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West Virginia Bar Association

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A CHALLENGE FOR UNREMITTING ACTIVITY FOR REFORM OF LOWER COURTS*

JOSEPH R. CURL**

DURING the past year the justices and constables formed and incorporated a new state-wide association, held several meetings, and set in motion plans for an "assault" on the 1947 legislature to force an increase in the statutory fees allowed to justices and constables for their services in the various matters of which justices have jurisdiction. The public press carried the news that the justices and constables had prepared a bill for this purpose, ready for introduction in the 1947 session of the legislature, and proposed in advance of the election of members of that body to secure the promise of each candidate to support such bill. The justices have now adopted for themselves the title of "minor judiciary," evidently having become conscious of the fact that some degree of opprobrium has attached itself to the office of justice of the peace. Notwithstanding their published promises to establish a code of ethics and to give improved service to the public, our experience teaches that any promises they make as to improvements in their system cannot be relied upon. We have but to look back upon our experience in the election campaign of 1940 to be assured that we may expect nothing good from their published promises. In the summer and fall of 1940, when the amendment to the judiciary article of the state constitution was presented to the electorate, which amendment would have supplanted justices of the peace by a summary court, the justices and their adherents used the argument that if the people would reject the amend-

* Address of the President of the West Virginia Bar Association, delivered at the sixtieth annual meeting of that Association at Clarksburg, West Virginia, in October, 1946.

** President of the West Virginia Bar Association 1945-46; member of the bar of Wheeling, West Virginia.
ment they would ask the legislature to enact such laws as were necessary to cure all the evils inherent in the justice of the peace system. The then Democratic candidate for governor was particularly active in presenting this argument, and it may be that the same contributed largely to his success in the election by drawing to his support the justices and their adherents. The amendment was defeated but the only action that came out of the promises of the justices was the preparation of two bills by the legislative interim committee between the sessions of 1941 and 1943, and their introduction in the 1943 session of the legislature. One of these bills provided for placing the justices on salaries, for the payment of the fees collected by them into the county treasury, and for prohibiting those justices receiving an annual salary of $2,000 or more from engaging in any business, trade, employment, or the practice of any profession, or the holding of any remunerative office. The other bill made provision for the necessary changes in the handling, auditing and payment of the fee bills of jailers and constables. These bills were introduced in both houses of the legislature and were considered by the judiciary committees of both houses. They were reported out of the house judiciary committee with the recommendation "that they each do not pass," and each bill was promptly rejected by the house. I have not investigated to see how these bills fared in the senate.

These bills proposed no other change whatsoever for the justice of the peace system, and no other steps have since been taken to improve the system. While the abolition of the fee system and the paying of adequate salaries to the justices of the peace or the judges of the courts for small causes is essential for justice in such courts, yet, it is only one of many things wrong with the justice of the peace system, and will not alone effect the reform we must have. All that the justices want is to have their fees increased. Placing them on a salary basis without instituting other improvements will only make matters worse. Therefore, their efforts in this direction should be resisted to the utmost of our ability. Our efforts, however, should not be limited to mere opposition, but our program should be a two-fold one: first, to work for the establishment of a satisfactory substitute for the justice of the peace system; and secondly, at the same time, but not as an alternative, to propose and work for a number of things that can be done to make the present system as good as possible under the circumstances.

That the matter of judicial reform generally is urgent, not only in our own state but over the entire nation, is the opinion of many prominent lawyers and judges, for whom I shall let speak Hon. Henry G. Binns of Columbus, Ohio, who has been a student of this matter for some years,
and an advocate of judicial reform in his state. In an address in March, 1945, before a joint meeting of the Executive Committee and the Judicial Administration and Legal Reform Committee of the Ohio State Bar Association, he said:

"For more than a quarter of a century, thoughtful and observant students of law have been warning us of a gradually increasing public dissatisfaction with the administration of justice in our courts; of faith being sorely tried by inexcusable delays, by outmoded technicalities, and, occasionally, by judicial inefficiency; of the growing tendency to transfer business from the courts to administrative agencies, or to set up arbitration tribunals for settling controversies, or to forgo entirely, clearly defined and long recognized legal rights, rather than risk the delay, uncertainty and expense of litigation in the courts . . .

"Is it any wonder, then, that ‘the great mass of the population’ represented by the small cause litigant, lacks enthusiasm and respect for courts and court procedure, and is indifferent to the defects of administrative procedure, administrative tribunals, or administrative law?

"I am convinced that our profession—the bench and the bar—and not the legislative branch of government will have to bear the major responsibility for this thing we call administrative law, for, without the power to sit in judgment, to hear and decide—in other words to exercise the judicial function—the administrative agency, while it might promulgate rules, could not make law.

"And I am also of the opinion that our profession—the bench and the bar—will have to suffer even more severely before it can be induced to clean house sufficiently to reverse . . . this trend we have been discussing.

"For, until we can bring about a unification of the trial courts in each county and their integration with the reviewing courts—all under responsible administrative control—with improvement in our trial and appellate procedure, so as to afford all litigants alike the same opportunity to secure, in the first instance, a determination of their controversies according to the highest conception of justice and in the second instance a prompt and less expensive review, we shall not achieve that efficiency and expeditious finality necessary to win back to the independent judiciary, the confidence and respect of the people."

Mr. Binns was speaking with reference to the situation in Ohio, but his remarks apply to the very last detail to West Virginia, and in fact to almost every other state.

The legal profession of West Virginia as represented by our association has for over four decades recognized this urgency in our state, and has made a number of attempts to obtain an improvement in our court system, each attempt taking several years of work.
The first was in getting relief for the supreme court of appeals by increasing the membership from four to five judges, this effort ending in success in 1902.

The second attempt was in endeavoring to get further relief for the supreme court of appeals by having the membership increased to seven judges, so that court could sit in two branches, but the amendment to bring about this change was defeated by the electorate in 1910.

The third attempt was in studying and proposing a system of intermediate courts of appeals, such as exists in Ohio and some other states, which attempt never reached the stage where it was submitted to the electorate as an amendment, and the demand for that appellate system has almost entirely subsided during the past decade.

The fourth attempt was in working for and getting submitted to the electorate constitutional amendments changing the circuit courts so that the legislature could provide for more than one judge in the several circuits, and thereby eliminate the necessity for courts of limited jurisdiction, and transferring probate jurisdiction from the county courts to the circuit courts with authority to exercise that jurisdiction through probate commissioners. These amendments were defeated in the election of 1930.

The fifth attempt was in getting a state constitutional commission provided for and appointed in 1929. This commission not only advised amendments to numerous sections of the state constitution, but the complete revision of article VIII, the judiciary article. This suggested revision was a recognition, to some degree at least, of the idea of a unified court system, and incorporated to a greater or less extent all the reforms previously advocated for our judicial system, including a summary court in place of justices of the peace that was compulsory in counties of more than twenty thousand population, and that was permissible in other counties. It provided for the retention of justices of the peace as conservators of the peace and examining magistrates in all counties, together with such criminal jurisdiction as might be provided by law; but took away all civil jurisdiction from the justices except in counties where no summary court should be established. However, provision was made for reducing the number of justices to two or more for each county, to be selected and paid and to serve for such term as might be prescribed by law. None of the amendments as suggested by the state constitutional commission has even been submitted to the people, though some of the ideas have been revised and submitted.

The sixth and last attempt was by working for and getting submitted in 1940 an amendment, revising the whole judiciary article, that followed in many particulars the revision of that article suggested by the
state constitutional commission of 1929. This amendment if adopted would have abolished the office of justice of the peace and have substituted in its place a court for small causes, called a summary court, with jurisdiction in all civil matters up to five hundred dollars in amount or value, except such as might be excluded by law, and in such criminal matters as might be prescribed by law. This amendment would have accomplished nearly all of the desired reforms, but it was rejected by the people at the election of 1940. I believe that its rejection was due in large part to the fact that it attempted too much. It made changes in our court system from the supreme court of appeals at the top down to the justices of the peace at the bottom, and while the most opposition came from the justices and their adherents, still as the adoption of the amendment meant the abolition of the courts of limited jurisdiction that exist in several counties, and provided for other changes to which there was opposition, some of the opposition, and perhaps a great amount, came from those who were unfavorable to these other changes. Either the amendment of article VIII suggested by the state constitutional commission of 1929 or the amendment of 1940 would have accomplished in one effort practically all that our association wished, but it may be that we courted defeat by aiming too high, and that if we had confined our efforts to a change in the most condemned and most unsatisfactory part of our court system—that of the justices of the peace—success would have been achieved as to that part of the program.

Now, having failed to get our program as a whole, why not work for a part of it and for that part which is most unsatisfactory and most condemned for its short-comings? In fact, I believe that by the recent activities of the justices we are challenged now to meet that single issue, and to work for some kind of new court of first instance unremittingly until success is achieved.

What have been our views in the past as to the improvement or abolition of these justice of the peace courts?

The first serious mention of the question in the yearbooks of the association is in the report of the twenty-third annual meeting held at New Martinsville on December 31, 1907, and January 1, 1908, at which time Mr. Charles McCamic, then of Marshall County, now of Wheeling, read a paper entitled "The Justice of the Peace—What is the Remedy?" In that paper Mr. McCamic, after giving a history of the office and reciting the many grievances regarding it, suggested as a remedy either the organization of an intermediate court to handle all the work of a justice of the peace, the judge of such court to be paid a stated salary and all fees chargeable to litigants in such court to be turned into the
country treasury, or the placing of the justice on a salary, with the requirement that he turn into the county treasury all fees received by him.

At the 1910 and 1920 meetings Mr. Thomas H. Cornett, of New Martinsville, read a paper advocating the establishment of a probate court in each county and suggesting also that such court be given jurisdiction concurrent with justices of the peace. On each occasion his suggestion was received with but slight response, being referred at the 1910 meeting to the committee on judicial administration and legal reform, and at the 1920 meeting to a special committee. I cannot find that anything developed from such reference on either occasion.

