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### A study of the trial justice court of Henrico County

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A Study  
of  
The Trial Justice Court of Henrico County

by

Joseph A. Alexander Jr.

1935

Bibliography:

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The Richmond News Leader.

The Richmond Times-Dispatch.

## Preface

I will be frank in admitting that it was with the greatest misgivings that I accepted the assignment to make a study of the Henrico Trial Justice Court. The work laid out before me was in virgin territory for, to the best of my knowledge, no study similar to that which I contemplated has been undertaken before. Thus, it was only natural for me to visualize the problems which would beset me, the unfamiliar legal terms which would puzzle me and the dreary court scenes which would leave me drunk with their monotony. Well, I came to the problems, saw them and conquered, I now call the legal terms by their first names, and as for the court room scenes, I am still sober.

This study was a revelation to me while the results of this study are a revelation to you (I hope). You, in reading this may possibly learn something about the trial justice court. I, in making the study have learned a great deal more. Judges and other high public officials are no longer the distant awe-inspiring personages whom I had always imagined, but good fellows whom anyone would not mind going with on a fishing trip. However, I must confess that at first I was reluctant to approach these officials and pester them with my petty problems. I soon overcame this feeling, and the first court session which I attended, I introduced myself to Judge A. Taylor Pitt, the presiding judge, and stated my mission, suggesting that any help from him would be more than appreciated. The fact that he is a fraternity brother of mine, and that I wore my pen very, very conspicuously might

have aided the situation for his response was very encouraging and I felt more at ease. After that I made many visits to the court, finding the sessions very interesting, frequently calling on Judge Pitt and Mr. Frank S. Shomaker, his clerk, for help.

In addition to the courtesy shown to me by these two gentlemen, I also wish to acknowledge the great service which has been rendered by Mr. Samuel P. Waddill, for sixty years, clerk of the Henrico Circuit Court ; by various members of the office personnel at the county seat at 22nd and Main Streets in Richmond. I am also indebted to Mr. Kingsley Freeman, a former college friend and now court reporter for The Richmond News Leader, for much timely help. Mr. William R. Shands, Director of the Division of Statutory Research and Drafting has also been of invaluable assistance and I wish to take this time to thank every one of these persons for their service, their willingness to help and their patience.

J.A.A.Jr.

## The Trial Justice Court of Henrico County

In 1922 the General Assembly of Virginia enacted a statute which permitted the establishment of a trial justice court in every county of 30,000 population or more, or adjoining a city of 30,000 or more.<sup>1</sup> The county of Henrico, falling in this category, immediately took advantage of the provisions of this act and in August of the same year, a few months after the law became effective, the Henrico Trial Justice Court began its work.<sup>2</sup> The immediate purpose of this court is to reduce expenditures and prevent congestion in the circuit court. The popularity and success of this court, the first in Virginia, aside from the Arlington County Court organized on a more limited scale, is attested by several pleasing facts. Since its establishment, there have been six additional trial justice acts, the latest being passed in 1934 by the State Legislature, providing for trial justice courts in all the counties in Virginia. In 1929 there were twelve such courts and prior to the 1934 act, twenty-three counties had adopted this system. At the present time every one of the one hundred counties of Virginia have established a trial justice court within their boundaries. It is also significant that none of these counties have voluntarily abandoned the system. These facts were brought out at the trial justice con-

<sup>1</sup> The Code of Virginia as Amended to Adjournment of General Assembly 1930, Section 4988 (1), p. 1406. (Hereafter this reference will be referred to as The Code of Virginia).

<sup>2</sup> The Richmond Times-Dispatch, November, 12, 1934.

ference held at the John Marshall Hotel, January 25, 1935 by Mr. William R. Shands, Director of the Division of Statutory Research and Drafting. <sup>3</sup> A recent survey made for the Commission on Redistricting Judicial Circuits in Virginia further points out that for the year ending August 31, 1934, out of 13,785 criminal cases tried by all the trial justice courts in Virginia, there were 411 appeals and 55 reversals, while there were only 101 appeals of the 7009 civil cases tried, resulting in 14 reversals. These facts clearly show to what extent the trial justice system is affecting savings in time for the higher courts.

However, we are interested only in the trial justice system in other counties in a general way only. In this paper I am confining myself to the Henrico court, attempting to approach this study from the angle of an impartial observer and critic with the purpose of ascertaining and showing its setup, jurisdiction, success or failure and its possible future.

Under the provisions of the trial justice act of 1922, this act was adopted and approved by a majority vote of the Henrico County board of supervisors and a copy of the same was immediately certified to the Henrico County Circuit Court. <sup>4</sup> Following this action, the judge of that court selected A. Taylor Pitt from the group of nominees suggested by the board of supervisors to serve as the first trial justice to hold office until December 31, 1924. Beginning with January 1, 1925, the trial justices were to serve

<sup>3</sup> The Richmond Times-Dispatch, January 26, 1935.

<sup>4</sup> The Code of Virginia, Section 4988 (14).

year<sup>5</sup> four terms, and the fact that Judge Pitt has held office continually since his original appointment, shows that his choice was an excellent one. Although residence in the county is the only requirement for office, Judge Pitt has had extensive legal training and at the present time is a practicing attorney in the city of Richmond. In 1924 the Henrico came under the provisions of another act passed the same year which affected only Henrico and Chesterfield providing for trial justices in those counties adjoining a city of 170,000 population or more. This act raised the salary range of the justice, allowed him to have a clerk, empowered this clerk to become a justice of the peace with all powers and more definitely designated the powers and jurisdiction of the judge.<sup>6</sup> In 1926 this act was reenacted, the only important change being that the trial justice was made ex-officio judge of the juvenile and domestic relations court. It was further amended in 1932, section 4988 (26) being the only section affected, and resulted in an even greater increase in the salary scale of the justice and his clerk.<sup>7</sup>

The present trial justice system lays its origin as far back as 1912 when citizens as well as public officials began to distrust the usefulness and efficiency of the office of justice of the peace. At that time, by the laws of Virginia, three justice of the peace were provided for each magisterial district, which ranged in number from three to ten in each county. If the

<sup>5</sup> The Code of Virginia, Section 4988 (3).

<sup>6</sup> Ibid, Sections 4988 (15) to 4988(29).

<sup>7</sup> Note: The entire act in its amended form is found in the appendix.



law were strictly observed there would be 1300 justices of the peace in Virginia. <sup>8</sup> In ancient times even this large number might be partially justified in view of those times of slow travel and when there was need of an officer close to one's door. But in this present age of speed such a large number is unthinkable.

However this was not the only indictment of that ancient office. The justices themselves must come in for their share of criticism. These officers, being paid a small salary, were often ignorant of the law, being merely lay magistrates and frequently careless in the performance of their duties. There are many examples of their inefficiency. Often they have tried cases which should have gone before the Grand Jury. <sup>9</sup> Frequently they do not give sufficient time to the trial of cases. Their decisions are marked by gross ignorance of the law and although they take an oath to enforce the laws of the Commonwealth without prejudice and favor, they are frequently called on to decide disputes involving their friends and relatives and there is much evidence that the justices were biased in their judgment. Another defect in the system was the law which allowed each of the justices to have jurisdiction as far as the boundaries of the county. <sup>10</sup> Under these circumstances, a lawyer is most apt to bring his case before the justice most likely to decide in his favor. Out of from nine to thirty justices, the chances

<sup>8</sup> Report of the Commission on County Government to the General Assembly of Virginia, p. 46.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid, p. 47.

were in his favor of knowing one who would be lenient to his client. However, do not make the mistake that I am accusing these gentlemen of dishonesty, but it is human nature to lean slightly in favor of a well known friend or acquaintance.

