Province and Counties annexed, shall presume to take up anie marked Horse, Mare, or other Cattle, but by the owner's order, and that no Unmarked Horses, Mares, Colts, Hoggs or other Cattle shall be deemed and accompted straye, that are not eighteen months old, Anie law or usage to the contrary notwithstanding.<sup>22</sup>

#### Ear Marks

The Duke of York's Laws required, in 1665, owners of cattle and hogs to crop and slit their ears with a distinctive pattern as evidence of ownership, and to register these "earmarks" with the county court.<sup>23</sup> This was usually done in open court, but sometimes individual justices took care of this matter. Thus,

Thomas Dodwell of Cohansy Creeke apeared in the office this 6th of September 1677; and desiered to have the Eare marke of his Cattle & Hoghs Recorded which was wizt a crop and slitt in the right eare and a swallow forke in the left eare. (New Castle Court, p. 127).

also,

Broer Sinniks of Christina Creeke apeared in the office this 3rd day of october 1677; and desiered to have his marke for

Cattle & hoghs Recorded vizt Both Ears Cropt  
one slitt in the Right eare, and the Left  
eare one hold. (New Castle Court, p. 143).

With these identifying marks, one could easily distinguish ownership among the animals enabling them to be free to graze in the woods as per se. The town mark, presumably, would be on the right ear as noted in the above examples both received a "Slitt in the right eare" denoting the town of New Castle and the differences in the mark of the left ear, ownership.

To insure further protection to the owner, no animal may be slaughtered either for private or commercial use, unless the name and mark of the owner was recorded by the person designated for this purpose in the town.<sup>24</sup> Furthermore, the stealing of cattle and pigs was a very serious crime. A criminal may receive up to thirty-nine lashes and be banished from the town.<sup>25</sup>

Additional records on earmarks on animals are cited in the Kent County Court Records, pages, 3, 5, 20, 87-91; and in the New Castle County Court Records, pages 79, 427, 448.

#### Power to Erect Court House and Prison

In the Pennsylvania-Delaware Law of 1693, it was stipulated that the justices of the peace had the authority to build a court house in which to administer the law and a

court house in which to administer the law and a prison

for restraint, Correction, Labour and  
Punishment of all such persons as shall be  
thereunto committed by law

in "Each Rideing" or county.<sup>26</sup>

The justices of the peace apparently had difficulty in completing the said projects according to court records from all three counties on the Delaware. Yet, in time, they were all probably completed from the fines collected by the courts and the "town levy" or taxes.

In New Castle, in 1675, Justice John Moll was given an order by the Governor,

That a Prison with a dungeon under it bee  
built in the fork with all Expedition,...  
the manner of building the same is Left to  
the contryvance & ordering of Capt. John  
Colier and Mr. Moll. (New Castle Court, p. 65).

Apparently this project was completed, for in 1677, this same Justice Moll was ordered by the court to fix the court room so that it would be comfortable to hold court during the winter months. The expenses incurred were to come out of his own pocket but the court would then reimburse him "out of the Levy to bee Laid." (New Castle Court, p. 143).

In Kent County, in 1697, Thomas Bedwell, a justice of the peace, was appointed by the court for,

the Necessity of haveinge a Court house built  
upon the County Land accordinge to the order

of Governor and Council.

The cost was to come,

from John Betts Sheriff, all such sume or Sums of moneys as are in his hands belonginge to the County and alsoe to demand of and from Richard Willson and William Morton what money is in their hands belonginge to the County.

In order to hasten the construction of the court house, a progress report had to be turned in as often as the court required. (Kent Court, p. 111). When Thomas Bedwell was later appointed sheriff, another justice of the peace William Winsmore replaced him in this project. (Kent Court, p. 129).

In Sussex County, in 1682, under pressure of the sheriff, constantly requesting the court for a place to put in the prisoners, the court ordered Luke Watson, a justice of the peace,

forth with to build a Court Cause (sic) and prisson according to his Agreement with the Court the 1th 10mo, 1680. (Turner, Sussex Court, pp. 94-95)

Watson later asked the Court to be released from this obligation. The reason he gave was,

that sence that time (1680) the Govermt is altered and that he is much Employed in other publick bussnes soe that it would be much to his demiadg if he should be confined to doe the said work.

The court consented on condition that he would be responsible to pay for any expenses incurred by the sheriff in maintaining prisoners because of a lack of a prison until

one was built. (Turner, Sussex Court, pp. 94-95).

Additional citations are in the New Castle County Court Records, pages 58, 187.

#### Bounty on Wolf Heads

Still another duty of the justice of the peace was that of collecting wolf's heads. This directive originated when the High Court met on May 13, 1676 at New Castle. One of the problems discussed was that of the menace of wolves to domestic animals. The court's decision was sent out in the form of an order by the High Sheriff Edward Cantwell. It stated:

Order (the volves being so over frequent and doing such dayly damage both to sheepe cat-tell and hogs) that any person or persons should bring in to any of the Magistrates of this river or bay any wolveskin or heads upon the certificate for the said Magistrates the party or person so bringing itt or them should have for each head the some of forty guilder to be payd out of the next publick leavy after the procuring of the said certificate.<sup>27</sup>

The premium per head was later changed to twenty-five shillings, then twenty shillings and finally ten shillings for a dog-wolf and fifteen shillings for a bitch-wolf.

The justice of the peace upon receiving the head of the wolves would then proceed to cut off the ears and the tongue to show that the reward has been granted to that

person who has killed it.<sup>28</sup> At one time the receipt of payment was shown by nailing the head of the wolf over the door of the office of constable.<sup>29</sup>

The recording of wolf heads' were as follows in all Lower Counties on the Delaware by the justices of the peace:

Justice Gerrett otto this day Shewed in Court a Woolves Tounge desiring that the same might bee taken notice of & Recorded. (New Castle Court, p. 95) (June 7, 1677).

Alex Draper certifies you the (i.e., to) the Court that John Richards killed a dog wolfe and brought the head to him about a month ago. (MS. Sussex Court, p. 69).

About the last of July (name not legible) brought a dogg volvos head onto Justice Luke Watson. (MS. Sussex Court, p. 510).

John Roades have to this day pay due to him for foure woolfes heads. (1681) (Turner, Sussex Court, p. 64) (1681).

Alex Draper and John Roades were also commissioned justices of the peace for Sussex County. (MS. Sussex Court, p. 62).