At the 1923 meeting there was read a paper by Judge Harold A. Ritz of Charleston on "Reorganization of Our Courts." This paper expressly left out of consideration "such inferior tribunals as justices of the peace and police courts," but pointed out that courts of first instance should be all of equal dignity and possessed of concurrent jurisdiction, and argued for the elimination of all courts of limited jurisdiction and for the continuation of the circuit courts as provided in the state constitution, with authority in the legislature to provide such number of additional circuit judges as the amount of legal business might require. The paper also argued for the creation of an appellate court of three judges to relieve the supreme court of appeals of much appellate work and for limiting the supreme court of appeals to a review of only the very grave matters of controversy.¹ In the discussion of the paper of Judge Ritz, notwithstanding his paper expressly excluded consideration of justice courts, there was much attention paid to those courts. One speaker, Judge J. B. Somerville of Wheeling, said:

"Judge Ritz has studiously avoided any reference to the justices' courts. My experience has been that that is the source of more mischief than any other tribunals we have . . . ."

Then, after arguing for some plan to curtail justices' appeals in the circuit court, the speaker continued:

"In the first place, you pay the justice in fees and give him inducement to see there is litigation going on constantly in his courts. That can be corrected.

"In the second place, as a matter of practical application, your justice of the peace is a collector of claims and is constantly, after having advised with the claimant and giving opinions, instituting suits in his own court and becoming virtually the counsel for the claimant. That ought and can be stopped, I think . . .

"If we can get rid of that sort of thing, we would go a long way toward clarifying the judicial situation in this State."²

¹ West Virginia Bar Association Yearbook (1923) 120.
² Id. at 128.
Another speaker, Judge John T. Simms of Charleston, said:

"This . . . is very important, and ought to be very carefully considered by this association. Personally . . . I have been in favor for a number of years of dispensing entirely with our justices of the peace, and creating in lieu of our present system nisi prius courts having jurisdiction of civil and criminal matters . . ."

"It is highly essential that the masses of the people . . . those who come in contact more directly with our justices' courts and our criminal courts in petty crimes and small litigation in civil matters—come in contact with justice properly administered.

"What I mean to say is this: that we should have a high-class judge at the base, right down in society, a learned man . . . Let that man be paid a salary commensurate with the powers and dignity of the office so that learned men in the law and just men can afford to accept such a position. Let him be right with the people on the ground, and when these people come in contact with justice in a concrete way they learn to respect the law because they learn to respect the administrators of the law, the judges.

"The great masses of the people are poor, inexperienced. They have matters of small importance, but they are great to them. They do not come in contact with the more learned justices of the law of this state or any other state. I am advocating this question from the standpoint of the masses of the people, and their ideas of what the law is. A learned man, sitting here today in this court room and hearing the differences, the grievances of the people in small matters, carefully and judiciously, and administering the law, makes a profound impression exactly where it ought to be . . .

"I say let's reverse matters and put the best trained judges down in contact with the people and teach them what the laws of this country mean.

"The obscure, illiterate man can go into this court room and a strong man, a judge, in robes, administering the law with dignity, with justice and mercy, makes an impression upon that man . . . But when he comes in contact with our present system, with an illiterate man, who knows nothing about the law, and is not presumed to know anything about it except that he is not to violate it, called a justice of the peace or a police judge, who administers justice according to his peculiar whim, with no other idea than favoring his friends—then everything is pushed along to the circuit courts and from the circuit courts to the supreme court.

"By the plan suggested by me of creating courts, eliminating justices of the peace entirely, I do believe that a great percentage of the cases that today go to the circuit and supreme courts would be taken care of in nisi prius courts, a court of dignity and power, and as I say, the people will be educated to respect the constitution and law and justice, right down where they need it."

\footnote{Id. at 129-131.}
These remarks caused Judge Simms to be called upon to prepare and read a paper at the 1930 meeting on "Justices of the Peace." He traced the long history of justices of the peace in England, in the colonial times of this country, in Virginia and in this state down to the present. He then mentioned the evils that have grown up in the system and the need for a change. He gave it as his "considered judgment that the time has arrived in West Virginia when it is to the best interest of the people to dispense with the office of justice of the peace and to substitute in lieu thereof a court of first instance to be known and designated by some appropriate name." He further said:

"Neither common law, constitution nor statutes of this State prescribe any qualifications whatsoever for a justice of the peace. It is possible, under our system, to elect to this office a man or woman who can neither read nor write. Just anybody can be elected . . .

"In the second place, the great increase in the amount of small litigation in the State of West Virginia and the flattering opportunity to 'make money' out of the fee system have stimulated a great many small unethical and unscrupulous men to seek the office of justice . . . Too often gain is the first consideration and justice is of secondary consideration, if it is considered at all in many cases . . .

"In a few words, the two great vices of this system are ignorance and avarice—ignorance of the justices (with a few exceptions), because the law requires neither technical nor professional qualifications. And avarice, because the only compensation allowed to justices is in the form of fees. The fee system of compensation fosters cupidity, greed, avarice and dishonesty. How preposterous that we retain a system of subordinate courts for the purpose of applying a science (the law) of which the justice is wholly ignorant! And, worse still, where his compensation—his fees—is wholly dependent upon 'the amount of business he gets'—the amount of trouble he can stir up! Where else in our institutional life in America do we find such inconsistency and incongruity?

"In principle, it is just as essential that justice be done between litigants in small matters as in great. Relatively speaking, a little thing in the life of a little man is just as important to him as is a big thing in the life of a big man. In short, the quality of judicial service—applied justice—should remain constant in all controversies, and in all courts, without regard to the value of the property involved, or the social status of the parties litigant."

Then, as to the remedy, Judge Simms continued:

"How shall we obtain the proposed goal? In the first place, the constitutional provisions making justices of the peace judicial officers, and conferring certain jurisdiction upon them, should be eliminated."

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4 West Virginia Bar Association Yearbook (1930) 41.
If I may be permitted to digress from these quotations from Judge Simms, I would suggest, much as I too would like to see that provision eliminated from the state constitution, that we simply "by-pass" that provision, as I will discuss more fully later.

Now, to continue to quote from Judge Simms' paper:

"The constitution now provides for the creation of such inferior judicial tribunals as the legislature may prescribe. The legislature may, therefore, create courts of first instance in each county of the state, conferring such jurisdiction in civil and criminal causes as are now cognizable in justices' court, and such other jurisdiction as may be deemed advisable. This court should sit at the court house, with power to hold regular or special sessions anywhere in the county, in the discretion of the presiding judge. In populous counties, it would probably be necessary to have more than one judge. In such cases, one would be designated as the senior officer, with authority to assign and apportion cases to the dockets of the several judges. The necessary clerks, bailiffs and officers should be provided. These judges should be elected by the people for a term of not less than four years, perhaps longer. They should receive designated annual salaries, varying in the different counties according to the population and volume of business done. Litigants should be required to pay costs and fees, as now, in sums to be paid into the county treasury. The fees collected would take care of the costs of maintenance of such courts, including the salaries of the judges thereof. The judge of this court should have requisite qualifications for the office, such as educational and professional, et cetera, and should be a member of the bar in good standing at the time of his nomination and election, and should have had at least five years' experience in the active practice of law, and any other qualifications that the legislature may deem wise. The right of appeal from this court of commons should be allowed for cause only, and not as a matter of right, as under our present system. The method of appeal should be simple in form, such as by petition setting out the grounds relied upon for error, together with a fair statement of facts approved by the trial court. This would not preclude the use of the complete record, including a transcript of the evidence, where the appellant desires to make use of same. The advantages of such a court over our present justice system would seem too obvious for discussion."

At the 1927 meeting, the Executive Council recommended, and the Association adopted, a resolution as follows:

"That the Committee on Judicial Administration and Legal Reform prepare and submit to the Association a constitutional amendment authorizing the Legislature to create in any city, county or portion of a county, a court for the trial of minor causes,
which court, within the territory assigned to it, shall have jurisdic-
tion in lieu of justice courts."

Although this recommendation of the Executive Council was
unanimously adopted, I cannot find that it was ever complied with. The
reports of the Committee on Judicial Administration and Legal Reform
and the Committee on Constitutional Provisions to the 1928 meeting
were silent as to any such amendment. However, the report of the Com-
mittee on Constitutional Provisions presented to the 1930 meeting of the
Association,6 shows that this resolution was presented to the State Con-
stitutional Commission of 1929 with the information that it had been
adopted by this Association.

The Hon. Mason G. Ambler in his address as President to the 1928
meeting, said:

"Justices of the peace still operate on the fee system, and some
are said to get fifty per cent more than supreme court judges with-
out even qualifying as attorneys. This should be corrected by estab-
lishing minor courts in many places and putting the remaining
justices on a salary—the fee system should be absolutely abolished."

In the report of the Committee on Constitutional Provisions, of
which Hon. Mason G. Ambler was chairman, presented to the 1930
meeting, mention is made of a partial survey of the courts of justices of
the peace made by Thurman Arnold, then dean of the College of Law of
West Virginia University.7 That survey, though incomplete, showed that
there were then 548 justices of the peace in the State, and from returns
of 188 of them, covering 58,000 cases, it was estimated that about 200,000
cases, civil and criminal, were handled by all justices in 1929, and that
the costs and fees in those cases amounted to well over $500,000, though
how much thereof was collected was not known. In the debate on the
report of the committee more than one speaker pointed out that it was
evident that the income from litigation in any courts substituted for jus-
tices of the peace would more than pay the salaries of the judges and
other personnel of any courts of first instance substituted for justices’
courts.

At this 1930 meeting the Committee on Constitutional Provisions re-
ported that as to justices of the peace the committee was not prepared to
suggest to the State Constitutional Commission what type of court should
be substituted for justices of the peace, but it did say this:

"This matter has been considered by the Association for over
twenty-five years without reaching a solution. It has been agreed

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6 West Virginia Bar Association Yearbook (1927) 18, 22.
7 West Virginia Bar Association Yearbook (1928) 42.
the justice of the peace system is archaic, subject to grave abuses and should be abolished. The fee system is wrong in principle and productive of much injustice."