As I have said before, the compensation for justices of the peace is very small and few competent men are attracted to fill the office. They were remunerated by their fees and it is exactly at that spot where the most abuse exists. The magistrates were often tempted to keep one eye on justice and the other on the fees. In addition to this, the office of justice rarely was self-supporting. This condition was not only due to the large number of such justices but also to the carelessness, willful or otherwise, of those who failed to receipt or report fines. There was no way to check up on these officers, supervision was lax and this practice tended to increase rather than abate.<sup>11</sup> Another black mark against the justice was the frequency of appeals which characterized that system. One of the chief duties of any minor judicial system is to relieve the higher courts in those cases in which it has concurrent jurisdiction. However the good which the justice of the peace affected in this respect was more than offset by the large number of appeals which must be brought before the higher courts for review. This condition, which made the older system even more of a hindrance than a help was directly a result of carelessness and incompetence and was the cause of gross injustice to litigants, and ~~blatant~~ placed an undue burden upon the circuit and corporation courts.

11.

Ibid, p. 46. (Hereafter this reference will be referred to as the Report of the County Commission).

These and many other charges against the office of justice of the peace in Virginia finally led to a series of special acts designed to improve the situation. The first of these, in 1912, applied only to Arlington County. However, the trial justice was give concurrent jurisdiction with the justice of the peace and his powers were limited in other respects. This was the opening wedge for what was to follow, but its legality was early attacked, its enemies claiming that it violated section 87 of the Constitution of Virginia relating to the jurisdiction of the justice of the peace. In the case *Ex parte Settle*, 114 Va. 715, 77 S. E. 496 the Supreme Court of Appeals of Virginia defended the constitutionality of the act, handing down its decision March 13, 1913. The way was now clear for the entrance of the trial justice system as we now know it.

It was not until 1922 that the Henrico Court was established with greatly increased power, so much so in fact, that it has often been referred to as the first trial justice court in Virginia. Prior to the passage of the 1922 act establishing this court, there were twelve justices of the peace in Henrico, three for each of the four districts. Subsequent to 1922, they were reduced to nine. Their powers were greatly curtailed as well as their number. Formerly they were empowered to issue both criminal and civil warrants, subpoenas for witnesses and to try both civil and criminal cases. By the trial justice act, the power to issue civil warrants and to try cases has been transferred to the trial justice. The subpoenas and all warrants are returnable only to the trial justice. Thus the justice of the peace is reduced to an officer

of the trial justice court.

There is one other power retained by the justice of the peace which until recently was also assumed by the trial justice. This was the right to institute and conduct proceedings to adjudicate a person insane, feebleminded or an inebriate. Subsequent to the 1934 trial justice act for all counties and up until 1935, 148 persons had been committed to state institutions in Virginia by trial justices and 445 by justices of the peace. It was not until January, 1935 that Dr. J. S. DeJarnette, Superintendent of the Western State Hospital at Staunton brought attention to the situation by refusing to admit a patient committed by a Bath County justice of the peace, on the grounds that that officer possessed no such power. In his opinion one of the two class of officials was assuming power which did not belong to him.

As a test case to clear up the problem, Sheriff Frank G. Thompson of Bath County applied for a friendly writ of mandamus to compel Dr. DeJarnette to admit the patient. The case was brought to the Supreme Court in Virginia which handed down its verdict January 24, 1935. The court ruled "that the Trial Justice has no jurisdiction to institute such proceedings and is not eligible to sit on a commission to inquire into a person's mental status. The jurisdiction and eligibility of the Justice of the Peace remains as it was prior to the passage of the Trial Justice Act".

<sup>12</sup>  
<sup>12</sup> The Richmond Times-Dispatch, January, 15, 1935.

<sup>13</sup>  
<sup>13</sup> Ibid, January, 16, 1935.

<sup>14</sup>  
<sup>14</sup> Ibid, January, 25, 1935

<sup>15</sup>  
<sup>15</sup> Opinions of the Attorney General Relating to Trial Justices and Justices of the Peace, p. 5.

After the adoption of the trial justice act by the Henrico Board of Supervisors, the Henrico Trial Justice Court immediately began its existence and it took very little time to prove that the arguments of its backers were more than justified. Efficiency economy and time saving have marked its career down to the present time.

On July 14, 1935 State Auditor L. McCarthy Downs announced that he could make a survey of the trial justice courts in Virginia to determine to what extent the minor judicial system is self-supporting. <sup>16</sup> Although no systemized audit of the Henrico court has ever been made, yet Mr. Downs should have no fears regarding it for almost from its early beginning this court has been a definite asset financially. In 1928 fines and penalties totaled \$11,790, this amount being paid to the state. The fees which were charged and collected totaled \$7,137.60 and were turned over to the county treasury, being more than enough to pay the salaries of Judge Pitt and his clerk at that time. <sup>17</sup>

The financial report of the court for the year 1933 shows that the court continues to be self-sustaining. These figures, given through the courtesy of Mr. Shomaker show that \$14,343.25 was paid into the county from the receipts of this court. When the salaries of Pitt and Shomaker are deducted a comfortable balance remains. The amount paid to the State that year was unusually small being only \$3179. This report, given in detail, is as follows:

16 The Richmond News Leader, July 14, 1935.

17 Wylie Kilpatrick, Problems in Contemporary County Government, p. 132.

## Report for the Year 1933

## Fees to be credited to Judge Pitt

Fees for trying criminal cases.....	\$ 2382.00
Fees for trying civil cases.....	729.50
Bail fees.....	178.00
	<hr/>
Total to be credited to Judge Pitt..	\$ 3289.50 *

## Fees to be credited to F. S. Shomaker, Clerk

Fees for issuing criminal warrants.....	\$ 431.00
Fees for issuing civil warrants.....	1435.00
	<hr/>
Total to be credited to clerk...	\$ 1866.00 *

## Amount paid to Mr. Waddill, clerk of the county

	Fines	Fines and costs
County (automobiles).....	\$ 1682.50	\$ 2551.00 *
County (Prohibition).....	6120.00	6636.75 *
State.....	1646.00	3179.00
		<hr/>
Total fines and costs..		\$12366.75
Paid to Justice of Peace in fees.....		\$ 446.00
Paid to Commonwealth's Attorney.....		1945.00
Paid to officers in fees.....		1459.60
		<hr/>
Total fees		\$ 3850.60

Total amount collected for the year..... \$21372.85

\*(Paid into the county treasury, State only receiving \$3179.00)

Although the Henrico court is definitely self-sustaining, this can not be said of the other trial justice courts, at least half of a decade ago, even though this was one of the few courts which employed a clerk at that time and in addition, paid its justice much more than a vast majority of the other like courts. The tendency exists in all counties to raise these salaries gradually as the receipts of the courts show that higher compensation will not result in a drain on the county treasury. The Henrico Board of Supervisors are required by law to fix the salaries of Pitt and his clerk between the limits of \$2500 to \$5000 and \$1800 to \$2400<sup>18</sup> respectively. Since 1928 Pitt's salary has been raised from \$3050 to \$3600 while Mr. Shomaker, the clerk, who formerly received \$1325 in 1930, now gets \$1800 not including a straight salary of \$150 for his duties as a justice of the peace. Other counties do not find that their trial justice courts deserve such large salaries as measured by the income received from this source, and turned into the county. One authority estimates that prior to the 1934 general act, in at least one half of the Virginia counties, the court operates at a loss to the county.<sup>19</sup> This is true of the rural and poorer sections of the state, and is one of the chief reasons that the trial justice system is not spreading as fast as it might.

The reason in back of these deficits is the law which requires that all penalties imposed by the court be paid to the state. These

<sup>18</sup> The Code Of Virginia, Section 4988 (26).

<sup>19</sup> Kilpatrick, op. cit., p/ 134.

include all fines and costs imposed for the violation of State laws and are paid into the treasury of Virginia for the Literary Fund. These include the greater bulk of all income received.

The county received all fines for violation of county ordinances and all fees. These include all fees, which justices of the peace for counties are authorized to charge and collect, and which have not been paid in advance, and all fees collected by the trial justice shall be turned into the county treasury, excepting those fees belonging to the issuing officers.<sup>20</sup> These fees are as follows: one dollar trial fee for hearing civil and two dollars for hearing criminal cases, fifty cents continuous fees in civil cases, warrant fees in both civil and criminal cases, bail fees and fees for issuing distress warrants.

