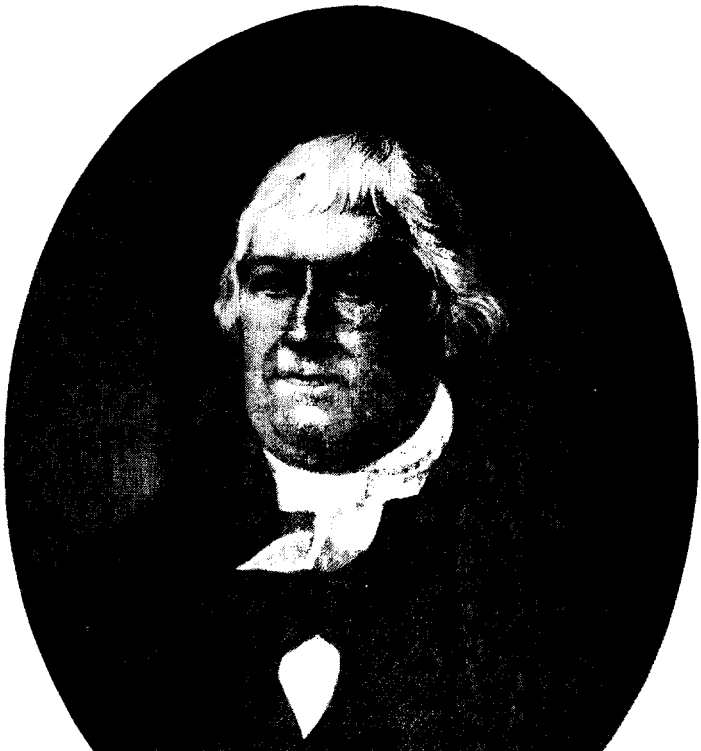

HON. JASPER YEATES

Born in Philadelphia, April 7, 1745. Received Bachelor of Arts and Master of Arts degrees from College of Philadelphia. Admitted to the Bar in 1765. Married in 1767 Sarah Burd, daughter of Colonel James Burd and Sarah Shippen Burd. Chairman of Committee of Correspondence of Lancaster County in 1776. Delegate from Lancaster County to Constitutional Convention of 1787. Commissioned Justice of Pennsylvania Supreme Court in 1791. Died at Lancaster, March 14, 1817.

THE LAW IN JUDGE JASPER YEATES'S LIBRARY

Jasper Yeates' law library consists of one thousand and forty-three volumes and was an almost complete collection of works on legal subjects in existence at the time of his death in 1817. The library represented a cost of $2,772, according to a catalogue made by Judge Yeates in 1816, an extraordinary amount in relation to Judge Yeates' salary of $4.00 a day as a Justice of the Supreme Court of Pennsylvania, an office he held from 1791 until his death in 1817. Judge Landis, in a paper on Judge Yeates, states that he had the largest law library of anyone living in the vicinity of his home.

An indication of the value of the library was the will of Catharine Yeates, a daughter of the Judge, wherein she expressed a desire that the library should be preserved, setting apart a sum to pay for its preservation.

Why did a Colonial lawyer and Judge import from Dublin and London almost every law book in existence, books in English, Latin and French; second hand books, new volumes, everything printed on the subject? Books by Bacon, Blackstone, Coke, Croke and Chitty? The law of gaming, of infants, on tenures, Justinian's Institutes, Johnson's Dictionary, a legal French Dictionary, the laws of Jamaica. Rolle's Abridgment, Stevens' Spanish Dictionary, Smith's Wealth of Nations, and Women's Rights in 1632. True, he was a busy lawyer, his appearance having been entered in 5,279 cases in Lancaster County, according to Judge Landis. But the real answer lies in a statute of the Commonwealth passed at the beginning of the Revolution on January 28th, 1777 which provided that all laws enacted by the King became of no force and effect; re-enacted all the laws of the general assembly in force on May 14, 1776 and provided that the common law and such of the statute laws of England as were theretofore in force were effective except those that conflicted with the Constitution of the Commonwealth.

This law would establish the need for all the English books on statutes and common law. The words "as were theretofore in force" establish a greater need for an English law library because, as Judge Yeates stated in Carson v. Blazer 2 Binney 484 in 1810 (in a case regarding a shad fishery in the Susquehanna river for damages of $200.00 for taking 1000 shad): "But the uniform idea has ever been, that only such parts of the common law as were applicable to our local situation have been received in our government. The principle is self-evident. The adoption of a different rule would, in the language of Sir Dudley Ryder, resemble the unskilled physician who prescribes the same remedy to every species of disease."