The committee did, however, suggest as the requisites of a system of minor courts the following:

"We therefore think that if any further constitutional provision for minor courts is necessary that it should be flexible—possibly permitting the legislature to classify the counties and to provide for county courts where deemed advisable—the number of judges in any one county to be determined on some basis of population—say not more than one judge to every 25,000 inhabitants. A liberal provision for a different system should probably be arranged for rural districts, but we have not been able to determine what this should be. If it is thought advisable, to make more specific provisions restricting legislative discretion then we think that the following matters should be considered. We, however, favor rather large freedom in the legislature, as this particular subject is new; must be somewhat experimental and should therefore be open to legislative revision as circumstances develop.

"In counties where minor courts are established, we think that these should be termed county courts;8 be courts of record with a seal and clerk and should be located at the county seat or in the centers of population in the county. We doubt whether a traveling or itinerant court, holding sessions at different points in a county would prove practicable. In present times it is not difficult, as a general rule, to reach the main center of population from any part of a county. The farming element conducts most of its business affairs at these points and it would seem no particular hardship to require their cases to be heard there.

"We also believe that the judges of these courts should have the same qualifications prescribed for judges generally by the Constitution. The salaries should be substantial and paid out of county treasuries. The costs and fees in the cases would go into these treasuries, and, if the survey is nearly accurate, should more than pay for the expense of these courts. The main purpose here should be to secure competent men for these important positions. It is also thought that these judges should be under the direction and supervision of the circuit court with power of removal for cause in that court.

"In regard to jurisdiction, we think that these county courts should have original jurisdiction in actions at law where the amount exclusive of interest and costs does not exceed $500, and such jurisdiction and powers in criminal matters as the legislature may determine. The appealable limit should be raised substantially over $15, but this perhaps should be left to legislative discretion."

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8 This suggestion was based on the thought that the commission would recommend an amendment changing the name of the present county courts to county boards or commissioners.
Strange as it may seem no concentrated effort was ever made by our association to attack that part of our judicial system—the justice of the peace courts—that most needed reforming, and that concerned the most people in our state, even though the association voted in 1927 for the preparation and submission of an amendment creating a court in any city, county or portion of a county for the trial of minor causes. Perhaps the reason for such neglect lies in the fact that the state constitutional commission was then in prospect and was expected to determine the needed amendments, and afterwards did recommend a change in that part of our court system. But whatever the reason the association found itself supporting a movement for the complete reform of our judicial system by a single amendment, when efforts to amend a little at a time might have had better results.

I consider this matter of reforming the justice of the peace courts of such great importance that even though the need for reform has been recognized by the membership of our association and some effort made for reform, I feel I must give you some excerpts from the speeches and writings of some contemporary legal scholars, thinkers and writers on this problem.

In pointing out the need of improvement in the judicial systems of America, and especially with reference to what that great teacher and student of law, Dean Roscoe Pound, chooses to call "courts for small causes," Dean Pound in an address before the American Bar Association at Chicago a few years ago, after referring to the high degree of success of the county courts in England, established in 1847, and saying that something of the sort needs urgently to be provided for this country said:

"For it is in these courts that the administration of justice touches immediately the greatest number of people. It is here that the great mass of the population, whose experience of the law is not unlikely to have been experience only of arbitrary action of magistrates in traffic cases, might be made to feel that the law is a living force for securing their individual as well as their collective interests."

Chief Justice Charles Evans Hughes also has had something to say on this subject, as follows:

"The Supreme Court of the United States and the courts of appeals will take care of themselves. Look after the courts of the poor who stand most in need of justice. The security of the Republic will be found in the treatment of the poor and ignorant; in indifference to their misery and helplessness lies disaster."

Arthur T. Vanderbilt, a distinguished lawyer of New Jersey, dean of New York University School of Law and formerly president of the
American Bar Association, has said of minor courts throughout the nation:

"That these contacts with our courts of first instance have all too often not been for the respect of law (or respect for judges or lawyers) is not to be wondered at. In many states these courts have been completely neglected while other courts more intimately parts of justice were being modernized to meet the needs of the times. In some places they are in fact integral parts of the political rather than the judicial system. The results can spell only disaster in terms of public respect for law and for our form of government."

And again in his foreword to Charles Warren's recent book on "Traffic Courts," Dean Vanderbilt says:

"To the great mass of people, however, judicial process means not the lucubrations of some eminent jurist in a great appellate tribunal, but the appearance, the manner, the voice, the words of the presiding magistrate and the environment in our civil and criminal courts of first instance. I had almost said our lowest courts, repeating the thoughtless colloquial phrase of lawyers, but, clearly, in the true administration of justice there is no higher and lower. Justice is not of different grades. A court of first instance even with limited jurisdiction is as important to the state and to the citizens who must resort to it as the ultimate tribunal. The English characteristically emphasize this by sending the justices of their High Court of Justice on circuit to the rural counties to try both civil and criminal cases. Even the Lord Chief Justice takes his turn at presiding over criminal cases at the Old Bailey.

"What our fellow citizens see and hear (and in some instances smell) in our police courts, our traffic courts and in proceedings before our justices of the peace quite naturally determines their idea of American justice. For the bulk of our people, their experience in those popular courts marks the limits of their experience with judges. Compared with the enormous number of proceedings in these courts, relatively few cases are tried in the trial courts of general jurisdiction, and still fewer ever reach the appellate tribunals. Not knowing anything about these other courts, the young and the foreign born, in particular, tend to impute to all judges and all courts their impressions as to their experiences before the justice of the peace or the police magistrate or the traffic judge."

Another student of the problem, and a tireless worker toward the accomplishment of the same end we have in view for this state, Ohio, is the Hon. Henry G. Binns of Columbus. He writes, in an article on "Unification of Our Trial Courts," published in the Reports of Committees, 1940 Spring meeting, Ohio State Bar Association:

"It is a matter of self preservation, as well as social duty, that the bar assume leadership in overhauling our judicial system so as to put the processes of the court in reach of the people and so as to make justice available to disadvantaged men. Instead of specialized
courts, would it not be better to have specialized judges—a court with complete jurisdiction of every phase of a controversy and power to do everything that a court can do in arbitration and enforcement, and then the judges thereof assigned to various branches or parts to deal there in specialized fashion with those types of litigation which they have shown themselves most competent to handle? . . .

"The whole system of courts inferior to the court of general jurisdiction, including municipal courts and police courts, implies that the small affairs of small people can be disposed of by small courts, when the true conception of the administration of justice is that the least concern of the least person is of the highest consideration to the state. Litigants in minor courts get the impression of our judicial system as being one which selects minor judges for minor matters of minor people, which is bad psychology and does not tend to produce that social confidence which ought to proceed from a well organized judicial administration. There should be but one trial court in the county, with as many judges as are necessary to transact the business, and such an interior arrangement and distribution of the business of the court as would enable minor matters to be speedily dispatched. The judicial department of government should be adequate to give all persons, rich and poor alike, equal protection under law without unnecessary costs or factual discrimination resulting from inability to spend the money on investigation and litigation now required.

"... the real practical blessings of our bill of rights is in its provisions for fixed procedure, securing a fair hearing by independent courts to each individual; yet, if the individual, in seeking to protect himself, is without money to avail himself of such procedure, the constitution and the procedure made inviolable by it would not practically work for the equal benefit of all. Therefore, something must be devised by which everyone, however lowly and however poor, however unable by his own means to employ a lawyer and to pay court costs, shall be furnished the opportunity to set the fixed machinery of justice going. This states a problem which no democracy may ignore; for a democracy can not survive if it can not find a way to make its administration of justice competent. It is idle to speak of the blessings of liberty unless the poor enjoy the equal protection of the law. Society is rotten when one citizen as against another can overpower him or undermine him by law wielded by an uneven hand. Only the blind, cruel, or unjust in heart can wink the eye at this unnameable curse.

"Differences in the ability of classes to use the machinery of the law, if permitted to remain, lead inevitably to disparity between the rights of classes and the law itself. And when the law recognizes and enforces a distinction between classes, revolution results or democracy is at an end.

"Let us establish a modern, adequate, and efficient system for the prompt and fair administration of justice. Let us remove from
the system all possibility that it can be used as a racket. The administration of justice in all phases is a serious business. It can never be entrusted to men who lack clear intelligence and sound character. People can not be expected to have respect for law unless the administrators of the law be respectable."

Mr. Binns later in an address at Columbus, before a joint meeting of the Ohio State Bar Association Executive Committee and the Committee on Judicial Administration and Legal Reform, said:

"Our inferior courts, the point at which the great mass of the population come in contact with legal administration and law enforcement, are conspicuously the least satisfying of our judicial system. With their arbitrary methods, incompetent magistrates, tribunals governed by petty politics and slovenly proceedings, they give a bad impression of the administration of justice as a whole and most seriously affect respect for and observance of law generally. George W. Wickersham reported this to the President of the United States. He might also have called to the President's attention, the fact that the great mass of the population is obliged to try its case or make its defense in one of these inferior courts where the costs are the highest, before a judge who is usually not only untrained and unlearned in the law, but whose financial status is involved in the controversy, and, if a jury is demanded the litigant must pay for it."

Arkansas is another state that is giving consideration to unification of its courts and that is endeavoring to supplant its justice of the peace system with one of a more modern type. Professor Glenn R. Winters in his plan for the organization of the judiciary of Arkansas, has this to say on the need for a court for the trial of small causes:

"The minor courts are the sort spot in the judicial systems of most American states. As Dean McCormick has said, 'The Justice of the Peace has a long and honorable history, but the longer it grows the less honorable it becomes.'

"There are too many justices of the peace; most of them have such absurdly small dockets that they never get any judicial experience; most of them have no legal training and rely on native common sense, which actually is fairly uncommon and which does not avail in administering the technical law of today as it may have in the simple life and times of a century ago. Their judgments cannot be fair when their compensation depends upon the outcome of the cases before them.

"The chief reason for having so many justices of the peace and having them so widely distributed on a township basis was to bring the machinery of justice within convenient reach of all in spite of bad roads and primitive transportation such as existed a century ago. As Professor Sunderland has pointed out, a single judge with a well-known office and standard office hours, located in a county seat within a half-hour's driving distance over good roads from
any point in the county, is ever so much more accessible than a justice of the peace whose court room is his house or barn, but who may himself when needed be helping his brother-in-law dig potatoes or sight-seeing in New Orleans.

