

The Courts of

Lancaster County: 1729-1791

By John Ward Willson Loose

When Pennsylvania's Constitution of 1790 became effective in 1791, Lancaster County, along with other counties of the Commonwealth, was provided with a new judicial system. An enabling Act of 13 April 1791 required among other things that the state be divided into districts or circuits, and that in and for each district "a person of knowledge and integrity, *skilled in the laws*, shall be appointed and commissioned by the Governor to be President and Judge of the Courts of Common Pleas within such district or circuit, and that a number of other proper persons, not fewer than three, nor more than four, shall be appointed and commissioned Judges of the Courts of Common Pleas in and for each and every of the counties of this commonwealth. . . ." The president judge was to be "learned in the law," that is he must have read law under the tutelage of an experienced lawyer or attended law school prior to demonstrating his competence enabling him to practice before the county court. The "other proper" persons were known as associate judges; they were not required to be trained in the law, but they were expected to be persons regarded by their peers as having qualities of humanness, mercy, understanding, integrity, high intelligence, and balanced temperament—all qualities that have been traditional for those chosen to occupy the Lancaster County bench. The bicentennial of the judiciary in Lancaster County under the Constitution of 1790 will be observed with appropriate ceremony in 1991.

Inasmuch as Lancaster County was established in May 1729, and the first court session was held in August of that year, the question may arise, "How

was justice administered between 1729 and 1791?" It is the purpose of this essay to explain how the court functioned and the quality of its leadership during those 62 years.

When the English colonists arrived here, they brought with them the English system of seeking justice. Evolving over many centuries, the English judicial system, now adapted to American needs and conditions, continues to characterize our local systems of justice. It is a fascinating story, but one that need not concern us here other than the part that answers the question, "Who were the judges of the county court between 1729 and 1791, and how did they accomplish their mission?"

Prior to the Norman Conquest in 1066, the Anglo-Saxons in Britain were known to use "conservators of the peace" to detect signs of impending disorder and to put down disturbances. While these early keepers of the peace did not have judicial functions, they acquired gradually over the years certain enforcement powers. They were elected by the people and they evidently were men of demonstrated ability in gaining the respect of the people, and earning reputations for leadership qualities, resourcefulness, and zeal in discerning who in their communities were prone to troublemaking. It would appear they had a deterring effect on those who might be inclined to wrongdoing. Prevention, therefore, was an important factor in keeping the king's peace. Keepers of the peace had to understand human nature, psychology, and possess temperaments suitable for balancing firmness with mercy. Then, as today, a successful keeper of the peace is often a rarity, and he generally is found among the more responsible members of the middle class and petty aristocracy. In early England, many persons chosen as conservators of the peace were thanes (or thegns) who, in later times, would be called squires or knights. Wrongdoers were tried before itinerant judges who travelled their circuits twice yearly. The close relationship between the keepers of the peace and the judges was an education not lost on the keepers.²

Midway through the fourteenth century, King Edward III had parliament enact a statute that ordered each English county to assign a lord and three or four of the most worthy men, some who were learned in the law, to be justices of the peace. They were to have the power to restrain rioters, offenders, and "barretors" (one who disturbs the peace by spreading rumors that create discord, who stirs up quarrels, or causes unnecessary litigation). Moreover, the statute empowered the justices of the peace to pursue, arrest, take, and "chastise" the wrongdoers according to their offenses. The justices of the peace were authorized to have them imprisoned and punished according to the law and customs of Britain. Additional responsibilities were placed upon the justices of the peace including hearing and determining guilt of persons indicted in their counties. Writs of "oyer and determiner" could be granted according to the statutes.³

The justices of the peace were to be chosen, not by party, but by the courts which were headed by the king's officers. Last, the justices were required to levy fines that were just and reasonable, having regard for the seriousness of the offense. This statute [34 Edward III] of 1360 is thought by some historians to have been enacted through the desire of King Edward III to keep his father, Edward II, imprisoned, and to thwart any attempts by his father's friends to free him. The reputation of Edward II was such that few, if any, persons of the class and standing from which justices would be drawn, would tolerate any effort to free the despised former monarch. Another theory holds

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Who shall be assigned Justices and Keepers of the Peace.

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ITEM, For the better keeping and Maintenance of the Peace, the King will, That in every County good Men and lawful, which be no Maintainers of Evil, or Barretors in the Country, shall be assigned to keep the Peace.

Enforced and amended by 4 Ed. 3. c. 2. 18 Ed. 3. Stat. 2. c. 2.