#### Warrants

Another duty of the justice of the peace was the issuing of warrants, for an arrest, search, seizure or any specific act in the administering of justice. These in turn were to be delivered by the constable. They were effective only in the county in which issued.<sup>30</sup>

In one particular case Justice John Moll of New Castle had to issue two warrants for the arrest of one person. When the constable was refused admittance to the home he had to return to the justice of the peace for a second warrant to break into the home for the apprehension of the person mentioned in the warrant. (New Castle Court, p. 107).

A search warrant was issued by Justice Moll for the home of Symon Gibson in trying to locate a missing coat belonging to a Mr. Alrick. When the coat was finally recovered no legal action was taken. (New Castle Court, p. 106).

In Sussex County Justice Albortus Jacobs issued an order to Proter Sudgar to return books belonging to a Adam Johnson. (MS. Sussex Court, p. 192).

Rarely did a person refuse to accept a warrant. Mr. Justa Andries happens to be one who tried but only until he was brought before the court on July 16, 1678 for,

foull menacing words & expressions opposed  
Rebuked hindered & assaulted the said Constable,

in the presence of justice of the peace who issued the writ. The justice then tried to deputize the people standing by withessing this abuse upon an officer of the law but to no avail. When Justa Andries finally appeared in court, he was found guilty as charged. The court sentenced him to

to kneel on both knees to ask forgiveness of the constable and Justice Moll or pay a fine of six hundred gilders. (New Castle Court, p. 227).

No warrants of arrest could be issued upon any person or persons on Sunday.<sup>31</sup>

The fees that a justice of the peace received for warrants,

of appearances to answer all sorts of actions at the court or binding over to the Sessions or the Assizes for the good behaviour or the peace",

was two shilling six pence. He could not receive any compensation for the issuing of warrants in criminal or capital offences.<sup>32</sup> Other cases of warrants being issued by a justice of the peace - see New Castle Court, p. 42, 140-141, 125, 127-128.

#### Sworn into Office

Justices of the peace were empowered by the court to administer the oath of office to constables. The Kent County Court in 1698,

Ordered that the following persons doe Serve as Constable for this Ensuinge yeare vizt: Henry Hosskins for Duck Creek hundred and William Willson appointed to Sweare him; Edward Fritz Jarrell for Little Creeck hundred, Sworne in Court; John Jones for Dover hundred and William Winsmore to sweare him; Edmund Needham for Murtherkill hundred, Sworne in Court; (and) Hugh Luff for Mispillion hundred to be Sworne by Henry Moleston. (Kent



Court, p. 129).

And again, in 1699:

The following persons are appointed to serve as Constables for this ensuing yeare, and Some Justice in each respective hundred to Sweare them viztt: Chas. Hillyard for Little Creeck hundred, John Evans for Dover hundred Francis Reonalds for Murther Kill hundred, Nathaniell Hunn for Mispillon hundred. (Kent Court, p. 141).

and for order examples, see the Kent County Court Records, pages 32, 72, 99, 112, 121, 158, 168, 245, 256, 268. A constable might be removed from office for misconduct.

When Robert Hutchinson, a constable, was accused of stealing many articles of value from a chest belonging to a Mr. Adam Wallis which was located in the home of the constable, Justice of the Peace, John Moll issued the following order,

Robert hutchinson being Constable is dismist of his place until next court or further order, and Mr. John Cann sworne this day constable in his Roome untill further order. New Castle, April ye 19th 1679. (New Castle Court, pp. 324-326).

#### Assessors and Tax Collectors

It was part of the duty of the county courts to see that enough taxes were levied and collected each year to cover the cost of government in each county. In doing so, individual justices might be called upon to act as assessors in their hundreds. Thus in Kent County, at a special session in September, 1703,

Proclamation Was Made That the Justices and Grand Jury (having Called to theire Assistanse Evan Jones Thomas Sharp, William Morton, John Mahon, Stephen Simons and Mark Manloue as Assessors) for this County are Ready to proceed to Lay the levys for this and thereupon they did Proceed to Calculate the Publick Charge of this County and Made a Rate or Assessment for defraying the Same According to the laws of this Government in Such cases made and provided. (Kent Court, p. 269).

Of the assessors named, two, Evan Jones and William Morton, were justices then sitting.

In 1705, four of the six assessors for the county were justices (Molleston, Robbisson, Rodeney, and Hillyard), but in this case they were chosen by popular election instead of being appointed by the court, as the following entry in the court record shows:

Thomas Bedwell Sherriffe of this County make knowne to this court that at an Election of Representatives held here the sixteenth day of May last past the Free Men then mett made choice of Six of Good and Lawfull men of this County to serve as assessors for this ensuing yeare viztt: Mr. Henry Molleston, for Mispillion Hundred; Mr. John Robbisson and Stephen Rodeney for Dover Hundred; John Foster for Little Creek Hundred and Charles Hilliard for Duck Creek Hundred. (Kent Court, p. 323).

At this time there were also "public appraisers," who might be justices. Thus, in 1703 Thomas Bedwell, a justice then sitting, was

Appointed one of the Publick Appraisers of this County (Sworn in Court) in the Roome of Robert Bedwell).

As entry of 1705 states that Thomas Bedwell (by this time

sheriff of the county), Henry Molleston, and Evan Jones  
(a justice),

are Continued Publick Appraisors for this  
County for this Ensuing yeare. (Ibid., p. 268, 323).

The collecting of taxes was a thankless job. The  
only instance noted where a justice was called upon for  
this task was at Upland in 1680 when Justice Otto Ernest  
was appointed to collect delinquent taxes. (Upland Court,  
p. 170-171). But justices might evade some of the tax  
burden themselves while in office. The Duke's Laws pro-  
vided,

That the Justices of peace only shall be ex-  
empted for paying any publique assessment in  
the place where they inhabit dureing the time  
of their bearing office payments to the Church  
only except. (1664)<sup>33</sup>

This was changed in 1666 to read,

That the Justice of the peace for the time  
to come are to pay their proportions to the  
Town Rates to which they belong and are to  
bee excused onely from payments in the Rates  
for publique charges.<sup>34</sup>

#### Administrator of Estates

Occasionally, a justice of the peace was named by  
the court to act in the capacity of administrator of an  
estate. Justice Gerret Otto was one appointed by the New  
Castle Court in 1682,

to be administrator: to a administr; upon  
the Estate goods and Chattles of Philip  
Teunisse, Laete of this County deceased;

hee to act therein and give a Just and true accompt thereof according to Lawe. (New Castle Court, V. 2, p. 10).