Many counties find that these fees and minor county fines are not sufficient to pay the salaries of the justice and the clerk as noted above. In order to remedy this situation so that the trial justice system might not be hindered, several recommendations have been suggested. One commission forwarded the suggestion that the counties be allowed to retain one-fourth<sup>21</sup> of all fines and costs collected. Although this suggestion was not acted upon, the Virginia State Legislature, in enacting the general trial justice law in 1934 (establishing trial courts in every county) greatly improved the situation by providing for an annual appropriation of \$40,000 to the counties to aid them.<sup>22</sup>

20

The Code of Virginia Section 4988 (26).

21

Kilpatrick, op. cit., p. 148.

22

The Code of Virginia, Sections 4988 (o)-a.



The county of Henrico, not considering the need of this inducement so far has failed to adopt the provisions of this act. However, the act has been of the greatest add in establishing the trial justice system in those counties where the scarcity of receipts would make such a court a liability rather than an asset. The fact that every remaining county immediately adopted a trial justice court after the passage of this act, showed the great need of financial assistance.

In Henrico County the justice of the peace is elected for a four year term, but the trial justice, although also serving a four term, is appointed by the county circuit judge from a list of nominees submitted by the county board of supervisors. In this respect, I believe that the manner of selecting the trial justice is superior because, in my opinion at least, a judge is one public servant whose choice should be taken away from laymen and placed in the hands of experienced and trained officials.

In one respect, the framers of the trial justice act failed to affect an improvement and that is in the requirements for the office of trial justice. No legal training is necessary, merely residence in the county. It so happens that Judge Pitt is a lawyer and his efficient handling of the court should prove to the State law makers that legal training should be one of the prime requisites for this office. At the present time, the governor's legislative advisory committee is making an extensive study of the whole trial justice system with the view of pre-

paring suggested amendments for the system for the next legislature.<sup>23</sup> I am confident that the above weakness will be one of the first to be remedied.

Another amendment which should seriously be considered by the committee is that of compulsory adoption of the trial justice system. The original acts do not make it mandatory that a trial justice court be established and few counties at first took advantage of it. Now that its success has been definitely established, compulsory adoption will certainly be required. As regards the Henrico court, such action is not necessary as this county came under the county management form of government in 1934 by popular vote. The county management act not only automatically provides for the compulsory establishment of a trial court but also reduces the number of justices of the peace in each county to one for each district.<sup>24</sup> In Henrico, this resulted in a reduction of the justices from nine to four in number, thus resulting in an even more concentrated and efficient form, the administration of justice in minor cases. By means of the same act, the fee system, long a hot bed for abuse, corruption and waste, was abolished as payment for county officials excepts as a method of remunerating certain part-time officers who perform only occasional services for the county and who have a regular occupation outside the governmental service.<sup>25</sup>

<sup>23</sup> The Richmond News Leader, July, 14, 1935.

<sup>24</sup> The Code of Virginia, Section 2773-n 55(a).

<sup>25</sup> Ibid, Section 2773-n51.

The act which originally established this court provided that the trial justice and his clerk shall receive no other compensation for their services except their salary which is paid monthly. Thus, the fee system was early abolished as far as these two offices were concerned. These non-fee offices were injected into a structure of judicial administration where the fee system still continued rampant. The justices of the peace still continued to receive fees for issuing criminal warrants, as well as fees for issuing summons for witnesses. The sheriff, deputies and constables still <sup>received</sup> fees for arresting law breakers and summoning witnesses. Likewise the clerk of the circuit court secured fees for receiving fines. <sup>26</sup> To summarize, the only result of the 1922 trial justice act was to abolish the fee system only as it applied to the office of trial justice and clerk, but even the latter was partly paid in fees for his services as a justice of the peace as provided for in the act. It was with the greatest enthusiasm then that thoughtful people greeted the adoption by Henrico of the county management plan. Not only did this act entirely eradicate the fee system, except for certain part time officers, but also abolished the offices of coroner and constable, those officials who have been serving in positions which have long been regarded as useless, outworn and completely unnecessary.

In the past, it has been assumed that the so-called petty cases, touching the lives of more people than any other class of cases, may be justly handled by untrained and frequently

27

incompetent lay magistrates. Experience has repeatedly proven that such a plan has been a disappointment and a failure not only in Virginia but in other states. The establishment of the Henrico Trial Justice Court for the first time enabled such cases in every instance to receive the maximum possible attention from an impartial trained judge.

No longer will the cunning lawyer be able to take his case before anyone of several justices of the peace where the most favorable verdict might be obtained. Now it is a case of one for all and all for one. There is only one court to which the litigants can resort and they have no choice in the matter unless it is in a higher court. Likewise, that condition is erased wherein the justice is acquainted with more than half of the persons who appear before him, as was often the condition under the old justice of the peace. Thus bias and favoritism have no place here and justice is beginning to resemble justice.

Likewise, for the first time, competent men are being attracted by the prospects of becoming judge of a minor county court. The office of the old justices of the peace was poorly remunerative and as a result it was filled by few able and intelligent men. A High School education was the peak which most of these officers ever attained. The resulting financial waste, muddled bookkeeping, unorthodox decisions and general inefficiency is not surprising. At the present time, Judge Pitt is receiving a regular salary of \$3600 a year while his clerk is paid \$1800,

27

Report of the County Commission, p. 47.

making the office of trial justice the second most remunerative in the county.

Judge Pitt holds court regularly on Tuesday, Thursday and Friday, which is a marked contrast to the old practice of the justice of the peace who dispensed justice whenever he was in the right mood, a custom which greatly inconvenienced litigants. Even when Pitt is absent from court because of sickness, disability or vacation, a substitute trial justice is immediately appointed by the judge of the circuit court, such substitute assuming all the powers and authority as the regular justice,  
28  
until his return.

Mr. Frank S. Shomaker, who was selected court clerk over eight years ago by Judge Pitt, is on duty from nine until four o'clock every day. His duties are very definite and are specified in the act. He collects all court costs and fines imposed. The court docket which is required by law and open to public inspection is kept by the clerk. In it must be recorded all cases tried, their dates and disposition, and all fines imposed. As allowed under section 4988(22) of the Code of Virginia, Mr. Shomaker has qualified as a justice of the peace. In this capacity he issues criminal warrants, certain civil processes and subpoenas which are returnable before Judge Pitt. He also has the authority to take acknowledgments, administer oaths and take affidavits.  
29  
It is the duty of Mr. Shomaker to prepare all

28 The Code of Virginia, Section 4988 (23).

29 Opinions of the Attorney General Relating to Trial Justices and Justices of the Peace, p. 13.

court orders and judgments for the signature of Judge Pitt, the clerk having ~~no~~ such power to sign them.

Formerly the justice of the peace held court at different places as he went from one locality to another. The Henrico Trial Justice Court, however, is located at the county seat at 22nd and Main Streets in Richmond. In this respect an improvement is affected. The physical disadvantages of trying all minor cases at one place are very slight in view of the present improved roads and the prevalence of automobiles. In addition, little expense is connected with the place of trial when it is located at the county seat, and it is more satisfactory for all concerned that the court be held at the court house where accommodations can be given to the crowds

In making my study of this court, it has been necessary for me to attend many of these court sessions and I have found these scenes vitally interesting as they enable one to study people who are under every emotional strain.

Court usually begins around ten o'clock in the morning and continues until all cases have been disposed. Seldom, however, does the court continue as late as two o'clock. The longest sessions are on Tuesdays, when the Saturday night drunks and petty week-end shooting and fighting scraps are brought up. Court is opened by the Bailiff with his time worn cry, a brief prayer for the Commonwealth follows and then business is under way. As the names on the warrants and subpoenas

30

Opinions of the Attorney General Relating to Trial Justices and Justices of the Peace, p. 19.

are called out by the Bailiff, the plaintiffs, defendants, the respective lawyers and the witnesses file out and stand before the judge. Here every type of personality is displayed at its best for the interested observer. The hen pecked husband, the over-bearing self-important stout woman, the indignant squeaky-voiced negro who demands his rights, and the hundred and one other varied types. Negroes and farmers predominate, this class of people apparently being more inclined to go to the courts rather than to settle their differences by mutual agreements. If one is a listless observer, the proceedings throughout the session are very monotonous. However, by paying close attention to the arguments of the opposing counsel and getting the general drift of the case, the activities of the court take on a new light and become highly interesting. Examples of pathos and humor are abundant, although the faces of the audience rarely register amusement or sympathy for most of those present are concerned only with their own troubles.