Today a Pennsylvania lawyer can find all the statute law in Purdon's Pennsylvania Statutes Annotated. If he can trail his way through the Index he is quite sure that certain statutes do or do not govern a situation. Again, in the opinions of the Supreme and Superior courts, he can find case law on almost any situation with which he is confronted. When the lawyer of today finds statute or case law that fits his situation he can advise his client as to the outcome of a problem with some certainty.

Under the Act of 1777 the Colonial lawyer, having found the law that governed his problem, was confronted with a greater problem — was it the law? Was it a statute theretofore in force? Was his case law theretofore in force? If neither statute nor case law was theretofore in force, what was the law? Was there common law in England that fit the situation? Should it be adopted here? Lawyers today may fret about myriad statutes, about volume after volume of case law being added to the store of decided cases, but his lot is better than his predecessor — the modern lawyer can generally find the law — the Colonial lawyer had to make his law in every case.

By 1807 the words "as theretofore were in force" had created such confusion that an Act of Assembly was passed requiring the Justices of the Supreme Court to report to the Legislature what English statutes had been in force before 1777. The Judges' report states that this simple statute required them to retrace the law from the time William Penn, who, by his Charter, was empowered to make all laws, but who, until he so acted, was enjoined to have the statutes of England in effect.

Again the doctrine of the unskilled physician comes into play, for even in Penn's time it was recognized that "it is a true principle of colonization, that emigrants from the mother country carry with them such laws as are useful in their new situation, and none other." (Report of Judges 3 Binney 596) Consequently not all English statutes were used.

The Judges therefore examined the statute laws of England from the beginning to the time of William Penn and deliberated which of them were proper to be adopted. They then examined all the statutes of Colonial Pennsylvania to find those which amended such English statutes and also the case law to find the judicial interpretation of the English statutes.

Further, although no English statute enacted since the settlement of Pennsylvania was considered to be effective here, nevertheless, some had been considered adopted from long practice.

This monumental task was completed between April 7, 1807 and December 14, 1808. The report reviews statutes from the 9th year of Henry III's reign to the 11th year of George II. Among other things, it recommends the incorporation of a statute that "The Day of the Leap Year and the day before shall be holden for one day." Hurried research shows no repeal of this statute and it may be that by law in this state, February 29th is illegal and does not exist.

Nor can I find the fate of most of the remainder of the statutes. I suspect, from their context, that many have been repealed for inconsistency with later Pennsylvania statutes. However, in Tollinger Estate in the Supreme Court of Pennsylvania in 1944 (349 Pa. 393), Paul Mueller successfully contended that the statute of 43 Elizabeth C. 4 (1601) was still in force in this commonwealth as part of our common law and its definition of a charity still a part of our law.

Here then was one great need for the law in Judge Yeates' extensive library.

The task involved in the statutes was simple compared to the task involved in determining what parts of the common law "were theretofore adopted." In effect, we had no settled law in Pennsylvania because in every case that arose it was contended on one side that the common law of England was in effect and, on the other side, the argument was made that the common law did not suit our circumstances. Our judges were therefore forced to review the common law of England and, bit by bit, to weave a new network of law from the old where the old suited and to make new law where the old did not suit. This task required not only a knowledge of the principles of common law but a knowledge of its growth, the original reasons for the adoption of the rules and the philosophy of the common law — which is by one definition, reason dealing by the light of experience with human affairs.

Perhaps a second definition of the common law will throw more light on the task of the judges. Under the common law neither the stiff rule of a long antiquity, on the one hand, nor, on the other, the sudden changes of a present arbitrary power, are allowed ascendency; but under the sanction of a constitutional government, each of these is set off against the other; so that the will of the people, as it is gathered both from long established custom and from the expression of legislative power, gradually forms a system — just, because it is the deliberate will of a free people — stable, because it is the growth of centuries — progressive, because it is amenable to the constant revision of the people.

The judges, then, had to form a new system of law from such of the common and statute laws of England as fit our circumstances and had been adopted in the past as suitable; and from the statutes passed by the General Assembly before May 14, 1776.