34 Ed. 3. c. 1. 32 Ricb. 2. c. 10. 13 Ricb. 2. Stat. 1. c. 7. 2 H. 5. Stat. 1. c. 4. 18 H. 6. c. 11. See farther for the Qualifications and Duty of Justices of Peace 1 Ed. 4. c. 2. 1 R. 3. c. 3. 3 H. 7. c. 1. 4 H. 7. c. 12. 1 M. Stat. 2. c. 8. 1 & 2 P. & M. c. 13. 2 & 3 P. & M. c. 10. 7 Jac. 1. c. 5. 23 Jac. 1. c. 12. 6 Geo. 1. c. 21. Stat. 10. 9 Geo. 1. c. 7. 5 Geo. 2. c. 18 & 19. 15 Geo. 2. c. 24. 16 Geo. 2. c. 18. 18 Geo. 2. c. 20. 23 Geo. 2. c. 20. Stat. 31. 24 Geo. 2. c. 44 & 55. 26 Geo. 2. c. 14 & 17. 27 Geo. 2. c. 16 & 20. and 30 Geo. 2. c. 24.

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The King Edward III statute which established "Justice and Keepers of the Peace." (See note 3)

that empowering of justices of the peace relieved much of the workload of the king's justices. Certainly as time went on, the latter became a valid reason, if not the original cause. Many of the persons chosen by the king's officers were squires, knights, and even petty nobility. The ranks of the justices of the peace were noted for their prominence and high standing in their counties.⁴

The institution of justices of the peace which evolved from the keepers of the peace eventually became a characteristic of English justice. Petty crimes and wrongdoing were handled by justices of the peace. Such trials required two or more justices sitting on the bench to act together.⁵

When William Penn drafted his "frames of government" for Pennsylvania, the English system was adopted, lock, stock, and barrel. County courts were established with justices of the peace holding sessions quarterly (hence "quarter sessions of the peace court"). Not only summary offenses, misdemeanors, and lesser felonies were heard by the justices of the peace, but the justices were given administrative duties such as overseeing the opening of roads and bridges, care of the poor, and supervision of the constables. They were responsible for county property and buildings.⁶

The first justices of the peace assigned to Lancaster County were John Wright, Thomas Read, Tobias Hendricks, Andrew Cornish, and Samuel Jones. Wright was the presiding justice, a position he held until May 1741. Wright,

Hendricks, and Cornish had been justices in Chester County prior to the erection of Lancaster County, Wright having served since 1717. Cornish and Hendricks had been appointed in Chester County in 1724. All were Quakers, or members of the Religious Society of Friends. At the November session of 1729, Andrew Galbraith and Thomas Edwards were added as justices. Edwards was appointed a Chester County justice in 1713.

From time to time the Pennsylvania Supreme Council and Assembly enacted laws and supplements thereto which provided additional justices of the peace and regulated their jurisdiction. An Act of the General Assembly of 22 May 1722 provided for organization of "Courts of General Quarter Sessions of the Peace and Gaol Delivery and of Common Pleas." It stated each county should have a "competent" number of justices, nominated and authorized by the governor or lieutenant governor, which said justices or any three of them shall and may hold the said General Sessions of the Peace and General Jail Delivery according to law, and as "fully and effectually as any Justice of the Peace, Justices of the Assize, Justices of Oyer and Terminer, or of General Gaol Delivery may or can do." Another section of the same Act provided for the justices of the peace "to hold Courts of Common Pleas, i.e. pleas of assizes, *scire facias*, replevins, and hear and determine all and all manner of pleas, actions, suits, and causes, civil, personal, real and mixed." Between 1727 and 1731 the General Assembly changed its mind several times, and in the latter year decided the Act of 1722 should stand.⁷

A supplement to the 1722 Act was passed on 29 September 1757 which set the number of justices in each county at a maximum of five, with any three empowered to act as a Court. This supplement also named the county court as "The County Court of Common Pleas."⁸

Upon declaring our independence, Pennsylvania adopted the radical Constitution of 1776 which required that the "Courts of Quarter Sessions and Gaol Delivery, and Courts of Petty Sessions, Courts of Common Pleas, Orphans' Courts and Supreme Courts, Courts of Oyer and Terminer and General Gaol Delivery, shall be held and kept in each respective county . . . by the justices and judges hereafter elected and appointed."

In the 1760s the commissions for the justices assigned them to specific courts, i.e., Assizes, Oyer and Terminer and General Jail Delivery, Common Pleas, and Orphans' courts. General commissions also were given, enabling the justices of the peace to serve in any of the courts held within their respective counties. On 31 March 1777, nineteen justices of the peace were commissioned for Lancaster County, and all were given general commissions. Three or more of them were required to act in concert for trying cases. On 18 November 1780, William Henry, who had distinguished himself as a patriot and manufacturer of guns during the American Revolution, was commissioned "President of the Court of Common Pleas; Court of Quarter Sessions, Oyer, Terminer and General Jail Delivery; and of the Orphans' Court of Lancaster County"

These presiding officials were "Presidents of the Courts," not "President Judges" as the presiding judge was termed after the implementation of the 1790 Constitution. Justices of the peace, however, were retained as the minor judiciary in the local municipalities. That office continued in Pennsylvania until the Constitution of 1968 revised the judiciary. Those elected to that office now are called "district justices," and they are required to undergo special training and to demonstrate competence prior to being elected.

