THE quasi-municipal unit of government called the County of Allegheny was created by an act of assembly of the commonwealth of Pennsylvania dated September 24, 1788. The most active proponent of this act was Hugh Henry Brackenridge, a leading western Pennsylvania lawyer, afterwards a justice of the supreme court of Pennsylvania.

This act declared that the judges of the supreme and oyer and terminer and general jail delivery courts of Pennsylvania should have jurisdiction in Allegheny County to deliver the jail of the county of capital and other offenders, and that judges of the courts of quarter sessions of the peace and common pleas then or thereafter commissioned within the limits of Allegheny County, or any three of them, should hold courts of quarter sessions and common pleas in said county with the jurisdiction of such judges in other counties.

The history of the courts of Pennsylvania prior to the creation of the County of Allegheny has been fully treated in various publications, and we therefore confine our discussion to a consideration of the law judges of the court of common pleas of Allegheny County and, in a subsequent paper, of the members of the bar of this court.

Courts of common pleas have existed in England since Magna Carta in 1215. They were a development of Anglo-Saxon institutions and had

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1 Read at the annual downtown luncheon meeting of the Historical Society of Western Pennsylvania on December 5, 1940. The author is a former judge of the Allegheny County Court of Common Pleas and a trustee of the Historical Society.—Ed.


jurisdiction to hear and determine all pleas of land and injuries merely civil between subject and subject.5

Sir Edward Coke, the great exponent and developer of the common law of England styled the common pleas court "the lock and key of the common law," viz., the customary law of England adopted by the courts as the law of the land.

Courts in Pennsylvania were first called courts of common pleas in an ordinance of 1707, in which the clerk was called prothonotary, the name applied to the chief clerk of the court in England, borrowed from the Roman ecclesiastical law.

Under the Pennsylvania judiciary act of 1722 common pleas and quarter sessions courts in the various counties were continued until the constitution of 1776, in which it was directed that common pleas, quarter sessions and orphans' courts should be held quarterly in every county. The supreme executive council and the president thereof appointed the judges.6

In the Pennsylvania constitution of 1790 the judicial power of the commonwealth was vested in a supreme court, courts of oyer and terminer and general jail delivery, quarter sessions of the peace, common pleas and orphans' courts and such other courts as the legislature might establish, and judges of the courts of common pleas were also made judges of the oyer and terminer and quarter sessions courts and also justices of the peace. Under this constitution judges were appointed and held office during good behavior.7

By an act of assembly of 1791 it was directed that the governor should appoint as president judge of each common pleas court "a person of knowledge and integrity, skilled in the law," and also not less than three or more than four common pleas judges in each county (laymen), and the state was divided into districts of not less than three or more than four counties. Allegheny County was placed in the fifth judicial district with Fayette, Westmoreland, and Washington counties and is now a separate judicial district, the fifth.8

5 Blackstone's Commentaries, 3:38, 39 (Lewis Edition).
The constitution of 1838 reinvested the courts of common pleas with the jurisdiction conferred in the constitution of 1790 but limited the terms of the law judges to ten years and the associate judges to five years, to be appointed by the governor. By an amendment to this constitution in 1850 judges of the courts of common pleas learned in the law were required to be elected.

By our present constitution of 1874, the judicial power of the commonwealth is vested, *inter alia*, in courts of common pleas, oyer and terminer and general jail delivery, and quarter sessions of the peace, courts of common pleas to continue as at that time established. Counties containing a population of over forty thousand were made separate judicial districts with one judge learned in the law and additional judges as provided by the legislature. Counties of less than forty thousand population were to be combined in convenient districts of not more than four counties. The office of associate judge not learned in the law was abolished in counties constituting separate judicial districts.9

Courts of common pleas in Pennsylvania are constitutional courts, with an established jurisdiction, of which the legislature is powerless to deprive them. They are thus established as an independent, coordinate branch of our government, of equal dignity with the legislative and executive departments.

It is interesting to note there are at present eight judicial districts in Pennsylvania in which lay judges participate with the law judges in the administration of justice in their districts.