Nor were the times without great hazard for the judges. One of the books in the Judge's library is the "Report of the Trial and Acquittal of Edward Shippen, Jasper Yeates and Thomas Smith, Justices of the Supreme Court of Pennsylvania on an Impeachment before the Senate of the Commonwealth" in January 1805. The report is made by William Hamilton, editor of the **Lancaster Journal** and published in Lancaster. It was a book relished by the Judge because it is full of underscorings, annotations and marginal exclamation points and rightly so because the case established the right of the judges to punish for contempt of court, a right which the court had by common law. The case was tried in Lancaster, the trial lasting from January 7, 1805 until January 27, 1805 when the judges were acquitted by a vote of 13 guilty, 11 not guilty, two-thirds being required for conviction. Although the pleadings and testimony occupy only 123 pages of the report, the arguments of counsel occupy 368 pages. The prosecution attacked not only the right of the judges to punish for contempt but the adoption of any common law in this state. Arguments of counsel were heard from January 12th to January 27th. A cursory examination of the arguments finds quotations from Shakespeare's Henry IV — 2nd part — Act V Scene VI, and long passages quoted in French. I wonder what effect the French had on the members of the Senate. Law books were introduced in volume and as Mr. Baileau, who was not a lawyer but the manager of trial for the House of Representatives and who presented an argument stated: "When, sir, I behold the mass of common law books under which the floor of the House groans, I am reminded of the giants of old, piling

mountains upon mountains in order to reach the skies and hurl Jupiter from his throne." I feel certain that many of the books in the Judge's library were present in that mass of common law books.

This case established the right of the Court to summarily imprison a person for a contempt committed out of the presence of the court. In 1836 (17 P.S. Sect. 2041 et seq.) the Legislature defined the powers of the courts as to contempts and withdrew the power given to the courts by this case, substituting therefore both a criminal and civil liability.

This paper has presented so far the role played by Judge Yeates' law library in the development of the substantive law in our commonwealth.

I propose to devote the remainder of this paper to a more colorful and lively subject — a comparison of trial by jury in England as it existed in Colonial times and the trial by jury as it has been fashioned in our commonwealth. It will appear that in many instances we follow ancient formulas verbatim, that in others we retain the formulas as mere words of hocus pocus. Also, we will find ancient precedents for many modern practices.

Oyez! Oyez! Oyez! All manner of persons having anything here to do before the Honorable, the Court of Common Pleas of the County of Lancaster now holding and composing Courts of Oyer and Terminer and Quarter Sessions of the Peace in and for the said County, may at present appear and they will be heard. God save the Commonwealth and this Honorable Court! This is the court cry used in Lancaster County today and is almost an exact copy of the cry in the Instructions to the Clerk of Assizes[1] found in a book of that name printed in 1681. Here then we still declare publicly and frequently one of the ancient rights of the people reaffirmed in the eleventh section of the Bill of Rights in our Constitution: that "all courts shall be open, and every man for an injury done to him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay." But we have copied only a small part of the ceremony of opening a court.

From the same book, we find the following description of the ceremony at the opening of an English court:

"When the Judges set forth for that County, the Sheriff sends his Bailiff[2] to the edge of the County to bring them the best way to that place where the Assize for that county is to be held, and before they come thither, the Sheriff, attended with his Under Sheriff, and Bailiffs, with their white Staves[3] and his Livery-men with their Halberds[4] in their hands, and accompanied with the Chief of the gentry of the County do wait upon the Judges at the usual place, and conduct them from thence to their lodgings at the Town where the Assizes be appointed to be held."

"When the Judges have reposed themselves at their lodgings, and the Gentry have paid their respects to them, and they have put on their robes; then the Sheriff covered, with his white staff in hand, attended by the Under-Sheriff bare-headed, and his bailiffs uncovered, with their white staves in their hands, and his Livery-men, uncovered, with their Halberds in their hands, two by two on foot, wait on the Judges from their lodgings to Church, where the Minister of the Parish reads

Prayers and the Sheriff's Chaplain gives them a Sermon, and when that is done, the Sheriff waits on them in the same manner from Church to the usual place appointed for holding the Assizes or General Gaol delivery for that County."

On arrival at the courthouse, the Clerk of Assize reads the commissions from the King and at the end is directed to say,

"GOD SAVE THE KING"

and the Crier is enjoined to repeat the same in a loud voice.

Then the Clerk shall cause the Cryer to make another Proclamation (the familiar Oyez!) and say after him:

"My Lords, the King's Justices do straitly charge and command all manner of persons that none dare be so hardy or presume to raise or inhaunce the prizes of Victuals or Horse-meat to greater value than they were at before the coming of the King's Justices upon pain of imprisonment."