A justice of the peace, Casparus Harman, was appointed to "the Estate of Will Moruill Deceased" and he was to pay any and all debts that may be outstanding against the Estate. He was, also to make a final report on all transactions of the Estate at the next meeting of the court. (New Castle Court, p. 95). A similar assignment was given to Justice Fop Jansen Outhout in 1679. (New Castle Court, p. 311).

In one particular case even after a Mrs Wybreggh Janse, the heir, proved to be the widow of Jan Siericks by producing the marriage contract, the court still appointed justice Gerrett Otto to see that the proper

proformance and due administration of Wybreggh Jansen of the premisses. (New Castle Court, p. 255).

One justice of the peace, Peter Alrick, refused a brother of the deceased, to administer the Estate until he was able to

obtaine Letters; of administrat: & Give Security to the honorable: Proprietry. (New Castle Court, V. 2, p. 50).

#### Administrator of Wills

Justices of the peace sometimes were administrators of Wills. A few justices who acted in this capacity were

Thomas Bedwell, (Kent Court, p. 256, 284, 285) William Rodeney, (Kent Court, p. 259, 265, 286) and John Robeson. (Kent Court, p. 267, 350).

One justice of the peace, John Brinckloe, received the honor of being appointed on February 8, 1697/8 to the Probate Court.

A commission for Probate of Wills and granting Letters of Administration in this County, directed to John Brinckloe, Arthur Meston and William Rodeney, was openly read. (Kent Court, p. 118).

Oral Wills, which were administerable at this time, were also attested by justices of the peace.

The Nuncative (sic) or Verball Will of James Sykes late of this County deceased being his last will and testament was proved by the attestations of Allexander Draper and Thomas Pride one of ye Justices. (Turner, Sussex Court, p. 121)(1687).

The cost for proving of wills and granting of administration thereof was stated in the Duke of York Laws in October, 1665.

Wills to bee proved and Administration granted in Sessions if the Estate bee under the value of one hundred pounds, shall pay one Shilling if one hundred pounds five Shillings and so proportionably five Shillings for each hundred pounds toward the Defraying Court Charges.<sup>35</sup>

#### Office of Register

Another position of importance which might be held by the justice of the peace was that of register. It was

noted in the New Castle County Court Records where a

John Cann by order of the Provinciall Counsell is appointed Register of the town & County of Newcastle which order was read in Court. (New Castle Court, p. 91).

and two more in the Kent County Court Records, "Mr. John Brinckloe and Mr. William Rodeney, Registers." (Kent Court, p. 214) The same two men have served in the same capacity three years later. (Kent Court, p. 316). All three men held the commission of justice of the peace at the time of their appointments to be registers of the said Counties.

The duty and fee of the Register in 1683 was

	<u>S.</u>	<u>P.</u>
Registering every Birth.....	---	6
Writing a Marriage Certificate in parchment.....	2	6
Registering the Death of any person.....	---	4
Registering the Name of each Servant, the time of his Service and day of payment or freedom.....	---	6
Registering a Will.....	3	---
Registering a Letter of Adminis- tration.....	5	---
Registering the marriage of any person.....	1	---
		36

### Surety

Justices of the peace might take on the added responsible of a surety: for example,

Nicholas Lockier obligeth himself to James Read that Hillitie Anderson shall fully perform all the Articles & agreement She hath made with him about a house and lott in town. (1696)(New Castle Court, V. 2, p. 222).

Then again he might witness a surety:

I doe by thes Presents assign & make ouer unto Samuell Land high sherrif of ye Town County of Newcastle one certain house & ground lying & being in ye 2nd Street next adjoyning to ye house & ground of ye sd Land it being for his Security of a certain Execution obtained by Euert Henricks against me giuing him full power of Expose to Sale at his will & pleasure ye sd house & ground for ye satisfying of ye sd Execution in wittnes whereof I have hereunto sett my hand ye 20th of october 1684.  
(New Castle Court, V. 2, p. 96).

It was signed by Ed. Cantwell and witnessed by John Cann, a justice of the peace and John Mandy, a layman.

#### Arbitrators

Justices of the peace who were chosen to serve as peace makers or arbitrators were william Clark, (Turner, Sussex Court, p. 116) John Roads, (Ibid., p. 116) Luke Watson, (Turner, Sussex Court, p. 102) and John Cann. (New Castle Court, V. 2, p. 51).

As peace makers or at times called umpires, (Sussex Court, p. 105), they were to try and settle differences between persons up to five pounds<sup>37</sup> and their decision,

shall be as conclusive, as a sentence given by the county court, and such conclusion to be registered in the county courts as other Judgments are.<sup>38</sup>

The arbitrators would be chosen by the two parties involved in a conflict of interests such as over "a parcell of land contrary to former Orders" in which the original

owner made a few improvements and desired to be paid for it, (Turner, Sussex County, p. 102) or dealing with financial affairs. (Turner, Sussex Court, p. 105). If either party refuses arbitration, then it is referred to the justice of the peace and "he is to give fourth his warrant as the action requires."<sup>39</sup>

The peace makers were appointed for one year in 1683,

by the Governor & the rest of the Court to sitt about such Matters the Last thur (d) day of the week in every moneth. (Turner, Sussex Court, p. 97).

According to the Duke's Laws, they were to receive two shillings six pence each as fees for every transaction performed by them. The justice of the peace was to receive two shillings six pence for each case referred to him by the peace makers.<sup>40</sup>

#### Guardian of Orphans

To be chosen as a guardian of an orphan by the court, a person had to place sufficient bond to show that they were financially and materially able to take on this added burden.<sup>41</sup> This bond or security was to remain with the court until the orphan attained the age of twenty-one for a boy and eighteen or married for a girl. (Kent Court, pp. 218-219). A person could not refuse the guardianship of an orphan once appointed by the court, unless he had five children of his



or had a close relative with many children who could become his obligation upon the death of the relative.<sup>42</sup>

Justices of the peace were often chosen by the court to be guardians. They were probably the best qualified in the whole community to meet the necessary bonds, security and every day needs of orphan children.

The following appointments of justices of the peace as guardians of orphans have been noted from the records: John Robeson in charge of Mary and John Mill age, eight and twelve respectively. He is

to give each of them a new suite of apparrell at the expiration of there times and till then to look after there Estates. (Kent Court, p. 219).

Thomas Bedwell in care of Joseph Hillyard, an orphan, eleven years of age and he

is to find him with Suffitient meat drink washing Lodging and apparrell, and at the Expiration of the said time to give him a Cow and Calfe, and a sow and piggs. (Kent Court, p. 105).