Presidents of the Lancaster County Courts

Lancaster County was served well by its early justices of the peace sitting in court. Most of the men appointed were exceptional citizens. Several had legal training. The "Presidents of the Court," in particular were outstanding jurists. Their lack of formal schooling in the law did not seem to affect the quality of their work, owing, perhaps, to their legislative careers in which the local justices found themselves assigned to committees to make rules for and to revise the judiciary. All had earned the trust and respect of their fellow citizens, and many had served in the Pennsylvania Assembly as lawmakers.

John Wright

John Wright, the first "President of the Court," had the honor of naming Lancaster County. Born in Lancashire, England, Wright wished to become a physician but his father, a bodicemaker, apprenticed the lad to learn that trade. He was a member of the Religious Society of Friends who are known as Quakers. He came to Pennsylvania and settled at Upland (now Chester), which then was the seat of Chester County. His public career began in 1718 when he was appointed a justice of the peace for Chester County, and in the same year was elected to represent Chester County in the Pennsylvania Assembly. At once Wright showed his firm convictions: he insisted on taking the affirmation without the assistance of God. He was recognized immediately for his business knowledge and logical mind. Appointed to those committees involved with tariffs, tonnages, accounts, duties, and tax collections, he soon found himself taking a leadership position in the Assembly. Colonial Pennsylvania could boast many highly intelligent men and Wright was considered to have few peers in his intellectual ability. Unfortunately for Wright, the Quaker faction—those men of "wisdom, virtue, and ability"—was defeated in 1719 owing in part to the domination of the Pennsylvania Assembly by the Philadelphia merchant elite. Wright was out of political power until 1725, when following several years of economic recession in Philadelphia, the more liberal Quakers began to regain political power. Wright once more was back in the Assembly. He then was given the task of interpreting William Penn's last will and testament, a document of incredible complexity.¹⁰

In 1725 Wright was assigned to committees that tried to solve Indian problems and settle disputes over the destruction of Indian fisheries by white settlers. Late in 1725 Wright was asked to serve on a small committee to revise the laws of Pennsylvania and compile them into one volume. After this was accomplished, Wright was assigned the task of remonstrating against the family of William Penn who were trying to interfere with the Pennsylvania government. Wright generally took the side of the people against the proprietor's family. (Although Penn and Wright were Quakers, Penn's sons and heirs were members of the Church of England and they were far less idealistic than the Founder, and they were interested in earning a goodly income from "their colony.") As a businessman, Wright worked diligently to promote trade throughout Pennsylvania. He was eager especially to permit Lancaster County farmers to make liquors out of their grains, fruits, and berries instead of trying to ship them to market as harvested. An advocate of paper money, Wright was put on a committee to revise the monetary laws of Pennsylvania. He was familiar with the problem caused by the lack of paper money which precipitated the panic of 1722. England was opposed to the emission of paper money. When his bill to issue paper money succeeded, Wright's signature appeared on the currency. He also sponsored the first "pure food" law of Pennsylvania.¹¹

On 24 August 1726, Wright was reappointed a justice of the peace (Chester County), and by this time he was living at Wright's Ferry (Columbia). The following October Wright was returned again to the Pennsylvania Assembly. During this term he served on a committee assigned to study a point of constitutional law. The dispute centered on a suit brought by a man who protested the Pennsylvania Supreme Court did not have the authority to issue original process, but could take cognizance of suits only by appeal to it. The Assembly went into a Committee of the Whole, and put Wright in the chair to preside. The issue was debated three full days with Wright's deft handling of procedure winning acclaim. The result was that the Supreme Court was denied the right to issue an original process in civil matters; in other words, the Pennsylvania Supreme Court did not have original jurisdiction in civil matters. The outcome of Wright's victory was that in 1727 he was appointed to a committee to draw up legislation establishing courts of judicature for Pennsylvania. The committee produced a bill that contained sixteen sections that defined clearly jurisdictions and set established safeguards against oppressive use of judicial authority. By this time Wright was considered one of the major judicial thinkers in the colony. He continued to serve in leadership roles in matters concerning finance and business in Pennsylvania. Wright pressed zealously for laws encouraging industry, particularly industry that used the products of the inland farmers. Late in 1727 Wright and most of the Chester County Quakers again were defeated by a resurgence of the Philadelphia mercantile elite. Wright found new problems to solve on the frontier of what was to become Lancaster County. Resident Indians and white settlers along

the Susquehanna River quarreled over land possession. Until 1736 the lands west of the Susquehanna River belonged to the Indians. (William Penn acquired Pennsylvania by charter from the British crown, but he insisted upon compensating the Indians as treaties annexing lands were executed.) That did not stop settlers from taking up land in the area between the river and the mountains. Wright found himself adjudicating, mediating, and arbitrating such disputes.¹²