"The modern pattern for efficient handling of small claims has been established in Virginia. The essence of the Virginia system is a set of 'trial justices' who are lawyers appointed by the circuit judges and responsible to them, exercising approximately the same minor civil and criminal jurisdiction as that which in Arkansas is assigned to the justices of the peace and in certain instances to the municipal and common pleas courts. The trial justices are provided in whatever numbers and locations the volume of judicial business requires. They are paid by salary and not by fees, their salaries, however, being graded according to the amount of work they do. In some instances they work part time and in others full time."

The foregoing references clearly show that there is generally a need for some kind of a court for small causes to supplant the justices of the peace. The need is no less in West Virginia, and our association has often gone on record as recognizing that need.

II

Mr. George Warren, working under the joint auspices of the National Conference of Judicial Councils and the National Committee on Traffic Law Enforcement, recently made a survey of the justice of the peace system as it exists in the United States in connection with a study of the traffic court problem, and published in 1944 his book on Traffic Courts, giving the results of his survey, and from that book I have taken some excerpts regarding the origin and history of the justice of the peace system and the conditions existing therein at the present day. While Mr. Warren endeavors to give a picture of the system as its exists over the country as a whole, yet we will recognize in his picture a most accurate portrayal of many things that, according to our own individual experiences, are present in the justice of the peace system of our own state. I quote from these excerpts:

"The justice of the peace has become one of the major modern problems in the field of the administration of justice. As inherited from the English judicial organization, the office was intended to provide a ready means for the settlement of petty complaints without the delay, inconvenience, and hardships attendant upon recourse to the ordinary court. For more than half a century it functioned effectively but thereafter the system fell behind in the march of progress. With inherent flaws as a court and unresponsive to changing times, it failed to satisfy the needs of a new era. The inherent flaws resulted partly from the failure of the colonists, when adopting the English justice of the peace system, to take with it the safeguards there provided. Another factor was the change from
rural to urban civilization which found the old justice of the peace unfitted to meet the modern demands upon him.

"There were two safeguards placed around the office of justice of the peace in England which were never utilized here. The first deals with selection and qualifications, the second with supervision..." 9

"The care exercised in the selection of these officers becomes apparent: 'Two or three of the best reputation in each county' were to be selected. They were to be 'of the best reputation, and most worthy men in the county,' and as if even that had proved inadequate more stringent requirements were set up by a later statute which ordered them to be 'of the most sufficient knights, esquires, and gentlemen.' This was later elaborated to include a property qualification. The holders of this office were clearly intended to be the most responsible, trustworthy, and capable men in each community. Compare with this our custom by which no qualifications are required in forty-five of the forty-seven states where the office exists. Except in Louisiana and Arkansas, a justice of the peace need neither be a citizen nor able to speak English. The consequence of so loose a method of selecting the officers has been a major factor in the present disrepute which is attached to the functioning of the justice of the peace as an institution..." 10

"Even more significant is the problem of legal knowledge. Assuming that the desired qualifications of character and ability are met, it is still unreasonable to expect a farmer, merchant or business man to understand the administration of law. Lawyers undergo years of specialized study to acquire sufficient knowledge and otherwise fit themselves for a career in the law. The practical reason for the difficulties encountered by newly qualified attorneys in establishing a practice is that potential clients feel these young men fall short of the technical learning and experience necessary to handle their cases. But the public appears to be less concerned about the training and ability of those who pass in judgment upon them than of the men they retain to represent them. It is this absence of legal background, more than character qualifications, that results in the average justice of the peace being unable properly to conduct his office. He does not know, is in no position to learn, and lacks the facilities to look up the law. This would seem to be an insurmountable obstacle to the administration of the office. Without knowledge of the law, adequate enforcement of its provisions cannot be expected.

"An important consideration in the effective and efficient execution of a public office is the provision made for supervision over it. This is particularly true in the case of justices of the peace scattered, as they are, through every village and hamlet and enforcing, as they do, the laws of the state. In England the activities

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10 Id. at 188.
of justices of the peace from time immemorial have been checked by both local and central agencies.

"Such supervision, which evidently proved satisfactory, was never provided for in our country. When we transplanted the office, no provision was made for its control, and this condition still remains in all but a handful of states.\(^{11}\)

"... No regular and planned supervision of the judicial activity in justice courts has been found in any state. But if an attempt along these lines were made, practical considerations would make an adequate check of the judicial functions of the justice of the peace impossible...

"The deplorable results of so haphazard and lax a court system cannot be sufficiently stressed. The character and quality of justice and the manner in which it is dispensed is perhaps better than one would expect under the circumstances, but it is nevertheless depressing and certainly provides a discouraging sample of our judicial structure. It is most unfortunate that so large a number of our citizens gain their initial court experience under such conditions. A general impression prevails, even among lawyers, that the justice of the peace court handles matters so petty that too much consideration to its problem is time uneconomically spent. This feeling may arise from the smallness of the sums involved in its civil cases and may overlook traffic cases. But from any social point of view, the thought is unsound. This is true not only in the sense that every court of law is an arm of the state, but also from the practical consideration that the very smallness of the sums involved, particularly in criminal cases, precludes the possibility of appeal. In other words, it is cheaper to suffer injustice in these cases than to fight for reversal. Few people are willing to sacrifice time, money, convenience and peace of mind for mere satisfaction. And if a party before these minor tribunals believes he has not received his 'day in court,' the consequence is usually a feeling of rancor which attaches to the judicial process in general. For this reason and because the justice of the peace is frequently both the trial court and court of last resort, he has an importance not present in connection with other judicial tribunals...\(^{12}\)

"The most frequent criticism of the justice of the peace is directed at the fee system... As a mode of compensation it may take either of two forms; the usual one whereby a fee attaches to the various items, as, for example, so much per appearance, for each paper filed, for entries in the dockets, etc., and a less common procedure whereby the justice gets so much per case or trial... The main objection is that it has the effect of giving the justice an interest in the outcome of the trial and it is argued convincingly that no person should be trusted to decide impartially a cause wherein he stands to gain through a particular decision. Although such disapproval has been common for many years and no valid defense of

\(^{11}\) Id. at 191, 192.

\(^{12}\) Id. at 195-197.
the practice seems possible, it is still used by a large majority of states . . .

"Confirmation of the influence of fees on justices of the peace is found in the comparison of the costs and the fines assessed in justice courts. Since the amount of the fine does not affect the justice of the peace, it is usually low, but costs are always full. Indeed, in almost all states a large number of instances were disclosed wherein the justices habitually suspended fines, remitting in almost every case a portion or all of the penalty assessed . . .

"Complaints periodically appear concerning the illegal overcharges made by certain justices. A recent newspaper editorial headed 'Squire Issue Up Again' was founded on an indignant complaint that citizens were being 'mulcted of hundreds of thousands of dollars annually by overcharging justices of the peace in disposing of motor vehicle cases.' This practice is general . . .

"However, for the purpose of emphasis it is repeated that the real viciousness of the fee system arises not from the possibilities it offers for unscrupulous revenue, but from the psychological attitude it engenders; namely, a conscious or unconscious prejudice where the testimony is at best evenly balanced. Such a frame of mind subtly eliminates the legal safeguard which requires evidence of guilt beyond a reasonable doubt before a person can be convicted of a crime. It falls most heavily upon the accused who, having pleaded not guilty, is entitled to the presumption of innocence.

"The compensation of justices by salaries has been partially successful in minimizing the disadvantages of the justice of the peace system. But even in the few states which have legislated a complete substitution of salaries for fees, this has proved to be a partial remedy only. The large number of justices apparently prevents any practical plan for making them salaried officers. Where fees have been replaced by salaries the new basis works well only in the small number of localities where the salaries are fairly large. Throughout the rest of the state it is, in three respects, worse, than the old fee method.

(1) To earn a fee the justice had to be available. When paid a part-time salary, it becomes a very 'part-time' job.

(2) To justices outside urban centers the very small salary precludes interest in the work.

(3) Except in the centers where an acceptable salary is offered, the personnel of the office is definitely limited to men whose ability may be measured (without too much unfairness) by their willingness to accept a post carrying time-consuming responsibilities for a few dollars per month. It is conceivable that competent, conscientious and public-spirited men would seek this responsible post in spite of the poor pay, for the good of the public and the community. But investigation and research in the states with a fee system showed this was definitely not the case.

"It must be stated that the communities most satisfied with their justice courts are those where adequate salaries are paid and
that these justices have the best and most adequate records. This is more than mere coincidence. It would appear, however, that the officer who is located in an urban community on a full-time basis and paid by salary, is more like a municipal court judge than he is the traditional justice of the peace. Part-time judges and payment by fees are an integral part of the tradition of the justice system. The application of the principles of a stationary, full-time, salaried judicial officer to the traditional office of justice of the peace, constitutes a recognition of the failure of this system as applied to our present civilization.

"... It must be recognized that, fundamentally, the justice court is an archaic institution which it would be more practical to replace than to revise."

III

There are three hundred and fifty magisterial districts in the state of West Virginia. The constitution provides that there shall be a justice of the peace elected for each magisterial district, and if the population of any district exceeds twelve hundred, two justices shall be elected therein. The 1945 West Virginia Blue Book shows that there are 617 possible positions for justices of the peace. Mr. George Warren in his recent work on "Traffic Courts," gives the number of 650, but that number was undoubtedly an estimate on the basis of one for each magisterial district plus such additional number as the extra population in some districts would permit. The 1945 Blue Book also shows 202 positions, or almost one-third, vacant, and the Blue Book of most years previous to 1945 shows numerous vacancies in these positions. But, even with the vacancies, we had in office in 1945 over four hundred justices of the peace, the actual number in office, according to the 1945 Blue Book being 415, or an average of better than seven and a half for each county in the state.