Henry Moleston in 1704 was given charge of an orphan boy called Edward Robbison fifteen years of age.

The court

doe order the said Henry to give to the said Edward a Cow and Calfe When he is Seventeen years of age and learn the said Edward to Read and Writ if he be capable thereof and at the Expiration of the said time to give him two suites of apparrell Which the said

Henry here in Court Promises to doe. (Kent Court, p. 286).

The orphan sometimes were allowed to choose their own guardian with the consent of the court. In one particular case a justice of the peace Thomas Bedwell, was chosen.

To this Court came Christopher Jackson and desires he might choose a guardian Which is according granted and thereupon he makes choyce of Thomas Bedwell (here alsoe present in Court to be Guardian of his person and Estate until he is nineteen years of age Who is approved and allowed by the Court to act as Guardian to the said Christopher during the time afforsaid. (Kent Court, p. 289)(1704).

For further examples see New Castle Court Records, p. 94; p. 115; and in the Kent County Court Records, p. 289; p. 290; and p. 309.

#### Depositions and Affidavits

Taking depositions were another primary duty of the justice of the peace in his precinct. Depositions were very vital in the administration of justice, especially in the attempt to settle problems pertaining to lands, chattels, and defamations, just to name a few, which will always exist among people. A few illustrations of depositions taken by justices of the peace are:

This day came Samuell Stilles aged 40 years or thereabouts before mee deposeth on his oath that the land that William Warrin seated for

Johannes Kipp and partner, on Mispillion Creeke is the same land that was surveyed for this deponent Samuell Stiles and Robbert Trayle and sence sould by this deponent and Robbert Trayle to Johannes Kip and John Shockerly and further sayeth nott.

Samuel Stiles his  
marke  
Witness  
William Clark

Sworne before mee at  
St. Jones the 17th day  
of August 1680. (signed)

Edward Pack  
(Kent Court, p. 25)

Ann Kittle sworne declares that shee has from Robbard hutchinson Received to wash and after washing deliver to him the said Robb: hutchinson, one Long playn carvat marked with small dutch letters A W about ten dayes agoe and that shee never washt ye Lyke neckcloath for him before mee this 22 day of Aprill 1679.

(signed)

John Moll  
(New Castle Court, p. 326).

William Cob was sworne before Justice Otto Ernest in upland County his declaration is as followeth vizt: That upon ye 23d day of february being in Company att Mr. Tymens house in Christina did heare John Staalcop call Justa Anderson his wyfe a theef to his face but for what ye deponent could not. (New Castle Court, p. 404)(1680).

In the first illustration, Mr. Edward Pack was a commissioned justice of the peace in Kent County. (Kent Court, p. 1, 57). In the second, Mr. John Moll was a commissioned justice of the peace in New Castle County. (New Castle Court, p. 4, 144, 240, 420).

Additional citations of depositions taken by the justice of the peace may be found in the New Castle County

Court Records, p. 105, 108, 229; in the Kent County Courts Records, p. 47; and in the Documents relating to the Colonial History of the State of New York, pp. 656-657.

Affidavits were an other important instrument that assisted the justice of the peace in maintaining law and order in his precinct.

Affidavits as recorded by the justice of the peace:

June ye 28 1686

This day personally appeared before me William Dyre Juror and Edward Ewster & made oath yt they did see the above Specified Letter of attorney signed Sealed & Deliuered to ye uses & purposes therein menconed.

Peiter Alrick  
(New Castle Court, Vol. II, p. 140).

Edward Blake & John White being Legally attested Declareth that on ye 25th day of ye last month June they Deliuered to Robert Dryer by the Request of John Darby one Deed of mortgage Specified in the aboue award. Taken this 4th of ye 5th mot. July 1688.

John Cann  
(New Castle Court, Vol. II, p. 183).

This 28th day of the 2nd month 1688 there came before me John Langford and Robert Truman and did (illegible) that is within mentioned letter of attorney is the act of and (illegible) Richard Stevens of Summersett County as witnessed my hand . . .

Tho. Price  
(MS. Sussex Court, p. 206).

The above signatures of Peter Alricks, John Cann and Thomas Price were justices of the peace of their

precinct at the time of the oaths.

### Acknowledgment of Deeds

According to the Duke of York's Laws, all acknowledgments and recording of deeds were to be by justice of the peace or a superior officer in the government. Those who did not follow this procedure

It shall be in the power of any Justice of peace, to send for the party so refusing, and commit him to prison without Bail or Mainprize, unless he shall acknowledge the same.<sup>43</sup>

This, probably, very seldom ever occurred for the communities were so small that practically everyone knew each others affairs especially that of land transactions.

A few acknowledgments of deeds by justices of the peace as recorded in the Lower Counties on the Delaware.

Justice Thomas Price acknowledge and made over in open court the same house and front lot with the apportionates unto John Bakr Taylor and Thomas crammo Corpont: according to a conveyance. Date the eight day of March: 1693. (MS. Sussex Cort, p. 695).

Justice Albertus Jacobs did acknowledge and make over in court unto Justice Thomas Koman 230 acres of land begin last of ( ) Tract and according to a conveyance bearing date the 25th day of January 1693/4. (MS. Sussex Court, p. 646).

Mr. William Tom acknowledged in Court a certaine deed & assignment for a certaine Pattent & 132 acres of Lane therein contained Lying in ye whoorekill by him the sd W. Tom, made over unto Luke Watson of ye Whoorekill aforesaid. (New Castle Court, p. 156)(1677).

John Hayly acknowledged a tract of Land called Industry containing Six hundred acres to Kendrick Wallraven: as by the Deed bearing date the 12th day of March 1688/9. (New Castle County, Vol. II, p. 196).

Thomas Price, Albertus Jacobs, William Tom, and John Hayly were justices of the peace in the above examples.

In an unusual case in the acknowledgment of deeds, there was one in which it stated that two persons were granted the right to grind their corn. Apparently, a deed to a flour mill.

Cornelius Empson acknowledged a Deed ffor ffree grinding of Corn to Lolifand & Erasmus Stedham & their heires for euer as by the Deed bearing date the 28th day of ye 3rd not. 1688. (New Castle Court, Vol. II, p. 186).

#### Coroner

The office of coroner was elective but there are instances where a justice severed as coroner.

John Brinckloe was a commissioned justice of the peace in 1689 (Kent Court, p. 118) when he received another as coroner. It stated,

A Commission to John Brinckloe to be Corroner for this County was read, and he was in open Court sworne to the same. (Kent Court, p. 119).

In another instance, a justice in 1682 was asking

payment for his services performed as coroner.