All evidence points to John Wright being the individual most responsible for preparing the petition and encouraging approval for the creation of Lancaster County. He was the "Father of Lancaster County." It also appears that Wright expected to exercise power in the new county and to hold office on his terms instead of being subjected to the whims of the electorate in Chester County and the domination by Philadelphia merchants. On 20 February 1729, the governor appointed John Wright to be one of the commissioners to survey and establish the boundary line which would separate Lancaster County from Chester County. Two counter-petitions were sent to the governor who forwarded them to Wright. Opposition was to be expected. Although the German farmers of Lancaster County liked Wright, they worried that a new county would find reasons for increasing taxes. Other questions arose. Would the new county be able to suppress Indian raids? Would it be likely to increase the political power of the Scottish Presbyterians who were frustrated by the pacifism of the Quakers when defense against the Indians was required? By 2 May the survey was completed and sent to the governor. Six days later Wright was appointed presiding justice of the peace for Lancaster County, and on 5 August 1729, Wright presided over the first session of court to be held in and for Lancaster County. That first session encompassed both the Quarter Sessions of the Peace and the Common Pleas courts. On 1 October 1729, he was elected to the Pennsylvania Assembly where he resumed his various committee responsibilities. One of his first acts was to sponsor a law that enabled Pennsylvania Germans to be naturalized and to be able to hold title to land with less difficulty. Passage of the law endeared Wright to many Lancaster Countians and surely it did not harm his chances in future elections. He sponsored another bill that made the Indians happy: private individuals would not be permitted to buy land from the Indians who frequently were exploited by the worldly-wise settlers. He was reelected in 1730, but in 1732 Andrew Galbraith seemingly defeated him. Wright was stunned. He contested the election, but the Assembly decided against him. In 1733 Wright was returned to the Assembly, and in the same year was reappointed a justice of the peace. While all this was taking place, Wright was busy with the struggle known locally as "Cresap's War," a battle over the Maryland-Pennsylvania boundary, and the occupation of Lancaster County land (on the west side of the Susquehanna River) by Marylanders.¹³

Wright continued serving on major committees of the Assembly, and whenever that body and the governor had a dispute—which was often—Wright

usually was called to confront the governor. By 1741 the governor had enough of Wright, and dropped him as a justice of the peace. The record reveals an interesting sidelight: the term used in the document was "Justices of the Peace and Judges for Lancaster County." Wright apparently sensed his judicial career was about to end, so at the last Grand Inquest he addressed the jury on the use and abuse of power. The valedictory was considered so excellent that it was ordered to be published! He continued to be elected to the Assembly until 1748 when old age and illness forced him to retire. However during the 1740s he used his seat in the Assembly to have his revenge on the governor. In 1745 Wright was chosen speaker of the Assembly. His age prevented him from attending many sessions by this time. The life of John Wright was significant in the early history of Pennsylvania and Lancaster County, but it ought not obscure the fact that Wright's daughter, Susannah, was the most brilliant woman in the colonies, and had achieved recognition by the leading men of letters, philosophy, and science. Not long after his reelection in 1748 John Wright died, and lies buried in an unmarked grave in Mount Bethel Cemetery, Columbia.¹⁴

Thomas Edwards

The next person to be commissioned "President of the Court" was Thomas Edwards. Edwards was a native of Wales, and arrived in Pennsylvania in 1684 with his parents, Alexander and Margaret Edwards; and his siblings, Alexander, Jr., Bridget, Jean, Margaret and Martha. Following his father's death in 1712 and the sale of land he had inherited, Thomas acquired 800 acres near Spring Grove in East Earl Township. Although he was reared a Quaker, Edwards was more closely associated with the Church of England. He was not successful in developing his land which contained three mill sites, and eventually he was forced to give up most of his lands. Edwards had a fair education and was very competent in Latin. Upon the creation of Lancaster County, he was named a justice of the peace. At the time Edwards was fifty-six years old. The same year he was elected to the Pennsylvania Assembly, receiving the highest number of votes of the four representatives to which Lancaster County was entitled. Reelected in 1730, Edwards along with John Wright constituted a powerful force in the Assembly. Edwards and Wright served on many of the same committees. In 1731, when the tide began to turn against the Quaker element, Wright was defeated and Edwards barely succeeded in that election. Rumors had been spread that Wright and Edwards had spoken out in the Assembly against the Germans, causing that group to withdraw their usual support of the two men. Edwards continued to be reelected, winning back his popularity until the fall of 1734 when he was defeated. Meanwhile, James Hamilton, the proprietor of Lancaster townstead, had arrived on the scene, and became the "political boss." With the support of Hamilton, Edwards was returned to the Assembly in 1735, and again was put on important committees. In January