This was necessary because the arrival of the Justices overtaxed the facilities of the town since there was a roll call of the Justices of the Peace, the Mayors of the Boroughs, the Coroners, and the Stewards of Lects and Liberties, who were fined for failure to attend.

After this the grand Jury was polled and instructed by the Justices in the laws. This was no casual direction but a minute review of all the criminal laws. These laws were divided into three parts:

1. Those delinquents that offend the health of your Souls, and their offenses extend against God and His Church. Such offenses included witchcraft and the striking or drawing of any weapon in any Church or Churchyard. The penalty for the latter was the loss of an ear, or, if both ears had been previously lost, by being stigmatized in the right cheek by a hot iron with the letter "F" for Fraymaker.

2. Those delinquents that offend against the health of your Head and these offenses extend against the King and his Government which include breach of the peace and offenses against common justice such as petty treason, murder, manslaughter, burglary, robbery, and those who transport sheep alive out of the King's dominions (the penalty for this was the loss of the left hand). The latter offense about sheep was designed either to keep other countries from entering the weaving trade for which England was even then famous or to keep all the wool in England for warmth against the climate.

3. The third class of delinquents was that class which offended the health of the Body and these offenses extend against the people and their Quiet. Again the woolen business is protected for in this class of crimes is included the crime of burying a corpse in anything other than woolen or lining a coffin with any thing other than what has been made of sheeps wool. Obviously it was felt that all Englishmen were headed for the rarefied and cooler climate of Heaven.

The Court was ready to hear cases now. The jurors were assembled to do their duty. And this was no light task for it was provided that "There is a maxim and old custom in the law that a jury shall not eat or drink after they be sworn till they have given their verdict, without the assent of the Justices. But with assent of the Justices, they may both eat and drink; and if any of the Jurors fall sick before they be agreed upon their verdict, so sore that he may not commune of the

verdict, then by assent of the Justices he may have meat or drink and also such other things as be necessary for him; his fellows, also, at their own cost."

"After giving their verdict they may eat and drink at the expense of the winning party and it will not void the verdict."

These prohibitions were carried out for in the case of Munson v. West, two jurors who ate some figs before arriving at a verdict were fined 5£ and three who had pippins but had not eaten them were fined 40s.

But Judge Yeates in M'Causland's Lessee v. M'Causland 6 Binney 371, tried at Lancaster, found that if jurors eat or drink at the charge of him for whom the verdict is given, before they are agreed on the verdict, that verdict is avoided and he cites the same book from which my quotation is taken.

Another reason for a new trial in that case was that Herman Skiles and two others of the jurors, threatened to throw three others of the jury, who dissented from them in opinion, out of the window of the second story of the Court House, where they were deliberating on their verdict, unless the dissenters would agree to find a verdict for the plaintiff.

Several years ago Lancaster County was very proud of a book of instructions which was compiled and is distributed to all jurors to aid them in the discharge of their office. I was, therefore, chagrined to find in Judge Yeates' library a book called "The Englishman's Right" by Sir John Howles, Knight Solicitor General to the late King William (London 1771) first printed in 1680 and reprinted in 1752, 1763, 1764, and 1770 which is a book of instructions to jurors.

The book is a dialogue and the opening lines are quoted to show that no change in jurors has taken place since 1680.

BARRISTER

My old client! A good morning to you! Whither so fast? You seem intent upon some important affair.

JURYMAN

Worthy Sir! I am glad to see you thus opportunely, there being scarce any person that I could at this time rather have wished to meet with.

BARRISTER

I shall esteem myself happy if in anything I can serve you. The business, I pray?

JURYMAN

I am summoned to appear upon a jury and was just going to try if I could get off. Now I doubt not but you can put me into the best way to obtain that favor.

BARRISTER

It is probable I could!

The barrister then declines to have the juror excused and instead delivers a learned lecture on the history of trial by jury and the office and just privileges of jurors. He states in his review of the history of trial by jury that the Saxon King Alfred caused four and forty justices to be hanged in one year as murderers for their false judgments.

As to jurors, he states that they have the right and ought to ask questions without leave of court and that they should take notes. Our present book for jurors does not make these statements.