In O’Mara v. Commonwealth, 75 Pa., 432, the supreme court explained the purpose and need for associate judges in its statement that “the greatest use for the associates is found in their local knowledge, and presence in the counties where the president is not a resident, enabling them to attend to matters of bail, security, appointments of viewers, appraisers, guardians, committees and other matters required to be done in the Quarter Sessions and Orphans' Courts. When the president judge resides in the district, as all judges learned in the law must, who have separate districts, consisting of single counties, the necessity for associates unlearned in the law does not exist. But the necessity for these associates

remains in all districts composed of two or more counties, and in them the office is continued."^{10}

By an act of assembly of April 6, 1833, the district court of Allegheny County was created, with civil jurisdiction similar to that of the court of common pleas. This court of three judges functioned side by side with the court of common pleas of three judges until the constitution of 1874 became operative, when the court of common pleas became Common Pleas No. 1, and the district court became Common Pleas No. 2. In the course of years the legislature created Courts of Common Pleas Nos. 3 and 4, each of three judges.

By an amendment to the constitution, effective January 1, 1912, the four common pleas courts of Allegheny County were consolidated into a court of common pleas composed of the twelve judges of the courts of common pleas then in commission.\(^{11}\) The number of judges was later increased to fourteen, and by 1941 to sixteen.

Here we have an outline of the development of the highest civil court in the County of Allegheny, covering 745.48 square miles, with a population of perhaps 1,500,000 people; a cosmopolitan population of many national origins, engaged in some of the greatest manufacturing enterprises in the world, and in mining, transportation, and commercial pursuits of great magnitude. In this county there are 4 cities, 69 boroughs, and 53 townships. The court of common pleas is a court of general civil jurisdiction in law and in equity, without limitation as to the amount involved. On the theory of law that there is no wrong without a remedy the court of common pleas has jurisdiction over almost any conceivable kind of action that can be brought due to any kind of civil injury. The time of the court is largely consumed in trying common law cases before juries, but it has an extensive jurisdiction in equity, divorce, and other actions under numerous statutes. The judges hold the criminal courts of oyer and terminer and quarter sessions of the peace in which they dispose of thousands of cases every year. In this great county the rights of the people of this workshop of the world are insured to them by the court of common pleas. The report of the court for the period from January 1 to July 1, 1940, appended hereto, shows the total number of cases dis-

\(^{10}\) O'Mara v. Commonwealth, 75 Pa. 432.

\(^{11}\) Pennsylvania Constitution, art. 5, sec. 6.
posed of to be 9,208, and gives some understanding of the amount of public service this court renders.

The separate common pleas court of Allegheny County held the first session recorded in Appearance Docket No. 1, on March 17, 1789. The Honorable George Wallace, a lay judge, presided. Alexander Addison was the first law judge of our court of common pleas, presiding therein from August 17, 1791, until January 22, 1803. From its inception to the present day, sixty-four law judges have presided in the court of common pleas of Allegheny County. Five of these served short appointive terms only, leaving but fifty-nine judges of this court who were appointed or elected for full terms. Ten judges learned in the law served in the district court, of whom three were also judges of the common pleas court. It follows that we have had seventy-one law judges in the civil courts now combined in one court of common pleas. A roster of these judges with their terms of service is appended hereto.

Alexander Addison, a learned and able judge, was impeached by the legislature for his refusal to permit an associate judge to charge the grand jury. In the early days both federal and state judges were accustomed to charge the grand jury not only on the subject of crime but also on matters of general public policy, sometimes in a politically partisan spirit. Judge Addison and an associate judge were of different political faiths. Judge Addison was strongly convinced that only the law judge had authority to charge the grand jury and he therefore excluded the associate judge from performing that function. As a matter of political retaliation against him he was impeached and removed from office. Political feeling was responsible about this time for an attempt to impeach justices of the supreme court, but this attempt to control the courts by political parties failed.13

William Wilkins, a law judge of the court of common pleas from December 18, 1820, until May 25, 1824, was a distinguished citizen who has enshrined his name in Allegheny County history. He was also a

member of Congress, a United States senator, minister to Russia, and secretary of war. Robert C. Grier, judge of the district court from 1833 to 1846, became a justice of the Supreme Court of the United States. Walter H. Lowrie, judge of the district court from 1846 to 1851, became chief justice of the supreme court of Pennsylvania. Walter Forward, a judge of the district court in 1851-52, was also a member of Congress, minister to Denmark, and secretary of the treasury. Henry W. Williams, judge of the district court from 1851 to 1868, became a judge of the supreme court of Pennsylvania.14