1736, Edwards was appointed to a committee to draft a law that would establish a court of equity for Pennsylvania. Prior to this, equity jurisdiction rested with the proprietor (governor) and in his deputy governors appointed by him, and at times in the Council. Inasmuch as matters in equity were handled in the executive branch rather than in the judiciary, the inappropriateness of that arrangement was recognized by Edwards. With his work on this committee in which he took a leading part, Thomas Edwards became known as the "Father of the Equity Tribunals" as a separate set of courts in Pennsylvania. The governor was not pleased by this development, and he opposed it. Edwards was appointed to defend his plan before the governor which he did forthrightly and with his customary logic and vigor. He continued serving in the Assembly where he was regarded as one of its leaders. In 1737 he was reappointed a justice of the peace, but he was defeated for his Assembly seat. Again in 1738 he met defeat and in 1739 he narrowly won back his seat in the Assembly. In 1740 he was defeated, and that marked the end of his legislative career. Wright was old, and Samuel Blunston, Wright's neighbor, had replaced him as one of Lancaster County's leading figures. In the never-ending political struggle between the Quaker Party and the Proprietor's Party in the Assembly, Thomas Edwards gradually shifted his loyalty to the governor rather than continuing to support his constituents. His popularity waned as a result.

In 1741 Governor Thomas dropped Wright and named Thomas Edwards as "President of the Court." Wright had opposed the governor's war policy. We can tell from existing records that he was a severe justice. Few opinions were written in those days, making it difficult to tell whether Edwards' sentences were in the spirit of the times or reflected the attitude of the man. We can see that as he aged he tended to become more inflexible and conservative. He served as the presiding justice until November 1757. Edwards died 8 May 1764 and was buried in the old Welsh graveyard near Terre Hill.¹⁵

Emanuel Carpenter

Emanuel Carpenter was the next presiding justice. Like Wright and Edwards, he was an active member of the Assembly, and he served on many of the same committees in which the talents of his predecessors found expression. Unlike Wright and Edwards, Carpenter (Zimmerman) was of Swiss-German background. His father, Heinrich Zimmerman, was a native of Seftigen in the Canton of Berne, Switzerland. (The name was Anglicized to Carpenter.) Heinrich was a prosperous physician. In 1710 he acquired land in what now is West Lampeter Township. In 1726 he commenced buying land in present West Earl Township. His two sons, Emanuel and Gabriel, had been born in Switzerland, but the rest of his children—Salome, Christian, Henry, Jr., Daniel, Mary, and Jacob—were born in Pennsylvania. Emanuel married Caroline Line, and they were the parents of five children, all of whom married well and became prominent in Lancaster County.¹⁶

Emanuel Carpenter was commissioned a justice of the peace in 1735, and upon the retirement of Thomas Edwards in 1757, he was commissioned "President of the Court," taking his seat as the presiding justice in February 1758. He served in this office until November 1779. During his long tenure, American Independence took place. The May Session of 1776 of the Court of General Quarter Sessions was held "in the sixteenth year of the reign of our Sovereign Lord, George the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, etc. . . . before Emanuel Carpenter, Esq., and his Associate Justices of the same Court." The August Session in 1776 dropped all mention of the king, and all proceedings were done in the name of "Pennsylvania." Carpenter's first official appointment came in May 1729 when he was named the constable for Cocalico Township. When he was commissioned a justice of the peace in 1735, his first official act was to perform the marriage ceremony of his sister, Mary Carpenter, to Daniel Ferree, Jr. Forty-one witnesses signed the marriage certificate. Carpenter's original commission from King George II was dated 1 November 1759 and stated, ". . . we have constituted and chosen our faithful Emanuel Carpenter, gentleman, presiding Judge of the Court of Common Pleas for the County of Lancaster, to hold the same for so long a time as he shall well behave himself therein." When King George III ascended the throne, all commissions were voided, and the new monarch commissioned Carpenter on 12 January 1761. On 31 March 1777 his first commission from the Commonwealth of Pennsylvania was issued, and it named him as "presiding judge." On 18 September 1770 Carpenter was issued a special commission to "hold court for the trial of Negroes only."¹⁷

Emanuel Carpenter's legislative career began in 1755 when he was elected to the Pennsylvania Assembly and he served without interruption until 1772. He could be found working in committees overseeing fiscal affairs, rights and privileges of the people, and the drafting of laws. During the French and Indian Wars, Carpenter and Benjamin Franklin were engaged busily in raising funds for the protection of Pennsylvania. Like Wright and Edwards, Carpenter was an enthusiastic supporter of paper currency. Carpenter made his most important contributions in the Assembly in his determined efforts to establish the jurisdiction of the courts, separation of powers between the executive and judicial branches, and establishing the liberties free people should enjoy. Carpenter rode to Lancaster on his horse, "Baldface," and was accompanied by his faithful dog, "Penny," at the beginning of each court session. They were a familiar sight. Between the August Session of 1777 and the August Session of 1778, Carpenter was ill. Colonel William Henry, the famed gunmaker and Revolutionary War patriot, presided over the court during Carpenter's absence. Carpenter's last court appearance was in November 1779, and he died the following April.¹⁸