The Court upon the petition of John Roades order him to be paid Twenty Shillings out of the Estate of Thomas Grenik deceased Twenty Shillings being for his fee as Crowner. (Turner, Sussex Court, p. 92).

John Roades held a commission of justice of the peace in 1681. His term expiring in March 1682, when the above petition was present to the court at their meeting in February 1682. (MS. Sussex Court, p. 25). He served again as a justice of the peace for the years of 1685. (MS. Sussex Court, p. 40) and 1686. (MS Sussex Court, p. 82).

He was the owner of a bar room. "John Roades kept an Ordinary in Sussex County, 1686." (Turner, Sussex Court, p. 23). John Roades died in September 1687. (Turner, Sussex Court, p. 119). His last will and testament was read publicly in the court on October 17, 1687. (Turner, Sussex Court, p. 121).

The fees which were allowed for the Coroner in the performance of certain tasks in 1693 are listed in the Charter and Laws of Pa., p. 235.

#### Marriage Ceremony

The justice of the peace was given authority by the Duke's Laws to perform marriage ceremonies by the Governor,

Provided that the said Partyes do purge themselves by Oath before the Minister or Justice that they are not under the Bonds of Matrimony to any other Person Living.<sup>44</sup>

furthermore, if he were to marry any person who did not have consent from their parents, master, or

any other person who have not been thrice asked in the church or usually meeting place or otherwise Legally published, or without a special License for his so doing, under the hand and Seal of the Governour

would be fined twenty pounds and be removed from his office as justice of the peace.<sup>45</sup>

The Quakers laws on marriage went one step further, in that, not only would the justice be punished as mentioned above, but the person who is being married without proper authorization would pay a fine of five pounds.<sup>46</sup>

The Quakers may also marry without a justice of the peace as long as

a certificate of their marriage under the hands of the parties and witnesses, at Least twelve, shall be brought to the Register of the County, where they are married and registered in his office.<sup>47</sup>

Similar Quaker marriage ceremonies may be found in Some Records of Sussex County, Delaware, page 140, three cases on page 136, and two cases on page 138.

Marriage ceremonies performed by the justice of the peace were:



Thomas Howard and Mary Simons were Joyned together in Marrig by me william Clark one of the Kings Justices of the peace for deale county (July 17, 1681, after due publication and in presence of several witnesses, not named). (Turner, Sussex Court, p. 55).

Ard Jhnson van Kirk and Grace Bundock married by William Clark one of the Kings Justices of the peace, July 28, 1681, after due publication "and in presence of several wittneses." (Turner, Sussex Court, p. 55).

John Johnson Jund and Elizabeth Lone Single women name Joyned together in Marriage the 3th day of the Monoth Called March, 1680/1.

Wm. Clark (MS. Sussex Court, p. 23).

Additional marriage ceremonies performed by the justice of the peace are cited in Some Records of Sussex County, Delaware in the Probate record section, pages 136, 138, 145, 147-148, 154, and 154-155. There were no marriages recorded in the New Castle County Court of Records or in the Kent County Court Records.

Occasionally, the justice of the peace would sign a sworn statement that a person is free of matrimonial bond due to death or some other reason not listed. (Turner, Sussex Court, p. 55).

One justice of the peace, Walter Wharton, married himself which was "contrary to the Lawes & Customes of this place & Province." (New Castle Court, p. 179). When he was arraigned before the court he could be fined as per se but

here was an unprecedented case, a justice violating a sacred trust that was placed upon him. The court not knowing what punishment to issue, but still, one severe enough to discourage any reoccurrence in the future. It was referred to the Governor at New York

to Inflict such punishment as his honor in his Wisdome shall thinke fitt & expedient. (New Castle Court, pp. 210-211).

Apparently, from the New Castle County Court Records, the type of punishment that may or may not have been inflicted by the Governor, was not known.

#### Action Taken in Cases

One justice of the peace was given the authority to hear and decide a case in an action of debt of forty three guilders by the court on March 10, 1679/80.

The defendent being absent and the matter in dispute being soe inconsiderable that itt is not worth ye Longer continuance The Court therefore impowered Justice Otto Ernest Cook, to hear & Examine the Acct: & Case and to make a final End & Determinacon thereof, as hee shall find Just & Equitable: (Upland Court, p. 158-159).

In another, Justice of the Peace, John Walker in the case of a child born out of wedlock, decided, after cross examination of the women, Margaret Cannada, that the man she named was not the father of her child.

Whereupon it being considered the Courts order is that she maintaine the child till it be Seaven years of age at her own Cost and

and immediatly to receiue fifteene stripes on her beare (sic) back, which was accordingly Executed. (Kent, Court, p. 106).

Apparently, the bearing of children out of wedlock was becoming a serious problem in New Castle, thus an order was issued by the court in 1678/9 to try to curb it. It stated,

The Court doe strictly forbid all In habitants dwelling in their district not to harbor or Interlayne any woomen bigg with chyld, (and come from any place without ye Jurisdiction of this Court) without giving notice first thereof to a magistrate. This place may not serve & be counted a shelter for whores. Those acting contrary to this order to bee seuerely punnisht or fyned att ye discretion of ye Court. (New Castle Court, p. 289).

This was an added responsibility of the justice of the registering all pregnant women coming into the town.

One justice of the peace, Gerret Otto was given the special assignment by the court to see that a Mrs. Elizabeth Snowden appears before the next court session after she has given birth to her child. The reason for her appearance was to answer questions pertaining to the words spoken between her and her husband about a possible abortion. (New Castle Court, p. 390).

Any referral of a case to a higher court which is in the authority of the justice of the peace would receive a fee of two shillings six pence.<sup>48</sup> Such a referral was made in 1677 by justice of the peace William Tom.

Pelle Mathias being bound over by Justice William Tom to prosecute Hendrik Johnson for that hee the said hendrik on the 8th day of October hath detayned & upheld a certain Girle named Catrina Jansen which was by the Court set out to the said Pelle. (New Castle Court, p. 155).

The court found him guilty and he was fined twenty-five guilders and cost.

A justice of the peace, Luke Watson, inquired of the court the procedure in the prosecution of another justice of the peace, Thomas Price. Both of them were commissioned officers in Sussex County at the time. (MS Sussex Court, p. 365).

Herculus Sheppard a justice of the peace for Sussex County was indicted for false attestation by the Grand Jury. The case was dropped by the Court when no witnesses appeared against the defendant. He was reprimanded by the court and released. (MS. Sussex Court, p. 76).

