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OPEN COURT

North Carolina Magistrates

This article is written from an earnest conviction that the legal profession is recreant to its duty, both to the public and to itself, in regarding with indifference the deplorably low personnel of the North Carolina magistracy. Particularly is this appeal made to our older brethren to abandon their complacency and to awake to the deeper implications of the situation. Most of us who have reached the age when girths wax and hair wanes rather preen ourselves that we have graduated from the turmoil of J. P. practice and mentally wash our hands of the whole business. I speak of this matter especially to those who flatter themselves that they are not affected by it. Their facile isolation will not bear analysis.

At the outset, let me make my sincere, and indeed humble, apology to that small but courageous minority of our J. P.'s who, in the face of a lamentable breakdown of the system, still manage to carry to the performance of their duties an integrity of mind and heart, and a native self respect which lift them above the chicanery and pettifoggery so rampant about them. There are many worthy magistrates in North Carolina, and any wholesale condemnation carries with it a regrettable injustice to many an honest and respectable man who suffers in public esteem an undeserved obloquy. To this corporal's guard apparently facing an early extinction I pay my tribute of respectful and grateful admiration. The only fear which has given me pause is that my strictures may wound the sensibilities of some of that Gallant Few who still entertain in their courts a respect for fair dealing and who temper their proceedings with a genuine love of justice.

The angle of the problem now urged upon the attention of those lawyers who do not feel themselves concerned is this. All of us who have the least affection for, or appreciation of, the profession which gives us our daily bread genuinely desire, and are willing to strive for, an elevation of the plane of practice and an improvement in the personnel of the legal fraternity. We approve wholeheartedly the most sweeping declaration of the Supreme Court in its insistence upon good moral character in those who seek admission to the bar. (*In re Dillingham,* 188 N. C. 165. *In re Applicants for License,* 191 N. C. 235.) Dean Ferson was roundly applauded and widely

praised for his address before the North Carolina Bar Association at Wrightsville setting forth the policy of law schools here and everywhere to demand constantly a careful selection and a more extensive training of those who so soon will be taking their places in the profession. Yet with all our insistence upon good moral character in the applicants for license, with all our bar associations and their codes of ethics, with all our exhortations to our oncoming members to maintain the high traditions of our profession, we furnish them an actual introduction to the practice of law which gives the lie full in the face to our pretty speeches and which makes a mockery of all our codes of ethics. Any fledgeling lawyer who can go through three years of J. P. practice and retain his ideal of high-minded service in an honorable profession has a toughness of virtue beyond all praise. It is not for the unlucky suitor that I am now concerned. The sovereign remedy of an appeal usually meets the necessities of his case. The thing which preys upon me is the fear that we invite the abasement of the moral texture of our profession in exposing our initiates at the most impressionable state to a so-called administration of justice in which every ideal of the profession is treated with the most brazen cynicism.

To those who have personal and frequent contact with magistrates' courts, it is unnecessary to describe more definitely the evils referred to. But for those who view these constitutional courts from afar or whose acquaintance is principally with magistrates of an older and sounder type, it may not be amiss to cite a few instances, not important perhaps in themselves, but indicative of a rather general condition.

Exhibit A is a magistrate in whose hands an appearance bond of substantial size was placed and who converted it to his own use, never trying the case. Exhibit B is a magistrate who was also in the public employment in another capacity. For making improper advances to a young girl going to his office on business he lost his regular job, but remains a magistrate. Exhibit C is a magistrate from whom personal property deposited in lieu of bail could be recovered only by legal proceedings. Exhibit D is a magistrate who received his appointment shortly after being heavily fined for violation of the prohibition law, not forsooth for having liquor presumptively for sale, but for making an actual back-alley sale for gain to one not a friend. Exhibit E is a magistrate who has appropriated all fines collected in his court to his own use. Under threat

of indictment, settlement with the county was made but he remains a magistrate. Exhibit F is a magistrate who for similar misappropriation of fines was indicted but evaded arrest until actually run down by officers and captured in a corn field. Exhibit G is a magistrate who for months did a land office business disposing of warrants for a particular class of criminal offenses of which to his knowledge he had no jurisdiction. Exhibit H is a magistrate who undertook with vulgar epithets and violent abuse to silence a negro defendant who ventured to assert his innocence of a criminal charge. It is interesting to note that both of the men found by the Supreme Court in the opinion in 191 N. C. 235 to be lacking in upright character were justices of the peace at the time.