Justices of the Peace in Lancaster County Courts

1729 to 1791

- Allison, John-1761
Armstrong, James-1739
Bailey, James-1777
Boyd, Robert-1769
Boyd, Samuel-1739
Burd, James-1763
Carpenter, Emanuel-1735
 President 2/1758 to 11/1779
Clemson, James II-1766
Cooke, Jacob-1777
Cooper, Calvin-1759
Cornish, Andrew-1729
Craig, John-1777
Davis, Zachariah-1761
DeHaas, John Philip-1765
Douglass, John-1759
Edwards, Thomas-1729
 President 8/1741 to 11/1757
Elder, Joshua-1777
Ewing, Patrick-1777
Foster, Thomas-1761
Galbraith, Andrew-1729
Galbraith, James-1760
Gingrich, James-1787
Gloninger, John-1784
Graff, Andrew-1787
Greenawald(t), Philip-1777
Green, Timothy-1777
Gruber, Everhard-1763
Hamilton, William-1761
Hay, John-1761
Hendricks, Tobias-1729
Henry, John-1777
Henry, William-1773
 President 1777
Herbert, Stewart-1777
Hobson, John-1759
Holliday, Thomas-1757
Hubley, John-1777
Hubley, Michael-1777
 President 2/1780 to 8/1791
Irwin, Moses-1777
Jacks, James-1777
Jenkins, David-1777
Jevon, William-1761
Jones, Samuel-1729
Kelly, William-1783
Kuhn, Dr. Adam Simon-1761
Kyle, John-1739
Lindley, Thomas-1739
Luther, John-1786
McClure, Jonathan-1784
McKee, Thomas-1763
Miller, Joseph-1777
Nees, Adam-1777
Old, James-1786
Parsons, William-1749
Pearce, Caleb-1730
Postlethwaite, John-1746
Read, Adam-1761
Read, George-1777
Read, Thomas-1729
Ream, Henry-1788
Reigar, Jacob-1787
Richardson, Isaac-1761
Sanders, Isaac-1759
Shaffer, Henry-1777
Shaw, Anthony-1739
Shippen, Edward-1761
Shippen, Joseph-1786
Slaymaker, Henry-1777
Smith, James-1757
Smith, William-1783
Smout, Edward-1734
Thompson, Robert-1761
Thorn, John-1777
Updegraff, Derrick-1734
Watson, David-1787
Weiser, Conrad-1746
Whitehill, John-1777
Whiteside, Abraham-1786
Whiteside, Thomas-1777
Work, Andrew-1761
Work, James-1773
Wright, John-1729
 President 8/1729 to 5/1741

Michael Hubley

His successor was Michael Hubley. Hubley was born 28 February 1722 in Germany of a Huguenot refugee family, Hubele. He arrived in Pennsylvania with his brother, Joseph Bernard Hubley, in 1732. On 8 August 1745 he married Rosina Strumpf, and they had seven children including Major John Hubley, Captain Joseph Hubley, Colonel Adam Hubley, and Captain George Hubley. The Hubleys were members of Trinity Lutheran Church in Lancaster. Michael served as barracks master in Lancaster during the Revolution. In 1777 the Supreme Executive Council of Pennsylvania appointed him a justice of the peace. In February 1780 he was commissioned "Presiding Judge of the Court of Common Pleas," serving in that office until it was abolished under the Constitution of 1790. His commission ended August 1791. He died 17 May 1804.

The First Session of Quarter Sessions of the Peace Court

It may be of interest to see how the first Quarter Sessions Court functioned when the County was established in 1729. The grand jury included only the most prominent citizens, and they were drawn from the English-speaking population. The early dockets of the Quarter Sessions Court are in the archives of the Lancaster County Historical Society. The actual form used in the docket is shown here with changes made only to clarify points that may be confusing to the modern reader. The following definitions may be helpful.

Quarter Sessions Court. Court held four times a year invested with criminal jurisdiction for offenses such as misdemeanors and lesser felonies, and jurisdiction in certain administrative areas such as establishing public roads and supervising the care of paupers.

Writ of Venire facias. A writ issued to the sheriff directing him to "cause to come" before the court at a specified day and time twelve good and lawful men qualified to serve as jurors.

Assault and battery. An unlawful touching of another person that is without excuse or justification. Assault is committed without physical contact (such as making a threat or attempt to inflict injury). Battery is the actual physical contact including offensive touching.

Grand Jury. A jury of inquiry (Grand Inquest) summoned and returned by the sheriff to attend each session of criminal court to receive complaints and accusations in criminal cases, hear the evidence assembled by the prosecution, and issue bills of indictment when sufficient evidence has satisfied the grand jury that a trial should be held. A grand jury usually had 12 to 23 men. The regular quarterly grand jury has not been used in Lancaster County since 1968. District justices now screen out cases where the evidence does not justify a trial. Another duty of the grand jury was to inspect the adequacy

and operation of county institutions such as the courthouse, jail, workhouse, almshouse, and hospital.