Several things are evident from the above figures. The first is that as nearly one-third of the positions are vacant, the position of justice of the peace is not a well-paying job, even attractive for a part-time job to supply a little pocket money. The fact that only a few over two-thirds of the positions are filled, and the fact that those holding two-thirds of the positions are complaining of the smallness of their earnings, and are asking for increased fees and allowances, further show that those active do not consider that the position pays a sufficient amount. This means that those who rely upon the position for their livelihood are in active competition for business. They cannot afford to wait for the business to come to them. They hunt it up. We know they do not get it without some promise, express or implied, to those who furnish the business. We have
elsewhere shown the results that follow. In fact, we know them far too well from our individual experiences.

The figures further show that even with about one-third of the positions unfilled, there are far too many in office for the necessary work. It is idle, therefore, to expect the position to attract men and women of the proper qualifications.

There are twenty-five circuit judges and ten intermediate, domestic relations, and criminal courts judges, or a total of thirty-five in the state, who must be doing as much, if not more, court work than all the 415 justices of the peace. Their work includes, too, a great amount of duplication of the work of the justices, by reason of appeals from the courts of justices of the peace, a large part of which would not reach the higher judges, if the work of the justices had been properly performed. I believe that if there were a properly qualified court of general jurisdiction substituted for the justices of the peace of the county, with the judge or judges thereof giving full time to their jobs, fifty judges for such courts could handle the work of the whole state. By giving to such courts also the jurisdiction of the intermediate, domestic relations, and criminal courts now in operation that work could be also done without supplying any additional judges to the fifty suggested above. Thus, that would make the net additional judges to be provided for something like forty. Of course, in the larger counties there would have to be more than one judge for the new court, maybe as many as five or six where the new courts supplant courts of limited jurisdiction now in existence, but for the less populous counties the same judge should be able to hold the court in several counties, just as the circuit judges now do in most of the circuits. It could be provided that such a court should also be open for the transaction of business and where the same judge holds court in more than one county, he could specify what days each week or month he would be in the respective counties where he holds court. It is submitted that there is no obstacle here which should deter us in proceeding with some plan to supplant justices of the peace.

Notwithstanding all the drawbacks to the position of justice of the peace, those holding the position will oppose every move to supplant the system. They have done it in the past and will do it again. They have so far shown sufficient strength, politically and otherwise, to defeat all our efforts to improve the system. To be successful in our efforts we may yet have to resort to some plan to gain their support. When the transition from justice of the peace courts to a municipal court was made in the District of Columbia, some years ago, which move had been defeated several times by the justices of the peace, their opposition was finally overcome.
by providing in the bill that the first judges of the municipal court should be selected from the justices of the peace in office when the Municipal Court Act became effective. This made every justice a candidate for a judgeship and forestalled his opposition to the bill. So, if we can be satisfied for a while with a few lay judges in the court that we would establish as a substitute for justices of the peace, it may be that we can overcome their opposition by that or some similar provision in the act for the establishment of the new court system. Perhaps they could be used as deputy judges, commissioners, or masters to preside over small-claim divisions of the new court, or to act as examining magistrates, under the general supervision of the presiding judge of the new court.

IV

In any plans to formulate a remedy for the situation, certain constitutional provisions must be kept in mind. One of these is Section 40 of Article VI of the Constitution, which is as follows:

"The Legislature shall not confer upon any court, or judge, the power of appointment to office, further than the same is herein provided for."

This provision prohibits doing what is looked upon generally as the most effective way of handling the justice of the peace problem, that is, to provide for his appointment, or the appointment of any officer substituted for him, by the court of the county possessing general jurisdiction. It is generally conceded by students of the problem that the ideal method for the handling of small causes is through deputy judges, commissioners, magistrates, or justices of the peace—like the trial justices of Virginia—masters, appointed by the court of general jurisdiction of the county, such as our circuit court, and actually supervised by such court. Most of the unified court systems that have been worked out and proposed for the states where the problem is being given consideration call for the use of such appointment and supervision. The Virginia trial justice system so provides and in that state the trial justices are appointed by the judge of the circuit court. The plan for a unified court of general jurisdiction for the county, advocated by the Ohio State Bar Association for adoption in that state, while retaining the office of justice of the peace as such, provides for the determination of the number and the selection of those to be used as officers of the court of general jurisdiction by that court itself. Due to this constitutional provision any plan that is adopted for West Virginia cannot place the appointment with the judge of the circuit court. It possibly could be done if the jurisdictional amount for cases cognizable in the circuit court were changed so that cases involving less than $50 in value could originate in the circuit court; for then the
circuit court could be authorized to make use of its commissioners in chancery, or other commissioners or masters to handle small causes, or could be given power to do so, by the statutory grant of additional jurisdiction as authorized by the constitution.

Another constitutional provision that must be borne in mind is the last sentence of Section 2 of Article VIII of the Constitution, which section deals with the matters within the jurisdiction of circuit courts. That sentence reads:

"They shall also have such other jurisdiction, whether supervisory, original, appellate, or concurrent, as is or may be prescribed by law."

This would seem to enable the legislature to provide some sort of procedure for the removal of cases originating in justice of the peace courts to the circuit court, provided the case is one which meets the other qualifications for jurisdiction, such as amount involved. One of the methods used in other jurisdictions to avoid some of the obnoxious practices of justices of the peace, and included in most of the plans for unifying judicial systems, is that of giving power to the court of general jurisdiction in the county to cause the removal to that court of cases originating in justice's or other inferior courts. The trial justice system in Virginia provides for such removal, and in that state any cause instituted before a trial justice may be removed to the circuit court on mere affidavit. The Ohio plan which has been referred to elsewhere also contains a provision for the removal of causes from the justice of the peace to the court of common pleas of the county. One of the ways also in effect in the District of Columbia years ago, before the creation of the Municipal Court of the District of Columbia, provided that any cause instituted before a justice of the peace which if it were allowed to proceed to final judgment before the justice could be appealed to what was then called the Supreme Court of the District of Columbia, but which was really a nisi prius court, could be removed to the latter court immediately after process was served on the defendant, by his filing a petition in the nisi prius court requesting an order directing the certification of the case to that court. Such an order for certification was granted as a matter of right. All papers in the case were forthwith sent to that court and the case was there proceeded with from that point forward. For lack of a better name, and because of the similarity to a proceeding of certiorari, the petition for removal was called a petition for certiorari.

Another constitutional provision is Section 19 of Article VIII. The part of this section which concerns us is the following:
“The legislature may establish courts of limited jurisdiction within any county, incorporated city, town or village, with the right of appeal to the circuit court, subject to such limitations as may be prescribed by law.”

It is this provision that offers us an opportunity to provide a remedy for the situation with which we are confronted, to be used pending the time when the whole judicial article of the constitution can be revised by amendment. We have advocated in the past a single amendment to revise, strengthen, modernize, and unify the whole judicial system of the state, as was proposed in the constitutional amendment of Article VIII submitted by the constitutional commission of 1929 and by the amendment of Article VIII submitted to the voters in 1940. Both of these proposals for the amendment of Article VIII of the Constitution authorized a system of small courts for the counties of the state, to take over all the jurisdiction now given to justices of the peace, allowing such a court to have such number of judges as may be necessary to perform the work in the more populous counties and for the less populous counties to have such a court presided over by a judge who also presides over such court in other counties, just as is done in the circuit courts. Of course, the establishment of such a court by statute could not, while our Constitution remains unchanged, take away from justices of the peace their jurisdiction, because the justice of the peace is a constitutional officer whose jurisdiction and authority are set forth in the constitution. But such a court could be given concurrent jurisdiction with justices of the peace of all matters now handled by them, and even of more matters, so that such court would not only be a substitute for the justice of the peace court, but would serve to take over the numerous matters that are now handled by the intermediate, criminal, domestic relations and common pleas courts now existing in some of the more populous counties, and in other counties relieve the circuit court of many of these matters. By having such courts available for litigants they would soon find they would get better service than is afforded by the justice of the peace, and receive a greater degree of justice. They would avail themselves thereof to such an extent that the justice of the peace system would become obsolete through lack of use, as it has already become through lack of efficiency and regard for justice, decency and integrity. This has been the method of meeting the problem in a few jurisdictions, notably in Maryland, where, in the city of Baltimore, there were established “Peoples Courts,” which have competed with the justice of the peace courts so successfully, doing the work so much better, that the justice of the peace courts have almost ceased to exist. The trial justice system of Virginia makes use of this same principle, for while a justice of the peace there still continues to
exist as an officer, he tries and handles no cases and has become merely an officer for the issuance of certain writs and processes.

In other words, let us make use of another provision of our constitution to render harmless an officer authorized by one section of the constitution who is outmoded by the times and who is making more use of his office to cause injustice than to render justice.

V

Michigan, through its Judicial Council, has studied the matter of a system of courts to replace justices of the peace. Professor Edson R. Sunderland, of the Law School of the University of Michigan, a recognized authority on court procedure, made the necessary research on this matter for the Judicial Council, and the result of his research was part of the report of the Judicial Council of Michigan of October, 1945. This report deals with probably all phases of the problem, more than can be given attention here. I recommend its reading by everyone who is interested in this subject. Under the broad power of the Michigan Constitution of 1908, which enables the legislature of that state to establish "other courts of civil and criminal jurisdiction, inferior to the Supreme Court," Professor Sunderland advocates the establishment of a county court of very broad jurisdiction as to subject matter, and with county-wide territorial jurisdiction, to supplant entirely justices of the peace, and to take over as well many types of cases handled by the circuit courts of the several counties. He was very much impressed with the Virginia trial justice system. Because the Virginia trial justice system furnishes us a very good model close at home, I am quoting most liberally from Professor Sunderland's report. He says:

"The state of Virginia furnishes the most notable modern example of the suppression of the system of justices of the peace by a county court system. The statute provides that 'for every county, including all incorporated towns therein ... there shall be appointed for a term of four years, by the circuit court for said county, or the judge thereof in vacation, a trial justice ...' In certain counties an associate trial justice may be appointed on request of the board of supervisors, and in each county a substitute trial justice shall be appointed. 'Two or more counties may, with the approval of the boards of supervisors of said counties, in the discretion of the judge or judges of the circuit courts for such counties, be combined, and one trial justice and one substitute trial justice be appointed for the two or more counties so combined by the judge or judges aforesaid ... Any city within any county may be combined with such county and one or more other counties combined as herein provided ...'"
Professor Sunderland, then calls attention to the salaries of trial justices in Virginia, which are fixed by a committee of three circuit judges appointed by the governor, within the limits prescribed by the statute. The statute grades the salaries according to the population of the counties, running from seven hundred to one thousand dollars per year in counties of five thousand or less population, up to three thousand to five thousand dollars in counties of more than five thousand population. These salaries, as well as those of clerks and assistants, are paid out of the state treasury from funds collected by the trial justices for costs. Professor Sunderland then continues:

"The trial justice has exclusive original jurisdiction, throughout the county or counties, including towns therein, and any city or cities, for which he is appointed trial justice, of all offenses against the ordinances, laws and by-laws of the respective counties, cities and towns, and of all misdemeanors, with certain exceptions, and of all claims to specific personal property, debts, fines, or other money, to damages for breach of contract or injury done to property, real or personal, or injury to the person, when the amount of such claim does not exceed $200, and concurrent jurisdiction with the circuit court where such amount exceeds $200 but does not exceed $1,000. And all civil cases, where the claim exceeds $200, shall be removed by the trial justice to the circuit court upon the filing by the defendant of an affidavit that he has a substantial defense to the plaintiff's claim. The trial justice also has power to conduct preliminary examinations of persons charged with crime.