One case of especial interest concerned itself over a dog belonging to a negro which had been killed by a white man who asserted that the animal, allegedly mad, had attacked him and several others. The angry negro, the timid apologizing white and the numerous assortment of witnesses composed a semi-comic, semi-tragic picture. Several times the defendant and the plaintiff accused each other of lying, and there was one persistent witness who continually interrupted and was repeatedly silenced by Judge Pitt. Finally the case was continued until the dog's

head could be examined for rabies. Later on in the day, one of the defendants was sentenced to six months in jail on a minor assault and battery charge. As he was led away, one of his young daughters broke down and cried. She was finally led away, still sobbing, by her elder sister, who tried to comfort her.

Judge Pitt has quite a reputation for dealing rather harshly with offenders of the law and he has never been accused of tempering justice with prejudice or favoritism. He is particularly severe on drunken drivers, usually imposing the maximum fine of a hundred dollars and costs. Again, when Joseph Antilli, an itinerant vendor of raincoats and sweaters, was brought up before him for peddling without a license, a \$250 fine was first mentioned with costs added. However, the fine was later reduced to \$100 when the defendant's lawyer explained to the court that Antilli had been allowed to peddle in New Jersey without a license because ex-service men were exempted from this requirement, and had thought the law was the same in Virginia.

Although, at times, Judge Pitt seems unduly harsh, yet his court ranks high in efficiency as judged from the infrequency of appeals and reverses in decisions. In 1928, out of a total of 2481 criminal cases tried, there were only 38 appeals to a higher court. In 1934, 46 appeals were noted from the total of 2010 criminal cases tried. Of the 1791 civil cases tried in this same year, the verdicts of only 15 were appealed. Thus, from

31

Wylie Kilpatrick, Problems in Contemporary County Government, p. 149.



these figures, it can be seen that in only 2.28% of the criminal and .839% of the civil cases were brought before the higher court for review. These figures compare very favorably with those of all the other trial justice courts in Virginia where 2.89% of the criminal and 1.44% of the civil cases were appealed. These percentages, based on the figures given in the beginning of this paper, refer to the year 1934. It is of great interest to note that of the 61 appeals from Judge Pitt's decisions in 1934, none were reversed! This is of special significance when we realize that of the 411 appeals in criminal cases for the trial justices as a whole in 1934, 55 were reversed while 14 of the 101 appeals in the civil cases were reversed. Thus, on an average, 13% of the criminal and 14% of the civil cases appealed were reversed. According to these figures, the Henrico Court is batting a little better than a thousand per cent.

It is the infrequency of appeals which is making the Henrico Court a pronounced success, not only in the minds of laymen, but also in the minds of those directly benefited by the court. Judge Julian Gunn of the Henrico Circuit Court, one of the original backers of the 1922 trial justice act, says:

"For four years I was Commonwealth's Attorney for this county (Henrico), and I was in a position to see the workings of the justices of the peace; and when I went to the Senate, I was patron of a bill creating the office of trial justice for this county. As far as I have been able to ascertain, the court is giving complete satisfaction. It has relieved the circuit court of a great number of petty cases, both criminal and civil, and I can say without fear of contradiction that not a citizen of this county would for a mom-

ent consider going back to the old plan. Justice is administered promptly and civil cases are fairly determined. I have very few appeals from the trial court." 32

Such a statement by a person who is in the most advantageous position to know, proves only too clearly that Judge Pitt is a man of fairness, intelligence and absolutely competent to fill his office.

The jurisdiction of the trial justice court is quite definitely specified in Section 4988(19) of the Code of Virginia. Under the terms of this section, the trial justice is defined as a conservator of the peace within the limits of the county and has exclusive original jurisdiction of the trial of all misdemeanor cases. The act further states that he shall have jurisdiction of all civil matters formerly cognizable by the justices of the peace, and shall in addition, have concurrent jurisdiction with the circuit court in actions at law for amounts not over \$1000. This marks a wide step from the justice of the peace who was limited to civil actions under \$300. In all civil cases involving a claim of \$300 or less, the trial justice has exclusive jurisdiction except in certain instances; "as where a sole defendant is not a resident of the county or state and the circuit court formerly had jurisdiction." The right to try attachment cases is given with the exception that

32 Wylie Kilpatrick, Problems in Contemporary County Government, p. 139.

33 The Code of Virginia, Section 3102-d.

34 Opinions of the Attorney General Relating to Trial Justices and Justices of the Peace, p. 18.

the amount involved does not exceed \$1000.<sup>35</sup> In this respect also the jurisdiction of the trial justice is much greater than that of the justice of the peace who was limited to try attachments where the amount did not exceed \$20.<sup>36</sup>

In criminal cases, the trial justice is given concurrent jurisdiction with the corporation court in all cases of violation of the revenue laws and misdemeanor cases.<sup>37</sup> In offenses against the by-laws of the county, he has exclusive original jurisdiction. Likewise he is given power to try all misdemeanors arising under the prohibition laws of the Commonwealth. Here again the jurisdiction of the trial justice is wider for the old justice of the peace had no power to try persons charged with violating the liquor laws of the state.

From this, we can see that the types of cases handled by the trial justice court are very diversified. As a court of original jurisdiction, it at least handles the early stages of even the most serious crimes. Thus, the following crimes may and are tried by Judge Pitt: assault and battery, major and minor assault, larceny, auto theft, carrying weapons, forgery, sex offenses, A.B.C. violations, driving while intoxicated, drunkenness, disorderly conduct, vagrancy, gambling, traffic violations, dog and game law violations, trespass, cruelty to animals, vio-

<sup>35</sup> The Code of Virginia, Section 3102-c.

<sup>36</sup> Opinions of the Attorney General Relating to Trial Justices and Justices of the Peace, p. 12.

<sup>37</sup> The Code of Virginia, Section 3094-b.

lations of license and sales laws, rape, murder, robbery and burglary. <sup>38</sup> The last four crimes mentioned are not customarily tried in the court but are usually given a preliminary hearing by Judge Pitt, who either dismisses the case or brings the accused over to the Grand Jury. In 1926 the trial justice act as affecting Henrico was amended so that Pitt should become ex-officio <sup>39</sup> judge of the juvenile and domestic relations court of the county. In this capacity, the efficiency attained by the Richmond juvenile and domestic relations court, Judge J. Hoge Ricks presiding, can hardly be expected because the Henrico court lacks a probation staff which is the backbone of this particular type of court.

Although the justice of the peace under the old system was empowered to conduct jury trials the present trial justice is forbidden to do so. The purpose is to eliminate all possible expense in minor civil and criminal trials. If the litigants absolutely demand that a jury try their cause, they are sent to a higher court. However, the vast majority are content to lay their case before the judge rather than go to the added expense of going before the higher court. The results have been highly satisfactory, especially to the county which saves over a thousand dollars a year in jury fees alone.

A substantial number of the major crimes brought in the trial justice court are bound over to the Grand Jury and Judge

<sup>38</sup> Wylie Kilpatrick, Problems in Contemporary County Government, p. 149.

<sup>39</sup> The Code of Virginia, Section 4988 (19)-d.

Pitt is given the power to grant the necessary bail, specify<sup>40</sup> the amount required and to demand surety, if necessary. In one year, out of over 2000 cases brought before him, 233 were transferred to the Grand Jury, 138 of the cases being violations<sup>41</sup> of the liquor laws. In comparison to the trial justice courts of other counties, these figures show that an unusually high number of cases are disposed of in this manner in Henrico. In this respect, Judge Pitt certainly cannot be accused of assuming jurisdiction of cases which should come before a higher court.