Oyer and Terminer and General Jail Delivery. Prior to the revision of the Pennsylvania Constitution in 1968, criminal courts were called courts of Oyer and Terminer and General Jail Delivery. Since 1968 all Pennsylvania district (county) courts are called Courts of Common Pleas under which the criminal, civil, orphans and family court functions are handled in divisions thereof. Oyer and Terminer are old terms meaning judges had the authority to inquire, hear, and determine treasons, felonies, and misdemeanors. General jail (gaol) delivery refers to bringing the persons detained in jail to court for trial. These terms now are obsolete in Pennsylvania.¹⁹

The First Lancaster County Court Trial

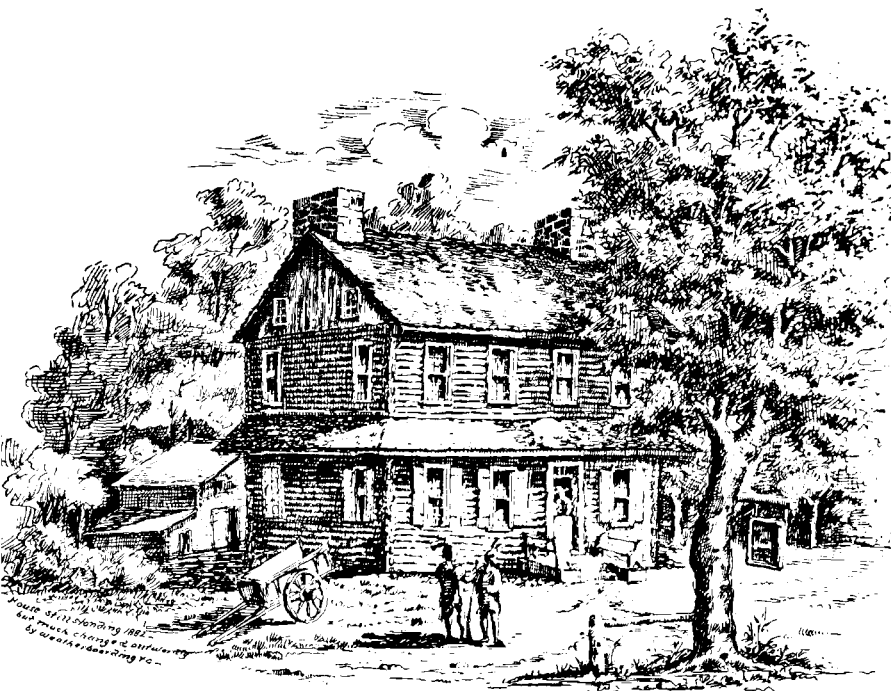
5 August 1729

At a Court of General Quarter Sessions of ye Peace held at ye house of John Postlethwaite in ye Township of Conestogoe for ye County of Lancaster the fifth Day of August in ye third Year of ye reign of our Sovereign Lord George the Second by ye Grace of God of Great Britain France and Ireland King Defender of the Faith & Before John Wright, Tobias Hendricks, Andrew Cornish, Thomas Read & Samuel Jones Esquires Justices of our s[ai]d Lord ye King the Peace of our same Lord the King in ye County afd[aforsaid] to keep and also divers felonies Trespasses and other Misdemeanors in the sd County committed to hear and determine assigned.²⁰

The Court being opened the Sheriff, Robert Barber, Esq. returns the Writ of Venire facias to him directed with the panel thereunto annexed and the following persons were sworn and affirmed on the Grand Inquest viz: James Whitehill, George Stuart, Edward Smout, Edmond Carlidge, James Patterson, Andrew Galbraith, John Hendricks, James Hendricks, Thomas Baldwin, James Roody, Francis Jones, Samuel Taylor, Patrick Campbell, William Hay, John Galbraith, Matthew Atkinson, and Ephraim Moore.

[Then followed a list of seventeen townships organized within the original County of Lancaster, viz. Derry, Peshtank (Paxtang), Lebanon, Earl, Warwick, Manheim, Hempfield, Conestoga, Martock (Martic), Drumore, Sadsbury, Laycock (Leacock), Lampeter, Salisbury, Donegal, Lancaster, and Caernarvon. Each township was described, giving its boundaries. After this was presented a list of the townships with three additional townships entered in different handwriting, and after each township was listed the constable, overseer of the poor, and supervisor of the highways. The additional townships inserted were Cocalico, Robeson, and Tulpehocken.]

Recognizances returned to this present session viz: Daniel Cookson and Andrew Work to appear and give evidence against Morris Canady (Kennedy);



The first Lancaster County courts were held at John Postlethwaite's inn near Rock Hill, Conestoga Township, in 1729. The log structure, later covered with clapboards, survives today as a farmhouse.

and Christian Stoneman and Charles Jones to appear for William Clarke; and Patrick Boyd and John Taylor to appear for Robert Allison.