A few other cases of the type of abuse that was cast upon the office of the justice of the peace and the persons trying to serve it well:

The Court fined Cornelis John for abusing Court and telling Luke Watson one of the justices he cared not A\_\_\_\_\_ for him twenty shillings. (1683)(Turner, Sussex Court, p, 107).

Upon the desire of han Petersen, Justices Abram Man declared in open Court that hee did not know or had not sayed that hans

Petersen had taken a false oath or that he was a Rogue; but that all hee had sayed was this that hee had heard that hans Petersen had formerly gon about to hire a man to sweare for him & further nott. (1680)(New Castle Court, p. 392).

Additional cases of scandal and abuse of the justice of the peace are cited in the Upland Court Records, pp. 54; 180-181; and in the New Castle County Court Records, pp. 35; 43; and 460.

The office of justice of the peace was able to withstand all these aspersions and still maintain an air of dignity and a court that was just and equitable.

#### Officers Fined

Justices of the peace would be fined by the court like any other person if they did not accept the responsibility of their office or violated any of the existing laws.

Mr. Walter Wharton being Commissionated of the Justices & members of this Court and hee having not appeared in fyve month for ordinary following Court days & for to help to doe and attend ye publicq and country busisnesse as other ye Justices & members of this Court from tyme to tyme to doe; The Court therefore in Regard that hee the said Mr. Wharton during ye tyme of his absence has not ben out of ye precincts of this River and Bay, Doe therefore thinke itt fitt that hee for an Example to others be fyned according to ye Expresse Lawes of ye government, the sume of Ten pounds, and doe hereby condemne him ye said Mr. Wharton in ye sd fyne of Ten pounds with ye Costs. (1678) (New Castle Court, p. 215; Hazards Annual, p. 454; Documents Relating to the Colonial History of New York, Vol. XII, pp. 596-597).

A justice of the peace, Edward Pack, was fined five hundred pounds for ignoring a summons issued by the court to appear so as to give evidence in a particular case. (Kent Court, p. 46).

Justice Henry Jones & Justice George Browne were boath fyned for not attending ye Court to suply their places Eack 10 pounds according to ye Law booke. (Upland, p. 189).

It was dated June 14, 1681. Whether George Browne still had to pay the fine is not record, for he did attend court sometime during the same day for it was later recorded,

Justice George Browne appeared and sate in Court being hendered to come sooner for want of a passage over the Creeke. (Upland Court, p. 190).

Additional justices of the peace who were fined by the court:

The Court fines Luke Watson (illegible) (fifty pounds of tobacco for smoking tobacco in the Court. (1680) (MS. Sussex Court, p. 7).

The Court fines Allexander Molleston fifty pounds tobaco for smoakin in the court house. (1683)  
(ditto Luke Watson) (Turner, Sussex Court, p. 109)

The Court fines Justice Clifton five Shillings for being drunk yesterday 7th instant. (1688) (MS. Sussex Court, p. 192).

The Court fines Allexander Molleston five shillings for swearing. (1683) (Turner, Sussex Court, p. 110).

In the last two cases cited above, the court was very lenient towards Justices Clifton and Molleston for, according to the law on drunkenness and swearing it further stated,

And if any Justice of the peace or other publick officer, shall be convicted of any of the aforesd crimes, Hee shall pay double the penalty mentioned against such offenders, and be dismissed his office.<sup>49</sup>

They were to pay the customary fine and still remained commissioned officers of the law. (MS. Sussex Court, p. 179; 277)(Turner, Sussex Court, p. 109).

#### Collector of Customs

One justice of the peace, Peter Alricks, was appointed Chief of Customs by order of Governor Edmon Andross who has just returned from England. It was dated August 24, 1678, New York,

...that I have appointed Mr. Peter Alrichs as Cheef and Mr. Tho: Wolleston Clercq to take care of the customes according to acts of parliamt & former practice.

Some of the duties, that were to be collected by the Custom officer at the time, were three pence per gallon on Rum, Brandy, Wine; one pence per gallon on Cider and twenty shillings on one hundred pounds of goods, personal, industrial, and commercial.<sup>50</sup>

#### Indian Interpreter

Israel Helm, a justice of the peace of Upland

County (Chester, Pa.), once served as an Indian Interpreter for many years on the Delaware. He was born in Sweden. (Upland Court, footnote, p. 35-36).

In the Upland Court Records, there is recorded a petition or request of the court by Justice Helm asking to be paid for his service as an interpreter between the Indians and the courts both on the Delaware and at New York. (Hazards Annals, p. 424). The court made note of this in their regular report to the Governor on the public charges or expenses of the county court in 1677,

to Justice Israell helm for his severall services to ye contry as Interpreter about ye Indians, 400 shillings. (Upland Court, p. 66).

#### Fees

The fees of the justice of the peace in 1683 which may not have been precluded in association with their other duties in the thesis were:

	<u>S.</u>	<u>P.</u>
A warrant of sppearance to Answer all actions att the Court.....	1	6
A warrant of appearance before a Justice of the peace.....	7	1/2
Binding Over to the Court, or Good Behaviour.....	1	3
Upon plaint or Damage or Debt.....	1	3
Upon common actions.....	1	--
Upon Summons of each person.....	--	6
To the Bench for every caus toward their charges of attendance.....	2	6
To the Bench for an Appeal.....	5	--
		51



They did receive a salary at one time but this was later changed to:

That instead of the Salary of 20L per Annum formerly allowed to the Justices of the peace, their charges shall from henceforth be bourne in their attendance at the Court of Sessions or Assizes, as also all other extraordinary incident charges, about publick affaires, and Estimate whereof is to be given in and allowed of yearly att the Assizes.<sup>52</sup>

## Footnotes

- <sup>1</sup>Charter and Laws of Pa., p. 77).
- <sup>2</sup>Ibid., p. 108
- <sup>3</sup>Documents relating to the Colonial History of New York, Vol. XII. New York, 1877.
- <sup>4</sup>Ibid., p. 605.
- <sup>5</sup>Charter and Laws of Pa., pp. 172, 215, 288.
- <sup>6</sup>Ibid., p. 5.
- <sup>7</sup>Ibid., p. 172.
- <sup>8</sup>Ibid., pp. 215, 228.
- <sup>9</sup>Ibid., pp. 9, 69.
- <sup>10</sup>Ibid., pp. 44, 55.
- <sup>11</sup>Ibid., pp. 59, 65.
- <sup>12</sup>Ibid., p. 10.
- <sup>13</sup>Ibid., p. 10.
- <sup>14</sup>Ibid., p. 68.
- <sup>15</sup>Ibid., p. 69.
- <sup>16</sup>Ibid., p. 233.
- <sup>17</sup>Ibid., pp. 136, 233.
- <sup>18</sup>Ibid., p. 15.
- <sup>19</sup>Ibid., p. 207.
- <sup>20</sup>Ibid., p. 207.
- <sup>21</sup>Ibid., p. 207.
- <sup>22</sup>Ibid., p. 219.
- <sup>23</sup>Ibid., p. 63.
- <sup>24</sup>Ibid., p. 24.