Judge Pitt conducts the trial of every defendant with utter sincerity and seriousness. In the majority of offenses tried, the cases are pushed on to a relatively quick decision, usually only one day being necessary for their disposal. Very few cases are dismissed, a verdict of guilty or not guilty being brought, or the case handed over to the Grand Jury. Justice is not delayed due to legal technicalities or unnecessary red tape, Section 6018 of the Code of Virginia especially providing that, "warrants shall not be dismissed for reasons of mere defects, irregularities or omissions." Section 6021 of the Code provides for a fine of \$5 for the failure of a witness to appear after being subpoenaed, if an excuse is not given within ten days. Under Section 6026, a new trial, when requested, must be granted within

<sup>40</sup> Opinions of the Attorney General Relating to Trial Justices and Justices of the Peace, p. 8.

<sup>41</sup> Wylie Kilpatrick, Problems in Contemporary County Government, p. 149.

30 days and when the opposite party is present. Justice is further hastened by a provision of the 1924 act which requires the trial justice, in any civil claim pending before the court for 30 days, to notify the parties concerned that the case will be dismissed in ten days thereafter unless good cause is shown to the contrary.<sup>42</sup> In a misdemeanor case, if the defendant has been summoned or arrested, and given bail for his appearance, justice is not necessarily delayed because of his failure to be present. Section 4883 of the Code empowers the justice to try the accused in his absence, although such is not the practice in the Henrico court.

The record of convictions enjoyed by this court reveal only too well that it is doing more than its duty to insure respect for the law. The following chart, a study of six counties in Virginia operating under the trial justice system, shows how the Henrico court, during the year 1928, compares with the others in the number of cases tried and their disposition:

## Disposition of cases

County	Total No. of offenses	Guilty	Not Guilty	Appealed	Pending	Transferred to the Grand Jury
Arlington	1224	581	270	61	230	141
Campbell	777	621	120	--	2	34
Chesterfield	1245	847	308	4	18	70
Nansemond	768	561	171	--	6	32
Roanoke	527	396	51	4	14	66
Henrico	2481	1636	515	38	76	233

42

The Code of Virginia, Section 4988 (28)-a.

## Penalties

County	Costs only assessed	Fine Below \$10	Fine \$10 to \$25	Fine above \$25	Jail sentence
Arlington	--	364	73	2	35
Campbell	--	351	142	89	88
Chesterfield	--	358	270	168	94
Nansemond	--	200	177	65	15
Roanoke	--	131	171	71	10
Henrico	549	324	454	87	108

43

Dr. Kilpatrick, who compiled this chart makes allowances for the large number of appeals in Henrico because of the near presence of the City of Richmond, remarking that appeal action is more common in urban localities. However I see no reason to make excuses for this one year, as I have already shown that the proportion of appealed actions to the total number of cases tried by Judge Pitt compares well with the trial justice courts in the counties of Virginia as a whole. From this chart, it may be seen that the trial justices are given wide latitude in the trial of cases which come before them. Pitt seems to be the only one who deems that the assessment of costs only is sufficient punishment in a number of cases. Fines ranging from \$10 to \$25 also are popular with him, while jail sentences are not as numerous in comparison to total number of defendants found guilty, as in three of the other five counties.

43

Wylie Kilpatrick, Problems in Contemporary County Government, p. 149.

Whenever the trial justice feels that a criminal charge was made maliciously and without probable cause, he is authorized to dismiss the case and charge the complainant up with both the costs of the Commonwealth and of the defendant, including witness fees.<sup>44</sup> Other provisions of the trial justice act which allow the justice wide leeway are those allowing him to suspend fines and jail sentences. However, on drunken charges, the fine may be suspended only when the defendant is placed on probation and the jail sentence on condition of good behavior.<sup>45</sup>

The fact that the trial justice acts leave so much to the discretion of the trial justice, speaks well for the system and for the justices themselves. No longer is the minor judicial system of the state regarded as a necessary evil, a hot bed of wastefulness, a place where justice was tolerated rather than welcomed, as was the condition under the justice of the peace system. Now the successor to that system has placed the minor court on a higher level more in keeping with the dignity and respect which it deserves. It is conducted with the same seriousness of purpose as the higher courts. The Henrico court fortunately possesses a judge who is learned in the ways of the law and who is capable of imparting the proper respect and dignity due his office.

<sup>44</sup> Opinions of the Attorney General Relating to Trial Justices and Justices of the Peace, p. 9.

<sup>45</sup> Ibid, p. 6.



Both Judge Pitt and Mr. Shomaker were required to post \$500 bond with the clerk of the circuit court. The oath prescribed by law is also required of them, even as in every other state judgeship. The trial justice act goes even further to insure the proper respect for its Henrico offspring. In one section, the act provides that any subpoena, warrant, summons or any other process issued by the trial justice may be directed to any constable of the county or the sheriff of the county.<sup>46</sup> A fine of from \$5 to \$500 is further provided for altering or failing to serve any such subpoena, warrant, summons or other process issued by the trial justice or his clerk.<sup>47</sup>

In tracing the origin and development of the Henrico Trial Justice Court to its present status we have seen how it has emerged from its early stages as a doubtful experiment to a triumphant fact. Preceded by Arlington County, the opening wedge, Henrico lead the way into the breach, and as soon as that way was proven to be safe and satisfactory, the other counties began, slowly at first, to follow in her wake. The acts which established the trial justice system have been designated as the most important and revolutionizing pieces of legislature which have been passed by the Virginia State Legislature for many years. However, I do not go so far as to call it revolutionizing, for, in the words of one prominent authority, the trial justice is merely a "glorified justice of the peace.". He has simply been placed on a higher plane and clothed with greater powers and

<sup>46</sup> The Code of Virginia, Section 4988 (28)-c.

<sup>47</sup> Ibid, Section 4988 (28)-d.

dignity. Early opposition was caused by the suddenness of this perfectly natural forward step, because it affected an institution which had been practically unchanged for hundreds of years. This opposition gradually disappeared as the new system proved that it was definitely a time-saving and money-saving investment.

There still remains room for improvement, however, and plans are already underway to remedy defects in the system which experience has brought to light. I have already noted that the governor's legislative advisory committee is preparing legislation which will be introduced in the Virginia State Legislature at its next session in 1936. Likewise, it is interesting to know that on January 25, 1935, all of the trial justices of Virginia organized themselves into a permanent association. In the words of one of its members, the purpose of the organization is,

"To foster a closer association among the justices; to promote uniformity of procedure and more efficiently administer the law; to maintain and further develop the juvenile and domestic relations courts, and to cooperate with the General Assembly in the enactment of legislation for the improvement of the trial justice courts, and the advancement of the general welfare of Virginia."

48

Early fears that the association would be used for political purposes do not seem to be justified. Already it has done much good, not only in bringing the trial justice system to the notice

of the public, but also in putting the justices on common ground, allowing them to thresh out matters which were puzzling, and, in return, to offer improvements which they may feel necessary. At its first meeting, W. H. Overby of Campbell County was chosen president. A. Taylor Pitt of the Henrico court was placed on the executive committee. In order to clarify code sections relating to fees for the purpose of greater uniformity, L. McCarthy Downs, State auditor, suggested a consolidated receipt form for such fees, and urged an informal agreement pending the 1936 General Assembly. The following April, one hundred questions bearing upon procedure in the trial justice courts were submitted to the heads of five State offices by the association.<sup>49</sup> The purpose of the questions is to make possible more uniform procedure which is approved by the State department heads. Several of the questions of a less technical nature, answered by the Attorney General, are included in the appendix of this paper.

Although the future of the Henrico court is definitely assured, there are several improvements which shall undoubtedly ~~be~~ be included in the amendments suggested by the association and the governor's committee for the next General Assembly.

Legal training will be one of the first requirements to be inserted for the office of trial justice. Although Pitt is a lawyer, this may not necessarily be true of future incumbents. Experience and common sense proves that a knowledge of law is

indispensable for such a position, and if this court is to continue its past record, such defect must be remedied.