The first trial held in the Lancaster County Court was to determine the guilt of Morris Kennedy who was charged with "having feloniously broken, stolen, and carried away fourteen pounds seven shillings of goods and chattels of Daniel Cookson." Sheriff Barber had Kennedy in custody and brought him before the bar of the court. Kennedy pleaded "Not guilty and for trial put himself upon the country and the prosecutor" who was Joseph Crowden, Esq. on behalf of the King. The first trial jury included John Lawrence, Robert Blackshaw, Thomas _____, John Mitchell, Joseph Barton, Edward Dougherty, Richard Hough, _____ Marshall, Richard Carter, Joseph Work, David Jones, and Lawrence _____. Kennedy was found guilty as charged, and was sentenced to pay to the provincial government fourteen pounds five shillings, restitution was to be made to Mr. Cookson, costs of prosecution of two pounds eighteen shillings, and that he was to be publicly whipped with twenty one lashes laid well on his bare back. When it was found that Kennedy did not

have the means to pay his fine and costs, he was sold to the highest bidder to earn funds to make such payment, his period of servitude not to exceed six years.

Robert Allison was the next defendant. He was charged with an assault and battery upon John Dunbar. He insisted he was not guilty but chose not to be tried. The Court fined him five shillings and six pence, and remanded him into the sheriff's custody until the fine was paid. The third defendant, William Clarke, charged with feloniously stealing twenty five shillings worth of goods from Christian Stoneman, did not appear. He was to be tried at the next session.

A notation in the docket states "Whereas at a meeting of the magistrates and others at the house of John Postlethwaite on the ninth of June last, it was agreed that for the present supply of this county the Sheriff should erect a building sufficient to hold prisoners and should be allowed towards the defraying the expenses the sum of five pounds publick money which building is now near built. It is therefore agreed and ordered by this court that the Sheriff shall with all expedition finish the building which when finished shall thenceforth be reputed the Common Gaol of the County of Lancaster till the publick Prison be built and with this order the Sheriff agrees."

The court clerk noted William Clarke, who did not appear in court to answer to the charge of stealing twenty five shillings worth of goods, had escaped from the Sheriff. He owned a gelding which "is a creature perishable and cannot be long sustained but at some considerable expense" whereupon the Court ordered the horse sold at public sale and the proceeds therefrom be held by the Sheriff until further order of the Court.

A petition was presented to the Court, requesting that a public road be laid out from near the Susquehanna River to Christian Stoneman's mill [Maple Grove] and from the mill to Daniel Cookson's near the head of the Pequea Creek. [That would be the present Route 462 from Columbia to Lancaster Township and Route 340 from Lancaster Township to Salisbury Township.] A petition was presented from James Patterson, Edmond Cartlidge, Peter Chartier, John Lawrence, Jonas Davenport, Oliver Walls, Patrick Boyd, Lazarus Lowery, William Dunlap, William Beswick, John Wilkins, Thomas Perrin, and John Harris that they be recommended to the Governor "as suitable persons to trade with the Indians." The Court approved. The final business of the Court's first session was to receive and approve petitions for tavern licenses from John Postlethwaite, John Miller, Jacob Hunk, Christian Stoneman, Jacob Bear, Edward Dougherty, Samuel Taylor, Francis Jones, and Mary Denny.

Endnotes

1. *Pennsylvania Constitution of 1790, Article V; Laws of Pennsylvania* (P.L. 59, 1791), republished (Philadelphia, Pa.: Carey & Bioren, 1803), v.4, 59.
2. F.W. Maitland, *The Constitutional History of England* (Cambridge, England: Cambridge University Press, 1908), 206-207.
3. *Statutes of Great Britain* (London: Baskett, Woodfall and Strahan, 1779), Statutes of Edward III, First Year of His Reign, Statute 2, Cap. 16, 195.
4. Bryce Lyon, *A Constitutional and Legal History of Medieval England* (New York: Harper & Row, 1960), 622-624; see also Maitland, 206.
5. Caleb P. Patterson, *The Administration of Justice in Great Britain* (Austin, Texas: University of Texas, 1936), 103.
6. J.I. Mombert, *An Authentic History of Lancaster County, Pennsylvania* (Lancaster, Pa.: J.E. Barr & Co., 1869), Appendix Division X, See First, Second, Third Frames of Government by William Penn, and The Charter of Privileges, 1-50.
7. *Laws of Pennsylvania* (P.L. 169, 1722) republished by Carey & Bioren, 1803, vol. 1.
8. Ibid.
9. Ibid.
10. H. Frank Eshleman, "The Public Career of John Wright" *Journal of the Lancaster County Historical Society* 14 (1910): 251-282.
11. Ibid.
12. Ibid.
13. Ibid.
14. Ibid.
15. H. Frank Eshleman, "A Short Sketch of Judge Thomas Edwards" *Journal of the Lancaster County Historical Society* 13 (1909): 111-113.
16. David F. Magee, "Emanuel Carpenter, the Law-Giver" *Journal of the Lancaster County Historical Society* 24 (1928): 155-162.
17. Ibid.
18. Ibid.
19. *Pennsylvania Constitution of 1968*, Article 5, Section 7.
20. Lancaster County Court of Quarter Sessions of the Peace. Docket 1, 5 August 1729.