The barrister further states that the jurors are the judges of law as well as facts and cites as authority for this statement the trial of William Penn in London in September 1670 when Penn was tried for preaching to an unlawful assembly in Gracechurch Street.

The jury in that case returned a verdict of "Guilty of Speaking in Grace-Church Street" which the judge refused. The jury was held from Saturday to Monday when they brought in a verdict of "Not Guilty" and the court then fined each juror 40 marks and imprisoned him. Edward Bushel thereupon obtained a habeas corpus and they were finally released, although it was argued that the imprisonment was just since they went against the direction of the court.

The court now having a panel of jurors is ready to try the first criminal case.

The criminal has been apprehended by raising the hue and cry. This was the legal name for the alarm which, when sounded, turned everyone into a policeman in pursuit of the criminal. This hue and cry was raised from town to town as the criminal fled, until all in England were policemen in successively larger circles until the criminal was caught or the last circle of the hue and cry disappeared into the ocean surrounding the British Isles.

This chase of the criminal was not a sporting matter. It was done under pain of paying the damages of the person harmed by the crime for failure to take an active part in the pursuit.

The prisoner, when captured, was generally held in jail by the Sheriff who was limited in the accommodations offered by a statute which provided that "No prisoners shall pay Chamber-rent in the King's Bench or Fleet Prisons longer than while they are actually in possession of such Chambers and not above 2s.6p. per week" and by a further statute which provided that "No Sheriff, Bailiff etc. to carry any under arrest to any Tavern, Ale-House, or other public Drinking-House, without his consent; so as to charge him with any Beer, Ale, Wine, etc., but what he shall freely call for: Nor demand or receive from him for the Arrest or Waiting than by law ought to be . . . ."

Assuming that the prisoner survived this treatment until trial or obtained bail, he was then brought before the Justices and arraigned.

If the prisoner pleaded not guilty he was then asked how he would be tried, because in England there were numerous kinds of trial besides a trial by jury.

They include trials by Certificate,[5] by Spiritual law,[6] by Battel, by Almanack,[7] by examination of Attorney or Sheriff,[8] by Wager of Law,[9] or by Ordeal. In all these trials, the sole judge of the law and facts was God.

A trial by Battel, if chosen, was allowed if the party accused was not sixty years old and of sound limbs. The accused party and an opposing champion were armed with staves and if the accused could defend himself until the stars came out, he was set free.

The Ordeal was a series of hot iron bars over which the defendant ran three times and, if the course was completed without stop or fall, he was acquitted. The

iron bars were used for freemen. For meaner persons, called Rusticus, vessels of scalding water were substituted.

The belief that trials by battel, ordeal and the other trials of similar nature would produce the truth was based on a theory that God would protect a truthful man and save him from unjust punishment.

To ask for such a trial, the prisoner replied that he be tried "by God."

Thus God was the jury in all these cases. But if the prisoner chose to be tried by a jury, God was not completely put aside. He was merely helped by twelve jurors because the prisoner asking for a trial by jury replies to the question of how he would be tried, "By God and my country." Thus, a trial by jury was in reality a trial by a jury of twelve (the country) and by God.

There is more religious significance in trials by jury. The number twelve for jurors was chosen because there were twelve apostles, twelve tribes of Israel, and twelve officers of Solomon.

In reading the reports of early trials in England, the records are replete with calls by both parties to God as their witness, with exhortations by the judges on the terrors of Hell which awaited the liar and the solemn prayer of the judges atfer passing the sentence of death "May God have mercy on your soul."

Religion played a great part in early trials by jury. Has our revolution from England and the divorcement of the Church and State affected our trial by jury? Have we adopted only the trial by country and not the trial by God? Shortly after the revolution we tried to hide the functions of God in our trials, believing that was separating religion and the state. Trials today are conducted without religious significance, but Edward Gibbs in his recent murder trial still requested a trial "By God and my country"; witnesses are sworn on Bibles, and jurors are sworn to try the case.

Nor does the Constitution of Pennsylvania completely divorce God. In Art. I Sect. 3 the rights of conscience and freedom of religious worship are preserved, but Art. I Sect. 4 provides "No person who acknowledges the being of a God, and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under the Commonwealth. A similar provision has appeared in our earlier constitutions. Further, the courts of Pennsylvania have found that Christianity is a part of the common law of Pennsylvania.

Finally, all trials are based on oaths and an oath is a calling on God to witness what is averred as truth.