Another improvement shall be affected in the manner of selection of a trial justice. The present law states:

"the board of supervisors of such county shall nominate for the position of trial justice under the provisions of this act one or more suitable and qualified persons and shall certify the name or names of such nominee or nominees to the judge of the circuit court of such county, who shall, within ten days and whether in term time or vacation, appoint such nominee or one of such nominees as trial justice or notify the board of supervisors, in writing, of his disapproval of its nomination or nominations, in which event the said board of supervisors shall, within thirty days, furnish additional nomination or nominations to the judge of said court, who, within ten days, shall appoint or disapprove as before, and so on until an appointment be made." 50

Thus, not only does the circuit court judge exercise the final power of naming a justice, but the full appointing power is discretionary with him. He may or he may not, as he sees fit, even select one of the nominees. His failure to do so would mean the automatic exit of the trial justice court. Although the laxity of the law is not necessarily harmful, as the circuit judge is normally ready to designate a trial justice, yet I recommend, and I am not alone, that such appointment be made mandatory.

In order to promote harmony and uniformity among the trial justices of Virginia, I believe and urge that the various special

acts establishing certain trial justice courts be repealed so that all of the counties of Virginia may operate under the same general act of 1934. The five counties of Arlington, Chesterfield, Carroll, Nansemond and Henrico are operating under such acts, while the remaining counties come under the provisions of the 1934 statute. Although the difference in set up of each of the five counties is slight, except for Arlington with its limited powers, confusion is certain to result. Minor variations in jurisdiction, manner of adopting the act and selecting the justice, salary and other instances tend to discourage harmony and cooperation. In addition, none of the five counties receive any of the \$40,000 appropriation provided for in the 1934 act, and none can say that they could not find some use for their share of this amount.

All in all, if my word is worth anything, I believe that the Henrico Trial Justice Court does remarkably well. Its faults, such as they are, are few in number and minor in importance. Mr. William R. Shands, who is one of the best authorities on the trial justice system, has had ample opportunity to get the proper perspective, and he has no hesitation in saying that the Henrico court is the best of its kind in Virginia.

In summarizing the work of this court, we will do as As Smith says, and look at the records. What do they show? Simply: that the minor court of the county has been transformed from a liability to an asset, financially; that appeals have been cut down almost to the vanishing point, while reversals in de-

cisions are almost unknown; that unnecessary expenses and time wasting have been reduced to a minimum for litigants; that from \$100 to \$200 is saved monthly for Henrico in jury fees alone; that it relieves the circuit court of many civil cases in which it has concurrent jurisdiction; and that it entirely eliminates prejudice, favoritism and injustice in the administration of justice in the minor judicial system. If these are not enough, read the words of a former commonwealth's attorney for Henrico County, who, next to the circuit court judge, is in the best position to weigh the value of this court:

" I find it very much more satisfactory

in handling the criminal cases under the trial justice than under the magistrates. It helps me to prepare for all cases that are sent on to the grand jury. Having the trial justice court makes it possible for me to be present at all hearings, and in that way I am familiar with the evidence supplied. The records of the trial court are kept in much better shape".

51

## Appendix A

(The Trial Justice Act, enacted in 1924, amended in 1926, under which the Henrico court is operating at the present time, taken from The Code of Virginia as Amended to Adjournment of General Assembly 1930, Chapter 199, pages 1408 to 1411.)

Section 4988 (15). In every county of this Commonwealth adjoining a city lying wholly within the State of Virginia, such city having a population of one hundred and seventy thousand or more, as shown by the past preceding United States census, there shall be appointed, in the manner and for the term hereinafter prescribed, a trial justice for each of such counties.

Section 4988 (16). In counties where a trial justice and substitute trial justice shall have been heretofore appointed under and in pursuance of chapter three hundred and eighty-eight of the acts of the general assembly of nineteen hundred and twenty-two, approved March twenty-fourth, nineteen hundred and twenty-two, such trial justice shall serve without further appointment or qualification as trial justice for such county under the provisions of this act until the expiration of his present term of office on the thirty-first day of December, nineteen hundred and twenty-four, inclusive, and such substitute trial justice shall serve as substitute trial justice for such county under the provisions of this act until the re-

## Appendix A

vocation of his appointment as hereinafter provided.

Section 4988 (17). During the month of July, nineteen hundred and twenty-four, and of every fourth year thereafter, and when the qualified voters of any county affected by this act shall have voted in favor of the adoption of this act, or the act which it amends, the board of supervisors of such county shall nominate for the position of trial justice under the provisions of this act one or more suitable and qualified persons and shall certify the name or names of such nominee or nominees to the judge of the circuit court of such county, who shall, within ten days and either in term time or vacation, appoint such nominee or one of such nominees as trial justice or notify the board of supervisors, in writing, of his disapproval of its nomination or nominations, in which event the said board of supervisors shall, within thirty days, furnish additional nomination or nominations to the judge of said court, who, within ten days, shall appoint or disapprove as before, and so on until an appointment be made.

Section 4988 (18). The terms of office of trial justices appointed under section three of this act (Section 4988(17) of this Code) shall be for four years, commencing on the first day of January, nineteen hundred and twenty-five, and on the first day of January of every fourth year thereafter, provided that if an appointment is made during either of said four year periods, the first appointment shall be for a term expiring at the end of



## Appendix A

that four year period. Any vacancy occurring in the office of trial justice, after appointment, shall be filled for the unexpired term by the judge of the circuit court of such county upon such nomination as is required by section three of this act (Section 4988(17) of this Code) for the appointment of a trial justice for a regular term of office, and such nomination may be made immediately upon the occurrence of such vacancy or at any time during its continuance.

Section (19). The jurisdiction of such trial justice shall be as follows:

(a) The said trial justice shall have exclusive original jurisdiction for the trial of all offenses against the by-laws or ordinances of said county for which he is appointed.

(b) In criminal cases the jurisdiction of such trial justice shall be the same within the limits of his county, as that now provided by chapter one hundred and twenty-three of the Code of Virginia or which may be hereafter provided for police justices of cities.

(c) In civil cases the jurisdiction of such trial justice shall be the same, within the limits of his county, as that provided by chapter one hundred and twenty-four of the Code of Virginia or which may be hereafter provided for civil and police justices and civil justices of cities.

(d) Immediately upon the qualification of such trial justice, the term of office of the judge of the juvenile and domestic relations court of such county shall terminate. Such trial justice shall thereupon become and continue ex-officio judge of such juvenile and domestic relations court, and no separate judge of

## Appendix A

the juvenile and domestic relations court of such county shall be thereafter appointed.

Section 4988 (20). All the provisions of law now in force, or which may be hereafter enacted, governing preliminary examinations, granting of bail procedure and appeals in both civil and criminal cases cognizable by justices of the peace of counties not affected by this act shall apply in like manner to cases tried before the trial justices appointed hereunder, unless otherwise provided herein, except that in civil cases triable before such trial justice no removal to any other court shall be allowed.

Section 4988 (21). Any trial justice acting hereunder may appoint a clerk who shall be designated in process issued by him as clerk of the trial justice court, and who shall hold his office at the pleasure of said trial justice. Such clerk shall keep the docket and accounts of such trial justice and shall discharge such other duties as may be prescribed by said trial justice.

Section 4988 (22). When such clerk so appointed shall have qualified as hereinafter provided, he shall be a justice of the peace of the county for which he is appointed and vested with all the powers and authority and subject to all the duties and liabilities of a justice of the peace, except where inconsistent herewith.

## Appendix A

Such clerk shall issue all warrants and other civil process returnable before such trial justice under chapter two hundred and twenty-three and chapter two hundred and fifty of the Code of Virginia, and all warrants for violation of the ordinances or by-laws of such county and all subpoenas for witnesses or other process in connection with the violation of such ordinances or by-laws, and no such warrants, subpoenas or other process above mentioned shall be hereafter issued by any other officer; except that where the plaintiff in a civil warrant is a resident of such county but neither resides nor has an office or regular place of business within ten miles of the county seat, such civil warrant and subpoenas for witnesses thereunder may be issued by one of the other justices of the peace of such county. The said clerk shall have concurrent jurisdiction with the other justices of the peace of his county to issue warrants in criminal cases and subpoenas for witnesses in such cases, and to admit to bail persons charged with criminal offenses or violations of such ordinances or by-laws.