"The venue of actions brought before the trial justices in Virginia is in general the same as that in circuit court actions.

"The office of justice of the peace was not disturbed, but the law provides that 'no justice of the peace or mayor shall, within any county or in any incorporated town located therein, or in any city for which a trial justice has been appointed, exercise any civil or criminal jurisdiction herein conferred on such trial justice,' but justices and mayors are nevertheless given the same power as trial justices to issue attachments, warrants and subpoenas and also to grant bail, and to receive their fees therefor, 'but said attachments, warrants and subpoenas shall be returnable before the trial justice for action thereon.' Any officer making an arrest shall on request of the person arrested, take him promptly before the nearest available justice of the peace or other officer authorized to grant bail.

"The trial justice shall sit for the trial of criminal and civil matters and cases at the county seat of the county, and at the town or city hall of the city for which he shall have been appointed,' or at such other places as the city council may provide in the city or as the circuit court shall designate in the county. Any matter may be removed for hearing, in the discretion of the trial justice, from any one of such designated places to any other one, to serve the convenience of parties or expedite the administration of justice."
"Statutory costs for services rendered by the trial justice and his clerk, and fines collected in state cases, are paid into the state treasury; and fines collected in ordinance cases are paid to the city, town or county whose ordinance has been violated.

"The total cost of operating the trial court system in the state is more than covered by the revenue received from its operation. In 1939 the total revenue from the trial justices amounted to $442,517.56, while the total expense of operating the system was $231,877.15."

At another place in his report Professor Sunderland says, as to the salary of the Virginia trial justice, the following:

"Most of the 'trial justices' in the new Virginia county court system render only part-time judicial service. In 1940 the then president of the Trial Justices Association, stated to the present writer that only about half a dozen trial justices in the state gave full time to their judicial work. On the average they devoted about one-third of their time to the duties of their office. And yet they were sufficiently well paid so that 67 out of 90 of them were attorneys at law with very satisfactory qualifications. The public appeared to have no general complaint against the part-time system of judicial service, and the opinion prevailed that better men were obtainable on a part-time basis than could be had if they were required to give up their practice for a full-time job carrying any salary that could be paid. The salaries of the trial justices ranged from $600 to $3,600. The latter amount was a half-time salary paid to the trial justice in Richmond. The average salary was $1,550, which represents the compensation for services averaging one-third of the incumbent's time."

After discussing the salaries of the Virginia trial judges, Professor Sunderland also refers to the Maryland system, which is similar to the Virginia system, and has the following to say of the Maryland system:

"Maryland also has a new trial justice system, somewhat similar to that in Virginia, though there are fewer and larger counties and each is served by from one to fourteen salaried trial justices. Most of them are lawyers serving on a part-time basis, and the present writer was assured by the attorney general's department in 1940 that the office attracted a very desirable type of incumbent, and that the results were satisfactory."

In addition to what Professor Sunderland says of the Virginia trial justice system, the address of Hon. W. Hutchings Overby, a trial justice in Virginia, before the joint meeting of the Virginia and West Virginia Bar Associations of 1940 at White Sulphur Springs, contains much excellent and informative material. It appears in the 1940 Year Book at pp. 205-211.

18 West Virginia Bar Association Yearbook (1940) 205.
VI

Of course, the most desired, as well as the most efficient, remedy for the condition that confronts us in West Virginia is a complete revision of Article VIII of the state constitution, unifying the whole judicial system, eliminating justice of the peace courts, establishing courts of general jurisdiction for small as well as large causes for each county, and making the system more elastic and responsive to future changes in conditions as they occur without requiring a constitutional amendment to meet the new conditions. This would involve a number of new provisions in the structure and jurisdiction of every court from the supreme court at the top to the justice of the peace court, or whatever minor court is substituted in its place; an enlargement of the jurisdiction of courts of general jurisdiction—the circuit court—including general control and supervision of all minor courts, no matter what amount may be involved in the cause of action, and no matter what may be the character of the proceedings in the minor court. This would also involve furnishing the system with adequate personnel to obviate the establishment of additional courts when the work becomes too voluminous for those already in existence—a device we now have to resort to for relief. Such a revision, although it did not go to the full extent here suggested, was what was sought in all efforts heretofore made to revise Article VIII of the state constitution.

We, of course, should not discontinue our efforts to accomplish the complete revision of Article VIII. But we have found that is a monumental task, and two decades have already been spent in efforts to accomplish that purpose; but if we continue with our efforts perhaps at sometime or other, we hope in the not too distant future, we shall accomplish our object. The amendment at which we have aimed is very comprehensive. Necessarily, such a plan causes us to be confronted with every imaginable type of opposition. This must be overcome step by step until we have achieved the goal we have set for ourselves.

Meantime, we should not confine our activities to the attainment of the whole of our object at one time, but we should if possible, attain our object piecemeal. In that way the improvements that we can secure from time to time may enable us to overcome the opposition by demonstrating the good that is accomplished by even small parts of the program as adopted from time to time. The public, seeing the good that results from parts of the program, will then lend a more willing and attentive ear to our arguments for the adoption of the rest of the program, and finally the whole of it.

Therefore, while aiming at and working for the complete revision of Article VIII of the constitution, at the same time we should be work-
ing along other lines, and I propose two lines of action for that purpose. They should be pursued concurrently, but they can be adopted independently.

The first of these is the establishment of a system of minor courts to operate concurrently with the justice of the peace system, having the same jurisdiction as the justice of the peace in its main characteristics, but greatly enlarged, and so organized as to attract all legal business within its field of jurisdiction, to give more considerate and efficient service to litigants, a service of such dependability and impartiality that gains the confidence and good will of the public. By such a system the higher courts will be relieved of much of their work, as there will go to the new courts much of the business now finding its way to the circuit courts. Also there will be less occasion for appeals from justices of the peace to the circuit courts. We will find that business will be gradually withdrawn from justices of the peace, and will find its way into such a system of new courts.

In some jurisdictions, in order to get around constitutional provisions, this has been the method of handling the justice of the peace problem. Better courts than the courts of justices of the peace have been furnished the public, and as a result after a few years the courts of the justice of the peace pass into disuse and become obsolete.

One of the arguments used, in defeating the constitutional amendment of 1940, by the justices and constables and members of the bar who looked with disfavor on the amendment, was that the justice of the peace court offered commercial institutions and the businessman a quick way to secure judgment and collect moneys due them, at practically no expense for attorney's fees and court costs, and for that reason it should not be dispensed with. By supplying an alternate system these commercial institutions and businessmen will then have their chance to try out the alternate system and to see for themselves that such alternate system will be not only better for themselves but for the public in general. It is believed that after trying out the alternate system they will finally make use of it to the exclusion altogether of the justices' courts.

Our present constitution makes ample provision for the establishment of such an alternate system parallel to and concurrent with that of the justice of the peace courts; for there is a provision in Section 19 of Article VIII that says the legislature may establish courts of limited jurisdiction within any county, incorporated city, town or village, with the right of appeal to the circuit court, subject to such limitations as may be prescribed by law. We have made use of that provision of the constitution, by establishing at various times in a number of counties of the
state certain courts to relieve the circuit court of certain phases of its general jurisdiction, as for instance, criminal courts in the counties of Harrison, Marion, Mercer, McDowell and Raleigh; the intermediate courts in the counties of Kanawha and Ohio; the common pleas courts in the counties of Cabell and Kanawha; and the domestic relations court of Cabell County, and for many years there existed at Wheeling the municipal court of Wheeling, which was a court of general jurisdiction for the city of Wheeling. The system of courts to be established would be given county-wide jurisdiction, and should take over the work of the courts of limited jurisdiction now in existence. They could even be given the jurisdiction now exercised by police courts and mayors' courts of municipalities that try the petty criminal cases involving the infraction of municipal ordinances. It is believed, however, that for practical purposes, in order to avoid opposition, especially when starting the new system, the new court should have concurrent jurisdiction with these police courts and mayors' courts, treating them the same as the justice of the peace courts.

Such a system of courts could be given even a greater amount of jurisdiction than the justice of the peace courts. The latter are limited to cases involving not exceeding three hundred dollars in amount, but the proposed court of limited jurisdiction could also be given original jurisdiction of cases involving not exceeding one thousand dollars, and appellate jurisdiction of all cases originating before justices of the peace. It should have concurrent jurisdiction of all justice of the peace cases, with the right in the defendant in any case after its institution before a justice of the peace, if the right of appeal would exist in either party on final judgment, to remove such case to the proposed court of limited jurisdiction after its institution and before trial before the justice, by some simple procedure, like a brief petition filed in the proposed court of limited jurisdiction, or an affidavit setting up the facts and a desire for removal, or by filing the process issued by the justice in the proposed court with a request that the case be removed. Such removal should be made mandatory upon the filing of such petition, affidavit, or request for removal.