Historically, God is an important element in trial by jury and I believe is still an important element. In our efforts to grant men freedom of religious worship and to divorce religion and the state, of which the judicial system is a part, we have slighted a great force for truth. If witnesses and parties to actions do not believe in retribution of some nature other than the penalties of perjury for evasion of the truth and false swearing, then trial by jury will be not as effective; because the cleverness of lawyers in cross-examination cannot be as effective in gaining the truth as the belief that false swearing will bring punishment to men's souls. I believe that we should substitute for the phrase "trial by jury" the proper historical phrase "trial by God and jury."

For several centuries man has become more careless of his soul, fearing Hell less, and disregarding the rewards of Heaven more in his pursuit of material pleasures and comforts. I do not know whether the elimination of God from the jury is a result of this trend or whether we hastened the trend in Pennsylvania.

There is an interesting variation in the common law trial by God and jury which demonstrates the quest of the law for justice.

If a foreigner was to be tried by English courts, then the jury was to be composed half of Englishmen and half of foreigners of the country of the alien party. However, if the alien was a Spaniard, then the other six foreigners were not limited to Spaniards but any alien would do. For reasons unknown to me, any Egyptian was not entitled to this privilege. However, if both parties to the matter were foreigners then the whole jury was English on the theory that the jury would not favor either side — much like the absolute impartiality obtained in the South when a negro sues a railroad company.

The practice of putting foreigners on the jury was adopted here and recognized in Respublica v. Mescal Dallas 73 in 1783 but since all the citizens of the United States at that time were essentially foreigners the practice must not have been practical and the special jury for foreigners was abolished by statute in 1834 (17 PS Sect. 911).

Women served on juries early in the history of jury trials, — their special function being to determine whether a convicted woman felon was quick with a quick child. If she was so found, the sentence of death was delayed until the child was born. This privilege was abused and it was necessary to add to the statute the provision that no woman could make this plea again after the first child was born and if she did so the Sheriff was fined for keeping her so slackly.

Now comes the verdict. If the prisoner was found "Not Guilty" of a crime of Life and Death, he was ordered thus by the crier:

"Down upon your knees, and say, 'God save the King and this Honorable Bench.' "

If the verdict was "guilty" the crier called, "Look to him Gaoler."

By the statute of 1 William & Mary Sessions 2c2 (about 1690) it is provided "That excessive Bail ought not to be required nor excessive fines imposed nor cruel and unjust punishment inflicted.

Identical language appears in all our Constitutions from 1776 onward. But so that you may see the difference in the meaning of words as they are applied at various stages of history, I cite the sentence of execution given to Sir Walter Raleigh after his conviction of high treason in 1603, less than a hundred years before the statute.

"That he shall be led back again to the place from whence he came, and from thence shall be drawn upon a hurdle to the place of execution and there shall be hanged by the neck and then shall be cut down alive and his entrails shall be cut from his body and shall be burned in his sight, and his head shall be cut off and his body shall be divided in four parts and shall be disposed at the King's pleasure." "Drawn and quartered" is a phrase we use glibly today forgetting its origin in the sentence above. I add that Sir Walter was imprisoned for fourteen years after the

sentence was imposed, then by some magic commanded an expedition to Guiana on promise of discovering a gold mine and, returning empty handed, was resentenced to die by the more humane method of having his head chopped off. This reduction in sentence so relieved him that he was able to feel the sharpness of the axe and remark, "This is sharp medicine for my ills, but a certain cure."

English courts had wide powers in many fields. At each sitting of the court the prices of soap, ale, and beer were set by the Justices, a precedent overlooked in the recent war and the O.P.A.

They also had powers in the field of labor relations — decreeing each quarter the wages of servants and laborers. Further a master could not discharge a servant before the end of the term without a quarter's notice on pain of a fine of 40s. Nor could the master give greater wages than that decreed under pain of a fine of 5£. On the other hand, servants who refused to work at the wages assessed or who quit before the end of the term, or, at the end thereof, without a quarter's warning, were imprisoned.

Quality control was provided by a statute penalizing any person who used any mystery or art not having served an apprenticeship.

Buying and selling was regulated as witness the definitions of these criminals:

A forestaller was a person who buys goods before they get to the public market.

An engrosser was a person who buys corn or grain with intent to sell the same again.

A regrator was a person who has bought or sold in the same market or a market without four miles.

Nor could butchers, brewers, bakers, poulterers or cooks all agree to sell their victuals at certain prices, such a conspiracy being punishable by a fine of 10£.