Section 4988 (23). The circuit court of such county or the judge thereof in vacation, shall appoint a substitute trial justice, and may at any time revoke such appointment of any substitute trial justice acting hereunder, and shall make a new appointment in the event of such revocation, or of the death, absence or disability of such substitute trial justice. In the event of the inability of the trial justice to perform

## Appendix A

the duties of his office by reason of sickness, absence, vacation, interest in the claim, proceedings or parties before his court, or otherwise, such trial justice shall perform the duties of the office during such inability, and shall receive for his services a per diem compensation equivalent to one twenty-fifth of a monthly installment of the salary of the trial justice, payable out of the treasury of the county; and the board of supervisors may, from time to time, determine whether or not such compensation shall be deducted from the salary of the trial justice, except that no such deduction shall be made on account of absence during one half of the vacation period of not more than one month herein provided. While acting as such, the trial justice or the substitute trial justice may perform all acts with reference to the proceedings and judgments of the other in any warrant, claim or proceeding before the court of the trial justice in the same manner and with the same force and effect as if they were his own.

Section 4988 (24). The said clerk on every day in the year except Saturdays, Sundays and legal holidays, shall remain at the quarters assigned him from nine o'clock, ante meridian, until five o'clock, post meridian, for the transaction of business, with the exception of one hour to be designated by the trial justice. On such Saturdays as are not legal holidays, the clerk shall remain at such quarters from nine o'clock, ante meridian, until two o'clock, post meridian. The trial justice

## Appendix A

may at any time require longer hours of service or such additional services of the clerk as he may deem necessary for the convenient dispatch of business. The clerk shall be allowed annually a vacation period of two weeks. In the even of the disability of the clerk to perform the duties of his office by reason of sickness, absence, vacation or otherwise, the trial justice may appoint a substitute clerk who shall perform all the duties of the office during such inability and shall receive for his services a per diem compensation equivalent to one twenty-fifth of a monthly installment of the salary of the clerk, payable out of the treasury of the county; and the board of supervisors may from time to time determine whether or not such compensation shall be deducted from the salary of the clerk, except that no such reduction shall be made on account of absence during the vacation period of two weeks herein provided. While acting as such the clerk or substitute clerk may perform all acts with reference to the proceedings or duties of the other in the same manner and with the same effect as if they were his own.

Section 4988 (25). Before entering upon the performance of his duties the trial justice, substitute trial justice, clerk and substitute clerk shall take the oaths prescribed by law and shall each enter into bond in the penalty of five hundred dollars before the circuit court, or the clerk thereof, with surety to be approved by said court or clerk, and conditioned for the

## Appendix A

faithful performance of his duties.

Section 4988 (26). The trial justice shall receive a salary to be fixed by the board of supervisors at not less than twenty-five hundred dollars per annum nor more than five thousand dollars per annum, and the clerk shall receive a salary to be fixed in like manner at not less than eighteen hundred dollars per annum nor more than <sup>hundred</sup> twenty-four dollars per annum. Such salaries shall be paid in monthly installments out of the treasury of the county, and neither the trial justice nor clerk shall receive any other compensation, either directly or indirectly, for his services as such. The trial justice and clerk shall charge and collect from litigants and defendants all the fees which justices of the peace for counties not affected by this act are authorized to charge and collect, and the fees now paid out of the State treasury to the justices of the peace for issuing criminal warrants, and in civil cases the trial justice shall charge and collect for every second or subsequent continuance of the case a fee of fifty cents, to be paid, at the time such continuance is granted, by the party on whose motion or at whose request such continuance is granted, but such continuance fee shall not be taxed as a part of the costs of such case.

Out of all such fees collected, the officers' fees shall first be paid; and the balance, including fees for admitting to bail persons accused of criminal offenses or of violation

## Appendix A

of ordinances or by-laws, and all other fees and charges of every character, shall be paid monthly into the county treasury. The trial justice and clerk may make a joint report in detail of the fees collected by them respectively.

Section 4988 (27). The board of supervisors shall provide suitable quarters for the court of such trial justice and for said clerk at the county seat, and shall provide all necessary books, stationery and supplies for each of such. Such books and supplies shall be under the control of the trial justice and shall remain the property of the county. The judge of the circuit court of such county, in his discretion, may from time to time direct that said Trial Justice shall hold his court at such other places in said county, and at such times, as said judge may direct, and said judge may amend and revoke his directions in that behalf in his discretion. If other places than the courthouse are so designated, a schedule of the times and places of holding the court of said Trial Justice shall be kept posted by said Trial Justice at the courthouse of his county in at least one public place in each district thereof.

Section 4988 (28). The court of such trial justice shall be open for the transaction of business every day in the year except Sundays and legal holidays. If any claim shall have been pending before such trial justice thirty days, he shall notify the parties or their attorneys that the same will be dismissed in ten days thereafter unless good cause be shown to the contrary, and unless such cause be shown, the trial justice

## Appendix A

shall forthwith dismiss such warrant. The trial justice shall keep a docket in which shall be entered all causes tried and prosecuted before him and the final disposition of the same, together with an account of the costs and fines and such docket shall at all times be open to public inspection. All papers connected with any of the proceedings in the trial of cases before the trial justice, except such as may relate to cases appealed or such warrants in criminal cases as may be by general law required to be sooner returned to the clerk's office of the circuit court, shall remain in the office of the trial justice or of the clerk appointed by him hereunder for three years after final judgment by the trial justice, and executions and additional executions in such proceedings may be issued by the trial justice at the end of such period, such papers shall be returned to the clerk's office of the circuit court of the county, and shall be properly filed, indexed and preserved by the clerk, who shall receive the same fees as are allowed for receiving, filing and indexing papers returned by justices of the peace. Any warrant, subpoena, summons or other process issued either by the trial justice or the clerk appointed by him may be directed to any constable of the county or the sheriff thereof, as the trial justice may direct.

No process or warrant issued by such trial justice or clerk or any part thereof or any date therein shall be altered after the same is issued by the officer to whom directed or



## Appendix A

any other person, except such trial justice or clerk. Any person, other than such trial justice or clerk, who shall alter any such process or warrant after the same has been issued or any officer who shall fail or refuse to execute within a reasonable time any warrant or process issued under the provisions of this act shall be guilty of a misdemeanor and shall be fined not less than five nor more than five hundred dollars.

Section 4988 (29). In counties affected by this act where a trial justice shall have been heretofore appointed under and in pursuance of chapter three hundred and eighty-eight of the acts of the general assembly of nineteen hundred and twenty-two, approved March twenty-fourth, nineteen hundred and twenty-two (Sections 4988(1) to 4988(14) of this Code), this act shall become immediately effective; in other counties affected by this act the same shall not be effective unless and until the board of supervisors of such county shall have approved and adopted the same by a resolution agreed to by a recorded majority vote of all the members of such board, a copy of which resolution shall forthwith be certified to the electoral board of such county, and the same shall have been submitted to and approved by the qualified voters of such county at the general election next following the adoption of such resolutions by such board of supervisors, the question of the adoption of this act shall be submitted to the qualified voters of such county upon the ballot used at such election, in such form as the

## Appendix A

electoral board shall prescribe. If a majority of the qualified voters, voting at such election, shall vote in favor of such adoption, then this act shall immediately become effective in such county.

## Appendix B

(Opinions of the Attorney General relating to Trial Justices and Justices of the Peace, resulting from the questions submitted by the Association of Trial Justices. These questions and their answers were made available through the courtesy of Judge Pitt of the Henrico Trial Justice Court.)

1. Q. In what case, other than those especially required by statute, can a Trial Justice require the Commonwealth's Attorney to appear and prosecute the case? Is there any general statute or law whereby the Trial Justice can call upon the Commonwealth's Attorney to appear, if it is deemed best by the Trial Justice?
 