Instances like the foregoing could be multiplied indefinitely by one who undertook an investigation. Enough for the present purpose. They relate themselves primarily to a lack of average good character and the need of redress is obvious to a layman. But there are practices even more incensing to a practicing lawyer. Exhibit I is a case where a magistrate, apprehending that defendant's counsel would remove the case, deliberately misled the defendant as to the time of trial and rendered judgment for plaintiff. An appeal does not quite soothe one's feelings in such a case. Exhibit J is a case where both the plaintiff and the magistrate were absent when the defendant and his lawyer appeared at the time set for trial. The magistrate left word with a bystander for defendant to come back on another specified day. Again the defendant and his lawyer appeared in vain. When the defendant finally found the magistrate, judgment had already been rendered for the plaintiff and the time to give notice of appeal had expired. The trouble and expense of a *recordari* does not adequately meet such a situation. Lest the suspicion arise that the writer is grouchy about losing cases, let it be understood that no case has been cited with which he has had any professional connection whatever. The instances cited have been gathered from lawyers in several different counties of the state.

Let us consider now a few general statements. We all know magistrates before whom it is utterly useless to appear if one of several of his good customers is of opposing counsel. We all know magistrates whose decision of a given case can be accurately foretold before the introduction of the testimony if one knows the nature of the case, or the identity of parties, or counsel. Many of us know magistrates who sound out in advance the views of other magistrates

so as to utilize them in case of a demand for a removal. In fact, hunting in pairs is a practice excessively hard to meet. Of course the most widespread evil is one which flows from inadequate mental training rather than from conscious wrong doing; namely, the regular custom of deciding cases from personalities, prejudices, or favoritism, rather than in accordance with evidence.

The reader, if a layman, is wondering why magistrates guilty of some of the egregious wrongs cited above are not put out of office. And if the discussion were shifted to lawyers he would wonder why many of them are not disbarred. The answers are probably the same. In the first place the Legislature has always resolutely declined to provide workable machinery. Proposals to simplify procedure for the disbarment of attorneys have been killed. And a meritorious bill to give the Governor power to remove magistrates from office was cleverly limited in the last Legislature to those magistrates who had been appointed by the Governor. Chap. 116 Laws 1927. For those named by the Legislature only impeachment or prosecution is permitted. The wider bill prepared in the office of the Attorney-General was apparently considered as implying the possibility of the Legislature's making a mistake in the selection of its appointees. Away with such aspersions upon Legislative Infallibility! Why not impeachment or prosecution then? Again the answer is also applicable to infrequency of disbarments. There are two reasons,—one worthy, one not,—namely, indifference and soft heartedness. As to the latter there will probably be no quarrel. But the indifference of members of the bar to the conditions herein described is deserving of a solemn protest. The trouble is that the more influential lawyers are little affected. The younger ones adjust themselves to it as best they may. And in requiring them to make that adjustment we are doing a very grave wrong to our profession.

Fundamentally, of course, the problem is not to get rid of the bad magistrates but to keep the bad ones from getting in. Just before or during the last Legislature, Mr. John A. Livingstone, special correspondent of the Raleigh *News and Observer,* performed a real public service in publishing a series of articles on this general subject. Incidentally, he revealed that in Wake County, for instance, only a small minority of the magistrates had filed any reports to court as required by a statute, the violation of which is a misdemeanor. One might safely bet that not twenty per cent. of all the magistrates in North Carolina ever file a report. But to come back

to Mr. Livingstone. He demonstrated quite conclusively that the real source of the trouble is the excessive prodigality of our system of creating magistrates. We have held the emoluments of the office down so severely that few competent men will take the job and then we have tried to offset our penuriousness by opening the door to anyone who desired to be a magistrate. Of course one necessary result is that there is such competition for business that desirable magistrates cannot earn enough to retain their interest in the job. Consolidated Statutes 1463 provides for three magistrates for each township and for an additional magistrate for each one thousand inhabitants in any city or town in said township. In most cases that would be too many. But not content, the Legislature each session passes an omnibus bill appointing as magistrates everybody whom any legislator wishes to so honor. And finally, to be perfectly certain that the plague of ill-qualified magistrates shall not diminish, the Governor is authorized to appoint as many more as he sees fit (C. S. 1468). With such a system it is strange that we do as well as we do. Apparently magistrate-making gets to be a sort of mania. For the county in which I write (Edgecombe) some original-minded lesser statesman has had passed a special act authorizing the election of one magistrate for each one hundred electors in each township. In a state noted for great fecundity in the production of magistrates, Edgecombe towers above the other counties as a sort of potential magisterial Reuben Bland. The result of this act (C. S. 1464) is that if the most arrant knave in No. 12 Township (containing half of Rocky Mount) wishes to be a magistrate and is an elector, his own sole vote assures his election and the only possible way to beat him is to get some thirty-five candidates to run against him. Could there be a greater absurdity?

A recent decision of the United States Supreme Court (*Tumey v. Ohio,* 71 L. Ed. 508, discussed in 5 N. C. L. Rev. 357) seems to mean that our method of compensating a magistrate in criminal cases only when he convicts the defendant is unconstitutional because it is contrary to due process of law for a defendant to be tried before one with a pecuniary interest in the outcome. This decision may necessitate a revamping of our whole system. Leaving aside the particular point to which the court's decision is directed, the following general suggestions are offered. There should be elected not to exceed one magistrate for each eight thousand inhabitants in a township estimated according to the last census with a minimum of two