William B. McClure, law judge of our court of common pleas from January 31, 1850, to December 27, 1861, was the first elective judge of this court. Selection of judges by popular election as party candidates has prevailed in Pennsylvania since the amendment of our constitution in 1850. The early settlers of the United States were critical of and hostile to courts and lawyers. Their distrust derived from their experience with tyrannical judges doing the will of a government that so persecuted its subjects as to drive them to America and to the Revolution, which resulted in the independence of the United States of America. There were constant complaints and criticisms of our judiciary in the early nineteenth century. The people were resentful of the life tenure of judges and desired to control the courts in the interest of the democratic administration thereof. Accustomed to lay judges in the colonial days the public resented the attempts of law judges to establish the dignity of the English courts. The people leaned toward the character of courts administered by lay judges even though some of these quarreled, came to blows, and dragged each other from the bench.

The names of many distinguished judges appear on our common pleas court roster. Thomas Mellon, common pleas court judge from April 8, 1859, to December 1, 1869, retired from the bench to become the founder of our greatest banking and industrial organizations.

Judge James P. Sterrett became chief justice of the supreme court of Pennsylvania.

Judge J. W. F. White and Judge Thomas Ewing were recognized as judges of extraordinary capacity and power. Judge White wore a full-dress suit and a stovepipe hat. Judge William D. Porter became president judge of the superior court of Pennsylvania. Judge Robert S. Frazer distinguished himself as judge and president judge of the court of common pleas and as justice and chief justice of the supreme court of Pennsylvania.

President Judge John D. Shafer was accounted the most cultured and learned judge of the court of common pleas for several generations.

President Judge John A. Evans was esteemed one of the ablest trial judges of this court.

Judge James R. Macfarlane was noted for his independence and his achievements as president judge of the consolidated court of common pleas, which reached a high point of efficiency under his president-judgeship.

Judge James B. Drew is a justice of the supreme court of Pennsylvania.

Judge Nelson McVicar is a judge of the United States court for the western district of Pennsylvania.

Judge Joseph Stadfeld is a judge of the superior court of Pennsylvania.

Others deserve special mention.

The court of common pleas of Allegheny County has been noted for the integrity and ability of its judges. It has rendered to the people of this county an essential governmental service of a high order. It has administered equal justice under law to the people of Allegheny County during the transformation of this metropolitan community from a primitive backwoods region to its present highly developed complex civilization. This court has had an influential part in developing a system of law suitable and adequate for the changing requirements of the growing population and enlarging industries and business of the county. For 150 years the court has been open to the humblest and greatest of its citizens and not one has been denied the equal protection of the laws of the land. The constitutional rights of the county's millions of people have been safe in the keeping of this court. So may it be always.
Each weekday morning since 1789 the court of common pleas of Allegheny County has been opened for business by the crier of the court with this proclamation:

"Oyez, Oyez, Oyez; all manner of persons having ought to do before the honorable, the judges of the court of common pleas in and for the County of Allegheny, here holden this day, will now draw near, their attention give and they shall be heard. God save the commonwealth and this honorable court."

Let all who cherish a constitutional government of laws join in the crier's prayer for the salvation of the commonwealth and our courts.
A REPORT MADE BY THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

Cases Disposed of January 1, 1940, to July 1, 1940

Jury Trials .......................................................... 444
Consent Verdicts .................................................. 38
Non-Suits ........................................................... 26
Cases Settled ......................................................... 255
Cases Settled at Pre-Trial ........................................ 183
Cases Non-Suited at Pre-Trial ................................... 10
Equity Trials ........................................................ 29
Divorce Cases ....................................................... 1,159
Cases Disposed of on General Argument List .................. 234
Cases Disposed of on Equity Argument List .................... 30
Applications for New Trial and Judgment Non Obstante Veredicto ... 213
Hearings on Tax Appeals, Zoning Appeals, Preliminary
  Injunctions, etc., Requiring Testimony ....................... 370
Miscellaneous Orders Made in Assignment Room ................. 6,217