Our Amish and Mennonites have a system of self insurance in their mutual barn raisings, but the English were not to be outdone. It was provided in that country that if any person has sustained so great damage by fire or other casualty that he must fall to beggary and want, then he may petition the court for a Certificate to the Lord Chancellor in order to obtain His Majesty's Letters Patent for a collection to repair his loss. On proof of his loss and the filing of a bond that the fund collected shall not be diverted, Letters Patent for a collection were granted.

The Court also acted as a Board of Health and in time of plague stopped the movement of household goods into town; prohibited public meetings; ordered the streets cleaned; stables moved out of town; and fires in moveable pans burned in the churches and convenient fumes to correct the air therein be burned; that swine, dogs, cats or tame pigeons be confined; and provided for the erection of pest houses.

If someone fell ill in a house that person was removed to the pest house and the house and remaining occupants shut off; a Red Cross and the words "Lord have mercy on us" affixed to the door and warders were appointed, not only to keep the quarantine, but to provide food and drink for the shut-ins.

After forty days the house was opened, a White Cross affixed thereto and the house well fumed, washed and whited all over with lime.

These are some of the things to be found in Judge Yeates' library. You may read there the verbatim report of the trial of Sir Walter Raleigh, Mary Queen of Scots, and many others for high treason (a common crime in a monarchy, but one almost eliminated in a democracy where views repugnant to the ruling party are most freely expressed); you may read there the rules of merchants regulating checks and bills and notes by custom since the law had not until later adopted these rules as law; you may read there the Doomsday books, the law of Gambling and, as our sale bills always conclude, many other books too numerous to mention.

It seems appropriate now to revive a proclamation of the Courts of England discarded in this country because our courts sit continuously and are always open:

Oyez! Oyez! Oyez!

All manner of Persons, that have anything more to do at this present Quarter-Sessions of the Peace, Holden before his Majesty's Justices of the Peace for this County of Lancaster, may depart hence at this time, and keep their Day again here, or elsewhere upon a new Summons.

GOD SAVE THE KING

Lancaster, Pennsylvania JOHN B. RENGIER

NOTES

[1] Clerk of Assizes had duties similar to modern clerks of court. The periodical sessions of the judges of the superior courts in English counties for the purpose of administering justice in the trial and determination of civil and criminal cases are Assizes.

[2] Bailiff was a sheriff's deputy or subordinate.

[3] The white staff was a symbol of authority carried by certain officers of the court, and particularly, those attached to the English Lord High Treasurer.

[4] Halberds were long-handled weapons with pointed, ax-like heads. Tipstaves now perform the duties of preserving order at the court.

[5] **Trial by certificate** is a trial in which the issue is determined by the testimony of a person certifying to what is peculiarly within his knowledge, as of an officer that a soldier is absent from the army.

[6] **Trial by spiritual law** is a trial by the Bishops of the Church in cases in which they at one time had jurisdiction, such as bastardy, the right of espousals, divorce, etc.

[7] **Trial by almanack** is defined in Trials per Pais, as follows:

"It seems an almanack (like our Baer's almanac) is so infallible, that it hath countervailed the verdict of a jury. For in error of a judgment given in Lynne, the error assigned was that the judgment was given at a court held there on the 16th day of February, 26 Eliz. and that this day was Sunday, and it was so found by examination of the almanacks of that year: Upon which it was ruled, that this examination was a sufficient trial, and that a trial by country, was not necessary."

[8] **Trial by examination of attorney and sheriff** was held in cases where the issue hinged on knowledge solely within the minds of an attorney or a sheriff and the case was decided finally without a jury, solely on the statement of the attorney or sheriff.

[9] **Trial by wager of law** is the act of a party having the negative, usually the defendant, in an action in giving a pledge, or in binding himself, to resort to and abide the event of an attempt to prove his case by the oath of himself and the required number of oath helpers, or compurgators.

ABOUT THE AUTHOR

John Rengier is a graduate of Franklin and Marshall College and University of Pennsylvania Law School. He was admitted to the Bar of Lancaster County in 1936, and is associated with the law firm of Rengier and Musser. His numerous civic responsibilities include serving as president of The James Buchanan Foundation for the Preservation of Wheatland, secretary of the Lancaster Heart Association, and is a trustee of the Henry G. Long Asylum. Mr. Rengier is secretary of the Lancaster Bar Association.