The writer of his own knowledge and experience knows that such a removal was in existence in the District of Columbia before the establishment of the municipal court there. There the procedure was by petition to the upper court setting up the fact of the filing of the case before the justice, the type of case, the kind of judgment asked, an allegation that the right of appeal existed from any judgment that might be rendered by the justice to the upper court, and a prayer that the case be ordered certified by the justice to the upper court. This type of procedure, while
technically not a certiorari as known to the common law, was nevertheless, for lack of some more accurate term, called a petition for certiorari. This proceeding in the District of Columbia was highly satisfactory to the members of the bar and to the public. Practically every case to which there was a legitimate and serious defense was removed at once from the justice's court to the upper court. The time when final judgment could be obtained in cases where an appeal would certainly be taken, was not only shortened, but the cost of an appeal bond was obviated, as well as further costs before the justice saved. More important still the procedure had the very salutary effect of causing the justices of the peace to realize that if they wanted business to stay in their courts, so that they could derive income from further services, they had to earn a reputation for giving defendants an equal chance with the plaintiffs to receive a decision on the merits.

Such a provision for removal exists for the trial justice system in Virginia.

Such a proposed court should have appellate jurisdiction from justices of the peace, so that the public could see and be able to compare the results obtained in such proposed courts, over those obtained in the justices' courts, and be able to recognize that they could obtain the services of such courts the more quickly by instituting their cases in such courts in the first instance, or by removal, without waiting for final judgment before the justice and then taking an appeal. This privilege of removal will have the effect of encouraging the public generally to use the proposed court rather than the justices' courts.

The proposed system of courts of limited jurisdiction should be made available for all counties in the state, by making the same compulsory in all counties of certain population, say twenty thousand or more, as was prescribed in the constitutional amendment proposed by the State Constitutional Commission of 1929, and optional with counties of smaller population if they show a desire to adopt the system by a vote taken at some general election. It might even be better to make the system general over the whole state by grouping the smaller counties into circuits, as is done with the circuit courts, so that even the smaller counties may have the benefit of the results that we are certain will follow from the adoption of the proposed system.

A great advantage to be gained by a court of limited jurisdiction established under our state constitution, and supplanting the justice of the peace is that such a court can be made a court of record. There is no doubt that every unit of an adequate court system should be a court of record, according to Professor Sunderland, and I believe the bar is in
general agreement that such a result is most desirable. The term "court of record" survives from the early common law, but does not have a very definite modern meaning. The distinction between courts of record and courts not of record goes back to very early times when the king could assert that his own records were incontestable and conclusive, so that formal records of king's courts could not be disputed, whereas the records from inferior courts, which kept no such formal records, could be disputed.\(^\text{14}\) Thus, the proceedings of a court of record, when properly authenticated, can be used as evidence in all other courts, in or out of the state. But today perhaps an even greater advantage in making any court a court of record is that the supreme court of appeals can establish rules of practice for such a court and amend them from time to time as circumstances render it expedient so to do.

The second line of action includes a number of amendments to Chapter 30 of the code relating to justices and constables. Section 28 of Article VIII of the state constitution gives civil jurisdiction to justices of the peace in actions of assumpsit, debt, detinue and trover, where the amount claimed, exclusive of interest, does not exceed three hundred dollars, and the legislature has power to give justices such additional civil jurisdiction and powers within their respective counties as may be deemed expedient, under such regulations and restrictions as may be prescribed by general law, except that in suits to recover money or damages their jurisdiction and powers shall in no case exceed three hundred dollars. In criminal cases the same section of the constitution provides that they may be given such jurisdiction and powers as may be prescribed by law. Nothing is said in this section about jury trials, and as jury trials before justices are the exception rather than the rule, and when they do occur are travesties of justice, and a means of bringing the administration of justice into disrepute, I recommend an amendment to Chapter 50 to require that, when a jury trial is demanded in a case pending before a justice, the case be ipso facto transferred to the circuit court or other court having jurisdiction of appeals from justices. It is not believed that such a provision would be in conflict with Section 13 of Article III of the constitution. That section preserves the right of trial by jury in suits at common law where the value in controversy exceeds twenty dollars, exclusive of interest and costs, and then provides that, in such suit before a justice, a jury may consist of six persons. By the amendment suggested the right of trial by jury would be preserved to any party demanding it, but the trial would be in the court having jurisdiction of appeals from justices of the peace, and not before the justice.

\(^{14}\text{Pollock & Maitland, History of English Law (2d ed. 1923) 669.}\)
My next suggestion for amendment is that all provisions of the
code giving civil jurisdiction of the justice of the peace in addition to
actions of assumpsit, debt, detinue and trover, should be repealed, and
such jurisdiction given to the circuit courts or to any court having jurisdic-
tion of appeals from justices such as the intermediate and common
pleas courts now existing in several of the counties. The tendency should
be to reduce the civil jurisdiction of justices and not to increase it.

For another amendment of Chapter 50, I suggest that the prepay-
ment of costs should be made a prerequisite to the filing of any civil pro-
ceeding before a justice. The amount to be prepaid should include the
amount necessary to cover the justice’s fees for entering suit, issuing sum-
mons or summonses, docketing the case, indexing and filing the initial
suit papers, receiving confession of judgment or rendering judgment by
default and entering same on docket, the taxing of justices’ and con-
stables’ costs, and the service fees of the constable. These should be actu-
ally paid to the justice, and the summons of the justice when issued
should show the prepayment thereof by the plaintiff, and the amount so
prepaid. The justice should not be allowed to file any case on any agree-
ment with the plaintiff merely to be responsible for the costs, or under
any other scheme or plan by which the justice will expect to get the costs
only from the defendant by rendering judgment for the plaintiff and
then by collecting costs and judgment from the defendant. The costs
should be actually in the justice’s possession before summons issues. This
is one of the most serious defects in the present system, as it enables col-
lection agents, real estate agents, credit houses, financial institutions,
everybody in fact, to file a suit before a justice without the risk of one
penny of costs, because justices of the peace, in order to attract business,
are always willing to gamble on their ability to get their costs out of a
defendant, and plaintiffs are never asked for the costs no matter what
the final outcome of the case is. In fact, justices of the peace actually
solicit the collection of accounts from businessmen and others on the
basis of that kind of an arrangement. Some of the opposition to the con-
istitutional amendment of 1940 arose from people, particularly credit
houses, who had such cases to turn over to the justices of the peace and
wanted nothing that offered any possibility of prohibiting the making of
a contingent collection arrangement with justices. Without regard to the
effect of the amendment in taking away any such so-called right, such
an arrangement should not be allowed in any event, for it is not only
vicious in its results, but it amounts to a violation of Section 17 of Article
III of the state constitution, which article is our bill of rights, by causing
not only the sale of justice, but also the denial and delay of justice. It
constitutes the sale of justice, because the justice of the peace is able to solicit business from the owner of a cause of action on the promise to such owner that he will not have to pay anything for reducing his cause of action to judgment and for collecting the judgment, regardless of the merits of the cause of action, and the defense thereto, as the justice agrees to look entirely to the judgment debtor for the court costs. It is the denial of justice to the judgment debtor, because it means that the justice of the peace in advance intends to give judgment against the debtor, regardless of any defense interposed, in order to repay the creditor for giving him the business and to assure himself of the collection of fees for his services. It causes delay in the obtaining of justice, because the judgment debtor, if he has a meritorious defense, cannot receive justice until the case has been appealed and his defense made and considered by an impartial court that has no personal interest in the outcome of the case. In addition, it causes a defendant unjustifiable expense in the giving of an appeal bond, the payment of court costs in the appellate court, and additional attorney's fees for taking his case to the appellate court.

The requirement for prepayment of costs by a plaintiff should be beneficial to justices of the peace. While no actual statistics are at hand, nor obtainable without great effort and expense, I believe it would prove true that justices of the peace do not collect the costs in a third or a fourth of the cases that come to them under such an agreement with creditors, and such a requirement for prepayment of costs would enable justices of the peace to collect the initial costs in all cases except in some very slight few that might be instituted in forma pauperis.

It would also be a proper provision of such a cost prepayment statute to include a requirement that the defendant, in case he interposes any defense, prepay the cost of filing any defense papers, a trial fee, the cost of subpoenaing and swearing defense witnesses, and any other costs occasioned by the defense. This would also add to the earnings of justices of the peace, for as to these it is believed that justices of the peace never collect such costs in those cases which find their way to the appellate court and end with a successful defense.

Such provisions as to the prepayment of costs would have the effect of taking away and destroying at once the personal interest of the justice of the peace in the outcome of the case and would make of him a fairer and more impartial arbiter of the matters before him. He would cease to be, what he is in actual fact, the attorney for the plaintiff and the guarantor of a judgment for plaintiff.

I suggest another amendment to Chapter 50 that I believe would improve the present justice of the peace system. This involves a change in
the venue provisions to require that an action be brought in the district of the defendant’s residence, if there is a justice in that district, and if not, in an adjoining district of the county. In cases against nonresidents where the action is in rem, then the location of the property should determine the district of suit. This would have the effect of improving the present situation in two ways, first, by destroying the favorite justice idea, which now enables a plaintiff to select in the first instance a justice that he knows will be favorable to him regardless of any defense made by the defendant; and, secondly, by offsetting the plaintiff’s right of selection and causing the action to be brought in the district where the defendant votes, which will put the justice on notice that he will have to be fair to a resident of his district or lose his support and influence in the next election. There should be coupled with this amendment a provision allowing a defendant who for any reason is sued out of his district the right to have the action removed to the district of his residence if there is a justice therein, and if not, to an adjoining district. This requirement would not be contrary to the constitutional provision giving a justice jurisdiction throughout his county, but would merely control the selection of the justice before whom any particular action could be instituted.