## Footnotes (continued)

- <sup>25</sup>Ibid., p. 138.
- <sup>26</sup>Ibid., p. 65; p. 208.
- <sup>27</sup>Document, Colonial History of the State of New York, V. 12, p. 513.
- <sup>28</sup>Charter and Laws of Pa., p. 232.
- <sup>29</sup>Ibid., p. 52.
- <sup>30</sup>Ibid., p. 34; p. 59.
- <sup>31</sup>Ibid., p. 8.
- <sup>32</sup>Ibid., p. 25.
- <sup>33</sup>Ibid., p. 10.
- <sup>34</sup>Ibid., p. 68.
- <sup>35</sup>Ibid., p. 67.
- <sup>36</sup>Ibid., p. 149.
- <sup>37</sup>Ibid., p. 60.
- <sup>38</sup>Ibid., p. 128.
- <sup>39</sup>Ibid., p. 60.
- <sup>40</sup>Ibid., p. 25; p. 60.
- <sup>41</sup>Ibid., p. 266.
- <sup>42</sup>Ibid., p. 142.
- <sup>43</sup>Ibid., p. 23.
- <sup>44</sup>Ibid., p. 36.
- <sup>45</sup>Ibid., p. 37.
- <sup>46</sup>Ibid., p. 229.
- <sup>47</sup>Ibid., p. 229.
- <sup>48</sup>Ibid., p. 25.

## Footnotes (continued)

<sup>50</sup>Ibid., p. 139.

<sup>51</sup>Ibid., p. 149.

<sup>52</sup>Ibid., p. 68.

## CHAPTER IV

### CONCLUSION

In seventeenth century Delaware the office of justice of the peace was one of honor and prestige and some profit. Under the rule of the Duke of York (1664-1682) the county courts, composed of these justices, were the chief agency of local government. Though they were appointed by the Duke's governor in New York and were strictly controlled by him, from the citizenry they were careful to exact the "obedience and respect due to his Majesties Justices."\*

The transfer of ownership and government to William Penn in 1682 brought no change in the powers and responsibilities of the justices and their courts. The justices were still appointed, by the proprietary or his deputy governor in Philadelphia instead of a governor in New York. The legislature (something new in Delaware government) of course could change the status of the justices in any way it and the proprietary saw fit, but they were in no hurry to do so. An eighteenth century law imposed fines for

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\*Kent Co. Recs., p. 3.

"speaking in derogation of courts" and committing any "rudeness" or "misdemeanour" therein.\*

During the eighteenth century the duties of individual justices became more burdensome, through the enactment of various laws for their enforcement they were made responsible.\*\* In that respect, their activities were much like those of a present-day justice or magistrate. But they also came together at stated intervals in the county courts of common pleas, and quarter sessions, and orphans' and other courts, and as long as they did so, their prestige was maintained despite the petty chores which they had to do.

The first step toward a differentiation in the personnel of major and minor was taken long before the Revolution, with the establishment of a new "Supreme Court," to be composed of three judges (one to be called chief justice) who could not "sit judicially" in any of the inferior courts, which were all to be conducted, as

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\*Laws of the State of Delaware, v. 1, p. 120.

\*\*For example, "An act for determining debts under forty shillings," and "An act to prevent the unseasonable killing of deer," both 13 George II. Laws of the State of Delaware, v. 1, p. 188-192. Many more examples could be cited from this volume.

heretofore, by the county justices of the peace.\*

This represented a real but slight decline in the traditional status of the justice of the peace in Delaware. The big change came with the constitution of 1776. Section 12 of this instrument provides for the appointment by the president and the legislature of

three Justices of the Supreme Court for the State, one of whom shall be Chief-Justice, and a Judge of Admiralty, and also four Justices of the Courts of Common Pleas and Orphans Courts for each County, one of whom in each Court shall be styled Chief Justice.

Section 12 also provides that "the Justices of the Peace shall be nominated by the General Assembly"--24 of them for each county, twelve of whom were to be appointed by the president "with the Approbation of the Privy-Council." The justices of the courts were to "continue in Office during good Behaviour," and the justices of the peace for seven years.

The Members of the Legislative and Privy-Councils shall be Justices of the Peace for the whole State, during their Continuance in Trust; and the Justices of the Courts of Common Pleas shall be conservators of the Peace in their respective Counties\*\*

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\*"An act for the establishing courts of law and equity within this government," undated, between 1726 and 1736. Ibid., p. 121-133.

\*\*deValinger, Leon Jr. "The Development of Local Government in Delaware, 1638-1682. 1935. (M.A. Thesis, University of Delaware).

From this time on, justices of the peace and justices of the courts were two different species. The former continued to take depositions, to bind suspects over to court, and to enforce various laws, as he had always done, but he plays no part in the decisions of the courts. The latter participates in the important judicial processes, without being burdened with a host of petty matters.



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## APPENDIX

The commissioned justices of the peace in early New Castle, Kent, and Sussex Counties of Delaware. The names were compiled from the New Castle County Court Records, Kent County Court Records, C.H.B. Turner, Sussex Court Records and the Manuscript of the Sussex County Court Record.