Total Number of Cases Disposed of ............................. 9,208

Cases at Issue January 1, 1940 .................................. 3,598
Cases at Issue July 1, 1940 ....................................... 3,101
Cases Put at Issue from January 1 to July 1, 1940 ............. 853

ROSTER OF THE LAW JUDGES OF THE COURT OF
COMMON PLEAS OF ALLEGHENY COUNTY, 1791–1939

Alexander Addison, August 17, 1791–January 22, 1803.
Samuel Roberts, April 30, 1803–December 13, 1820.
William Wilkins, December 18, 1820–May 25, 1824.
Charles Shaler, June 5, 1824–May 5, 1835.

Trevanion B. Dallas, May 5, 1835–June 24, 1839.
Benjamin Patton, July 1, 1839–January 31, 1850.
Thomas Mellon, April 8, 1859–December 1, 1869.

15 Pittsburgh Legal Journal, July 6, 1940.
JAMES H. GRAY

John W. Maynard, April 16, 1859—December 5, 1859.
David Ritchie, May 22, 1862—January 24, 1867.
James P. Sterrett, November 4, 1862—March 12, 1877.
Edwin H. Stowe, December 1, 1862—January 5, 1903.
Frederick H. Collier, December 6, 1869—October 29, 1906.
John M. Kirkpatrick, December 6, 1869—October 1, 1885.
J. W. F. White, January 6, 1873—November 5, 1900.
Thomas Ewing, December 1, 1873—May 9, 1897.
Charles S. Fetterman, March 21, 1877—January 7, 1878.
Christopher Magee, October 7, 1885—January 7, 1907.
Jacob F. Slagle, January 2, 1888—September 6, 1900.
John M. Kennedy, May 27, 1891—January 1, 1912.
Samuel A. McClung, May 27, 1891—December 1, 1908.
William D. Porter, May 27, 1891—August 1, 1898.
John D. Shafer, June 15, 1897—October 12, 1926.
John A. Evans, September 5, 1898—April 30, 1930.

Elliott Rodgers, January 30, 1901—March 4, 1905.
James R. Macfarlane, January 5, 1903—January 1, 1934.
James S. Young, March 14, 1905—February 1, 1908.
Joseph M. Swearingen, April 9, 1907—October 11, 1932. Retired subject to call and died March 27, 1937, while in commission.
Thomas D. Carnahan, April 9, 1907—October 24, 1930.
Josiah Cohen, April 9, 1907—June 11, 1930.
John C. Haymaker, February 1, 1908—October 29, 1925.
Livingston L. Davis, December 3, 1908—December 17, 1917.
Ambrose B. Reid, January 1, 1912. In commission.
Charles H. Kline, March 24, 1919—January 4, 1926.
Stephen Stone, March 24, 1919—December 12, 1922.
Howard W. Douglas, January 2, 1922—September 4, 1925.
ROSTER OF THE LAW JUDGES OF THE DISTRICT COURT OF ALLEGHENY COUNTY, 1833–1873

Robert C. Grier, May 2, 1833-January 1, 1846.
Trevanion B. Dallas, June 4, 1839—April 7, 1841.
Charles Shaler, January 5, 1824—May 4, 1835.
Hopewell Hepburn, September 14, 1844—November 3, 1851.
Walter H. Lowrie, August 4, 1846—December 1, 1851.

Walter Forward, October 10, 1851—November 24, 1852.
Henry W. Williams, . . . 1851—October 26, 1868.
Peter C. Shannan, November 27, 1852—December 5, 1853.
Moses Hampton, December 5, 1853—January 5, 1874.
John M. Kirkpatrick, November 21, 1868—October 1, 1885.

This and the foregoing roster, compiled by the author and first published in the Pittsburgh Legal Journal, October 14, 1939, are based on data obtained from the office of the secretary of the commonwealth, The Twentieth Century Bench and Bar of Pennsylvania (Chicago, 1903), and the files of the Pittsburgh Legal Journal. The names of the judges of the former Common Pleas Courts Nos. 1, 2, 3, and 4 appear in the chronological order in which they became members of those courts and not in the order of their seniority among all the judges.