I also suggest a still further amendment of Chapter 50 to provide that to an action in which an attachment is sued out, or any action in which the civil arrest of a defendant is asked, the defendant shall first start his contest of the attachment or arrest by causing the case to be removed to the circuit court or other court having jurisdiction of justice of the peace appeals, under the provision elsewhere mentioned for the removal of cases from a justice’s court to the upper court. All cases of this kind nearly always get into an upper court, and not only will a greater degree of justice be done by getting them into such court at the earliest possible time, but their final conclusion will be reached sooner. This amendment should extend to third party claims and property on which an attachment or execution has been levied, as such cases should also be removable to an upper court—the same reasons applying. In all these cases the removal should be permitted on special appearance if the process has been defectively issued or levied, so such defect could be raised without a general appearance resulting. As our law stands now, it serves no purpose to raise a question as to the validity of process or its service on a special appearance, for an appeal from a ruling sustaining the process or its service is held to be a general appearance that cures the defect.

Unlawful entry and detainer actions can now be brought in the upper courts and many of them are already so brought. Therefore an-
other amendment I would suggest is the repeal of the provisions of law which now allow justices of the peace any jurisdiction in unlawful entry and detainer cases and in the kindred cases for the recovery of rent and for damages for trespass or injury to real estate.

Justices of the peace are given jurisdiction of actions of detinue by the constitution. Hence all jurisdiction of actions of detinue cannot be taken away from a justice of the peace, but the removal provision elsewhere suggested will take care of all but the very small and trifling cases.

Another amendment, which I consider of the greatest importance, and one that would eliminate most of the chances for wrongdoing and the working of hardships that a justice of the peace now possesses, is one of which I have already spoken in connection with the first line of action, and that is a provision of law enabling a defendant in any case of which a justice of the peace has jurisdiction to have the action or proceeding removed at once, if an appeal would lie to the final judgment in such action or proceeding, to the court having jurisdiction of justice of the peace appeals. The writer believes that this would do as much as any plan that can be devised to cure some at least of the evils in the present system. A justice would know, in advance, that if he intended any sharp practices, or had been guilty of any such in other cases before him, the defendant would promptly remove the action to the upper court, thereby causing the justice to lose all income from the case outside of the small fee that he would get for his services in instituting the action. This removal procedure would encourage justices to make a good record in their work, and persons sued before justices with good records for impartiality, integrity and honesty would not remove their cases to the upper court. On the other hand, too, plaintiffs would not bring actions before justices whose cases were constantly and regularly being removed to the upper court. The provision for removal works for good in two ways.

The removal procedure above suggested is but a step farther beyond two amendments to Chapter 50 made by the Revised Code of 1931. There was then introduced a provision that no justice should entertain action on any claim which he had had in his hands for collection or upon which he had counseled the claimant or plaintiff; and also a provision that, if a defendant filed an affidavit showing that the justice was biased or prejudiced against the defendant, the action must be transferred to the other justice of the district, or if none such, to a justice of an adjoining district. Every West Virginia lawyer, in the fifteen years these provisions have been in effect, has, I am sure, made use of these provisions to good advantage for his clients, as well as to check some more or less nefarious design of a justice of the peace. If the removal from one justice to another
produces some good, how much more may we expect if we furnish some kind of procedure for removal of cases from justices to a higher court where impartial decisions may be expected.

Another helpful amendment of Chapter 50 would be one that would deprive the justice of the peace of all jurisdiction of suggestion proceedings—that is, of all supplemental proceedings following judgment—and to provide that all proceedings of this kind be instituted in the circuit court by the filing of an abstract of the judgment and execution with the clerk of that court, using the same procedure as is now used when a debtor to a judgment debtor, or one having possession of property of a judgment debtor, resides in another county.

Appeal procedure could, with profit to the victims of the justices of the peace, be amended so as to enable the appealing party, instead of being required to furnish a bond with surety, to deposit United States bonds or cash in double the amount of the judgment. Even one and a quarter times the amount would be ample rather than double. Many an appeal has to be foregone for failure to find a willing surety when the appellant could from means of his own, or through friends or relatives, produce United States bonds or cash. We should do everything possible to make it easier for those who have to suffer from the acts of justices to get their cases where justice can be meted out to them. In fact, whenever any security is required before a justice of the peace, provision should be made for a deposit of United States bonds or cash as an alternative to a surety bond.

All criminal jurisdiction, except to provide for the issuance of warrants to act as examining magistrates, to fix and receive appearance bonds, and except perhaps for the trial of the most petty offenses, should be taken away from justices of the peace. Under the provisions of the state constitution this can be done, for the constitution provides that justices shall have only such jurisdiction and power in criminal cases as may be prescribed by law. The high-handed conduct of justices in criminal cases has given rise to so many complaints that we do not need to dwell upon them. We have heard them on every side. All prosecutions that can be kept out of the hands of justices of the peace, and placed in courts for which the public has respect, and in which the public reposes confidence, will do more than any other step we can take to advance the administration of justice and to gain the good will of the public for courts and lawyers. We cannot simply wash our hands of the matter, say we do not practice in those courts, and therefore what is done there is of no concern to us, because the public looks upon the bar as profiting by what occurs in justices' courts whether we appear there or not. We can gain the
confidence and esteem of the public by doing those things that will make such practices impossible, and a step in this direction is reducing to the very minimum all criminal jurisdiction of justices of the peace.

One of the purposes of the new organization of justices and constables, or of the "minor judiciary," as they now wish to call themselves, is to have the legislature increase their fees. Every effort should be made by our association to prevent any increase in fees. While we all wish every man to be paid well for his services, still all modern ideas as to the proper administration of justice call for reducing the cost of litigation, and not for increasing it. To allow any increase in the fees to be paid justices and constables will enable the justices and constables under the present system only to make the system more burdensome for the common man, and the poor and the unfortunate, who suffer the most now, and will give the justices and constables the opportunity only to make of their practices more of a racket than now exists. If we do anything, or allow anything to be done, in the matter of costs, it should be to bring about a reduction in the costs and fees allowed to justices and constables so as to make justice cheaper for the common man and the poor and unfortunate. As elsewhere shown, the root of the trouble is not in the smallness of the amounts prescribed for fees and costs, but in the provisions for far too many justices of the peace and constables.

However, some provision should be made by an amendment to Chapter 50 to enable anyone who has cause for complaint of the fees charged by justices of the peace to have those fees reviewed and re-taxed by some responsible authority. Now, the only recourse is to sue the justice before another justice, or to institute a criminal proceeding against the justice for making an overcharge. Neither of these remedies is very satisfactory, no one resorts to either proceeding, and many overcharges made by justices and constables go uncorrected. Perhaps it would be possible to allow a higher court, on motion to retax the costs and penalize the justice in some way for the overcharge by requiring him to pay the costs of the motion in the upper court.

These are things that can be done to improve the present practice before justices of the peace. They may eradicate some of the evils. They cannot make them any worse. We owe it to those who are so unfortunate as to find themselves in litigation before justices of the peace to make conditions better for them if possible. When we improve conditions for these people, we at the same time lessen the chances for wrong-doing and the causing of hardship on the poor and the unfortunate, and also gain more respect for the law and its administration. At the same time we curb some of the abuses that bring the court for small causes into
disrepute. Possibly, we shall have to pay justices of the peace a salary if their system cannot be maintained on the fee basis. The office must attract competent and honest men and women, men and women of good character and integrity. Rather than to increase their fees, it would be far better to require all their fees to be turned into the county treasury and to provide for a salary to be paid them.

Statistics are not available to show what it would cost each county but if some way to reduce their number could be found the system could be made to pay its way. The trial justice system in Virginia so proves. But, as matters stand, all efforts of the justices to secure an increase in their fees and costs should be resisted until a survey can be made and definite information laid before the legislature. It is believed that a complete survey of all fifty-five counties would not have to be made to determine such matter. It is believed that a survey made under the supervision of the state tax commissioner as auditor of public offices, could be made in three of the less populous counties, in three of the most populous counties, and in three in between, and that from the survey in these nine counties, an accurate picture of conditions all over the state could be obtained, which would be sufficient to enable the legislature to deal with the problem of furnishing proper compensation to the justices of the peace, including allowances for offices and for clerical assistance, but putting the justices on a salary basis should be the last resort, and then only if their number can be reduced. Without constitutional amendment the reduction in number can be forced only by reducing the number of magisterial districts to the minimum number of three.

It is believed also that the official bonds of justices and constables should be increased in amount, so that the minimum should be ten thousand dollars, which is the maximum at present, and that only surety company bonds should be accepted. This would require an amendment of the present code provision.  

VII

This discussion has already pointed out what should be the conclusion of the whole matter, even if I had not specifically stated what should be our program at the very outset. But for the sake of emphasis, and to bring the discussion to a close, I state again what should be our duty at the present time.

First, we should oppose with every means at our command all efforts of the justices and constables to secure from the legislature at any future session, any action that will result in the increase of their fees

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15 W. Va. Code (Michie, 1943) c. 6, art. 2, §10.
in cases of which the justices have jurisdiction, for such increase will only multiply the evils now prevalent in the system.

Secondly, we should prepare, submit and work unremittingly for a bill, for enactment into law by each successive legislature until successful, creating courts of limited jurisdiction in each county—that is, limited so far as not having all the general jurisdiction that the circuit court has under our constitution, so as to comply with the constitutional provision, but general and broad enough to take in the jurisdiction now possessed by the courts of limited jurisdiction now in existence, and to have concurrent jurisdiction of all matters given to justices by the constitution—so that such courts may attract to themselves the legal business now going to the justices, and will, as a practical matter, finally supplant them.

Thirdly, in referring to and naming such court I would use some other name than "inferior court," "minor court," "lower court," or "summary court," and since the name "county court" cannot be used, because of its use to designate the tribunal or board for fiscal purposes of the county, I suggest the name "People's Court," which is used in some other states. All the other names above mentioned have an objectionable connotation, creating an unfavorable opinion of the court by the very mention of its name.

Fourthly and finally, I would endeavor to obtain from the legislature every amendment possible to the law governing justices of the peace and the practice and procedure before them, not only to improve the system, if that be possible, but also to prevent as much as can be done the many acts and practices of justices of the peace which enable them to cause hardships and bring about injustice, and that bring the administration of the law into disrepute so far as small causes and petty criminal cases are concerned, especially among those whom the law should seek to protect and to impress with the democratic ideal of equal justice for the high and the low, the rich and the poor, the strong and the weak, administered fairly and impartially, without price, fear or favor.