### New Castle County

1676

John Moll  
Henry Ward  
William Tom  
Foppe Outhout  
John Paul Jacquet  
Gerret Otto

1677

John Moll  
Peter Alricks  
William Tom  
Foppe Outhout  
Walter Wharton  
John Paul Jacquet  
Gerret Otto

1678

John Moll  
Peter Alricks  
Foppe Outhout  
Gerret Otto  
Johannes De Haes  
Abraham Man  
William Semple

1679

John Moll  
Peter Alricks  
Foppe Outhout  
Gerret Otto  
John Dehaes  
Abram Man  
William Sempil

1680

John Moll  
Peter Alricks  
Gerret Otto  
Johannes De Haes  
William Semple

1681

John Moll  
Gerret Otto  
Johannes De Haes  
William Semple  
Peter Alricks

1682

John Moll  
Peter Alricks  
Johannes De Haes

## New Castle County (continued)

## 1682 (continued)

William Simple  
Arnoldus de la Grange  
John Cann

## 1683

John Moll  
Arnoldus de La Grange  
John Cann  
Peter Alrichs  
James William  
Caspaes Herman  
Johannes DeHaes  
John White  
John Williams  
Henry Williams  
William Welch

## 1684

John Cann  
James Walliam  
John Williams  
Henry Williams  
Valatine Hollingsworth  
Edward Green  
Casparus Herman  
Henry Lemmans

## 1685

John Cann  
Peter Allricks  
Edward Green  
James Walliam  
Vataline Hollingsworth  
Henricus Williams  
William Guest  
William Stockdale  
Cornelius Empson  
Henry Lemmen

## 1686

John Cann  
James Walliam  
William Guest  
Valatine Hollingworth  
Henry Lemman  
Peter Allricks  
Edward Greene

## 1686 (continued)

Cornelius Empson  
Henricus Williams

## 1687

John Cann  
Peter Allricks  
James Walliam  
William Guest  
Henry Lemmens  
William Stockdale  
Cornelius Empson  
Johannes DeHaes  
Edward Blake  
Richard Hollywell:

## 1688

John Cann  
Peter Allricks  
William Stockdale  
Johanes Dehaes  
Vallt Hollingsworth  
Cornelius Empson  
Richard Hollywell  
Edward Blake  
Charles Rumsey  
Peter Bsinton  
Georg Robinson  
Robart Ashton  
John Fforeat  
John Hayly

## 1689

John Cann  
William Stockdale  
Edward Blake  
Charles Rumsey  
John Fforeat  
John Hayly  
Peter Allricks  
Johannes DeHaes

## 1690

Peter Alrichs  
John Cann  
Edward Blake  
Charles Rumsy  
John Heally

## New Castle County (continued)

## 1690 (continued)

Cornelius Empson  
Peter Bainton  
Robert Ashton  
Henricus Williams

## 1691

Peter Alricks  
John Cain  
Edward Blake  
Henry Williams  
Charles Rumsey

## 1694

Peter Alrichs  
Edward Blake  
Richard Hollywell  
Adam Peterson  
John Grubb

## 1695

John Donaldson  
Cornelius Empson  
John Richardson  
Nicholas Lockier  
John Hanson  
John Williams

## 1696

Peter Alrichs  
Richard Hallywell  
John Donaldson  
Adam Peterson  
John Hanson  
Cornelius Empson  
John Richardson

## 1699

Richard Halliwell  
Cornelious Empson  
John Richards  
John Heally

## Kent County

1680 - 1682 - 1683

Francis Whitwell  
John Hillyard  
Robert Hart  
Edward Pack

1697

John Curtis  
John Brinckloe  
John Walker  
Richard Willson  
Thomas Bedwell  
John Robeson  
Henry Moleston

1698

Captain John Brinckloe  
Richard Willson  
John Walker  
Henry Moleston  
John Robeson  
William Willson  
William Winsmore

1699

John Walker  
Henry Moleston  
William Morton  
Georg Robbisson  
John Robbisson  
William Freeman  
Arthur Meston  
Thomas Sharp  
William Winsmore  
Thomas Bedwell  
Evan Jones  
Samuell Berry

1700

John Brinckloe  
John Walker  
John Robinson  
Thomas Sharp  
Richard Willson  
Henry Moleston  
Evan Jones  
Simon Irons  
Thomas Bedwell  
John Foster

1701

John Brinckloe  
John Richardson  
William Morton  
Henry Moleston  
Thomas Bedwell  
Georg Robbisson  
Thomas Sharp  
John Walker

1702

John Brinckloe  
William Rodeney  
John Walker  
Henry Moleston  
John Robeson  
George Robeson  
William Morton  
Arthur Meston  
William Winsmore  
Thomas Bedwell  
Evan Jones

1703

John Brinckloe  
William Rodeney  
Henry Moleston  
William Morton  
Thomas Bedwell  
John Robeson  
Evan Jones  
George Robeson  
William Winsmore  
John Walker

1704

John Brinckloe  
William Rodeney  
John Walker  
Henry Moleston  
William Morton  
Thomas Bedwell  
John Robbisson  
Evan Jones  
William Winsmore

## Kent County (Continued)

1705

Capt. John Brinckloe  
Capt. William Rodeney  
Henry Molleston  
John Robbisson  
Evan Jones  
William Winsmore  
Samuell Berry  
Robert Bedwell  
Charles Hillyard

1706

John Brinckloe  
William Rodeney  
John Walker  
Thomas Bedwell  
Evan Jones  
John Robbisson  
William Winsmore  
Samuell Berry  
Robert Bedwell  
Charles Hillyard  
William Brinckle  
Vincent Emerson

## Sussex County

1680

Luke Wattson  
John Kipshaven  
Otto Wolgast  
William Clark

1681

Luke Watson  
Otto Wollgast  
John Kipshaven  
William Clark  
John Roades

1682

William Darvall  
Luke Watson  
Norton Claypoole  
John Roades  
Edward Southrin  
Robert Hart  
John Kiphaven

1683

William Clark  
Robert Hart  
Alexander Molleston  
Luke Wattson  
John Kipshaw  
John Roades  
Edward Southorne  
Herculus Shepare

1684

William Clark  
Luke Watson  
John Roades  
John Kipshaven  
Robert Hart  
Alexander Draper  
Robert Bracey

1685

William Clark  
Luke Watson  
John Roades  
Alexander Draper  
Robert Bracey

1686

WilliamClark  
John Roads  
Alexander Draper  
Robert Bracey  
Herculus Sheppard  
Luke Watson  
Francis Cornwall  
Robert Clifton  
Samuell Gray  
George Young  
Thomas Wynns

1687

William Clark  
Thomas Wynne  
Samuel Gray  
Robert Clifton

1688

William Clarke  
Thomas Wynne  
Thomas Price  
Robert Clifton  
Henry Bowman  
Henry Molestine  
Albertus Jacobs  
William Footcher

1689

William Clark  
Griffith Jones  
Thomas Price  
Robert Clifton  
Henry Molestine  
Albertus Jacobs  
William Footcher  
Henry Smith  
Thomas Wynne  
John Hill  
Samuel Preston



## Sussex County (continued)

1693

William Clark  
Capt. Luke Watson  
Thomas Pomberton  
Albert Jacobs  
Robert Clifton  
Samuel Gray  
John Stokely  
Thomas Koman  
Joseph Booth