A. No general power or authority is conferred on the Trial Justice to require the Commonwealth's Attorney to appear in cases. The Trial Justice may request the Commonwealth's Attorney to prosecute violations of the Game, Inland Fish and Dog Laws (Code, sec. 3305 (55)).
2. Does a Trial Justice have authority to take bail bonds of persons charged with a felony after preliminary examination where they are sent on to the Grand Jury?
 

A. The Trial Justice has authority to admit to bail all persons charged with crime unless the judge of the court of record had previously refused bail. See sections 4988-g-Fifth and 4829-a of the Code.
3. Q. If a prisoner has been taken to the State Farm to serve a sentence, or for non-payment of fine and costs, can the Trial Justice suspend a part of his unserved sentence and have him released?
 

A. The statutes do not confer upon the Trial Justice the power to suspend a jail sentence or the payment of a fine after the prisoner has been committed to jail or the State Farm. The Circuit Court, however, does possess this power under the provisions of section 4952 of the Code, even though the prisoner was convicted by a Trial Justice.
4. Q. What should be done with a warrant of arrest for a felony which has been executed and returned to the Trial Justice when, before the warrant is returned, an indictment for the same offense has been found in the Circuit or Corporation court?
 

A. The warrant should be dismissed and returned to the clerk's office of the court in which the indictment was found, if the accused has given bond to appear in answer to the indictment. In such case the jurisdiction of the Trial Justice Court has been superseded by the proceedings in the Circuit or Corporation Court. If the accused has not been arrested pursuant to the

## Appendix B

indictment, but appears before the Trial Justice, he should be remanded to the custody of the sheriff until bond is given.

5. Q. Should a person accused of drunkenness or other crime be tried while in an intoxicated condition?

A. It is the opinion of the Attorney General that no person should be tried while deprived of the possession of his normal faculties. The accused should be remanded to the custody of the sheriff for detention until the intoxicated condition has passed.

6. Q. In the issuing of criminal warrants, is it proper for the issuing justice to demand of the complainant that he deposit the fee for issuance and service of the warrant in advance, or should no such costs be collected until the case has been tried?

A. There is no provision of law by which a complainant in a criminal matter may be required to pay in advance a fee for issuance and service of a warrant. As a matter of practice, I am informed, many officers who issue criminal warrants refuse, in some cases, to issue the warrants unless the fee therefor is paid in advance, but I know of no authority by which a complainant can be compelled to pay these fees. The Trial Justice is vested with discretion to determine whether any case is a proper one for the issuance of a warrant.

7. Q. Is there any authority for taxing against the defendant in ordinary misdemeanor cases, a Commonwealth's Attorney's fee when the Commonwealth's Attorney appears and prosecutes the case at the request of the party who asked for the warrant?

A. The law makes no provision for taxing such fees except in cases where the duty is imposed by law on the Commonwealth's Attorney to appear.

Note: In the following cases, and perhaps others, the statutes authorize or require the Attorney for the Commonwealth to prosecute the charges against the accused:

- (a) Preliminary hearings in felony cases--Code, section 3505.
- (b) Violations of Alcoholic Beverage Control Act--Acts 1934, p. 132, section 62, subsection d.
- (c) Violations of Dairy and Food Laws--Code, sections 1179, 1223 and 1232.
- (d) Violations of State Forestry Laws--Code, section 548.
- (e) Violations of statutes governing the sale of gasoline and other fluids used for power purposes--Code, section 1443 (11).
- (f) Where the prosecution in the case of the violation of any penal law is instituted by the Commonwealth's Attorney upon information given by the sheriff, constable or other officer--Code, sec. 4864

## Appendix B

(g) In Juvenile and Domestic Relations Courts when requested by the judge thereof--Code, sections 1951-a and 1953-h.

(h) Violations of Game, Inland Fish and Dog Laws, when requested by the Trial Justice or an agent of the Commission of Game and Inland Fisheries--Code, section 3305 (55).

(i) Violation of compulsory school attendance laws--Code, section 686.

(j) Persons reported by the commissioner of the revenue to the Attorney for the Commonwealth as transacting business without the license required by law--Tax Code, section 136.

(k) Violation of the statutes regulating sale of seeds--Code, sections 1153-n, 1154-g.

(l) Violations of certain laws relating to oysters and shellfish--Code, section 3289.

8. Q. If a Justice of the Peace is appointed Trial Justice, does the acceptance of the office of Trial Justice automatically vacate his office as Justice of the Peace, or may he continue to hold his office as Justice of the Peace until the expiration of his elected term?

A. Section 3093 of the Code provides that if any Justice of the Peace accepts or holds any other office incompatible with that of Justice of the Peace, such acceptance or holding shall vacate the office of Justice. However, I do not think the two offices are incompatible if the proper interpretation is placed upon the duties of a Trial Justice who is also a Justice of the Peace. By this I mean that, if a Justice of the Peace is appointed a Trial Justice, in every matter in which the two offices have concurrent jurisdiction, the officer should act as a Trial Justice and not as a Justice of the Peace. To illustrate, both a Trial Justice and Justice of the Peace have power to issue warrants; in every case where a warrant is issued by an officer holding both offices, I think it should be issued by him as a Trial Justice and not as a Justice of the Peace, on the theory that the Trial Justice is being paid a salary for everything that can be done by that officer as such Trial Justice.

9. Q. Has a Trial Justice the right to appoint a guardian ad litem?

A. Section 3105 authorizes such appointment by civil and police justices and this authority is conferred on Trial Justices by section 4988-g.

10. Q. Does a Justice of the Peace have a right to issue a garnishee process on a judgment rendered by a Trial Justice?

A. Only the Trial Justice rendering the judgment or one acting as his substitute may issue a summons in garnishment thereon.

11. Q. May a Trial Justice (who is a lawyer) accept employment either to prosecute or defend a person accused of a felony where the

Appendix B

preliminary examination has been waived before the Trial Justice?

A. While this practice is apparently not expressly prohibited by the statute, it is the Attorney General's opinion that it should be discouraged.

12. Q. Where a civil warrant is served on the defendant and returned to the Trial Justice and the plaintiff does not appear or send costs to cover trial and filing, what disposition should be made of the warrant?

A. The warrant may be either dismissed or continued, in the discretion of the Trial Justice.

13. Q. Is there any authority for charging a fee of fifty cents for a continuance in civil cases, when the motion for the continuance is made either by the attorney for the plaintiff or for the defendant?

A. Section 3481 (9) provides as follows:  
"When a justice attends a trial and the case is continued to another day, the justice shall be entitled to a fee of fifty cents to be paid by the party asking for the continuance."  
This provision is likewise applicable to Trial Justices.

14. Q. Should the trial fee of \$1 provided for by section 4988-L be charged by the Trial Justice in addition to the fee of \$1 authorized to be collected by a Justice of the Peace under section 3481 (6)?

A. While section 4988-f requires the Trial Justice to charge and collect all fees which Justices of the Peace ~~were~~ authorized to collect, it is the opinion that the trial fees provided for in the two sections referred to in the question are the same fee, and only one trial fee should be charged and collected by the Trial Justice. The Justice of the Peace no longer has trial jurisdiction.

15. Q. Does the Trial Justice court have the right to require a non-resident plaintiff to give security for costs?

A. Under the equity powers of the court (Code, section 6022), I am of the opinion the Trial Justice may require reasonable security for costs in such cases. 7 Ruling Case Law, p. 786.

16. Q. Must the Trial Justice hold court every day except Sundays and holidays, if there are any cases to be tried, or may he designate certain days in the week for criminal cases and certain days for civil cases, leaving other days on which no cases will be heard?

A. Section 4988-1 of the Code authorizes the circuit court of the county to prescribe the times and places of holding court by the Trial Justice. He is not expressly required to hold court at any other time. He should however arrange a schedule

Appendix B

to expeditiously transact the business of his court.

17. Q. How is the Substitute Trial Justice to make his report in cases tried by him, and to what extent is the Trial Justice required to supervise his report?

A. A separate report should be made in the same manner the Trial Justice's report is made, and covering the same transactions which would have been embraced in the Trial Justice's report. The Trial Justice is not responsible for it and is under no duty to supervise it. He should, however, call attention to any errors if same come to his notice.