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## History of the Dauphin County Courts

By Judge Homer L. Kreider

An Address Before the Historical Society of Dauphin County, January 21, 1952<sup>1</sup>

Dauphin County was formed by the Act of March 4, 1785, when it was detached from Lancaster County. Lebanon County was established and detached from Dauphin County in 1813, but its judicial district remained a part of Dauphin County until 1893. Before Harris' Ferry was fixed as the County Seat of Dauphin County in 1785 the people living at Middletown and in Lebanon Township vigorously opposed making Harris' Ferry the County Seat. The Middletown people urged that their town was more central, a much larger place, less apt to be flooded and in every way more suitable than Harris' Ferry, while the people in Lebanon Township contended it would be just as convenient to go to Lancaster to the County Seat as it would be to go to Harris' Ferry. Petitions were presented to the Legislature signed by residents of East Hanover, Derry, Bethel, Lebanon and other townships, but without success.

Dr. George P. Donehoo in his "Harrisburg and Dauphin County", states that "in 1785 there was on this location only the single house and farm of Mr. Harris. The favorable situation of the place gave him the idea of founding a city there; he laid out the streets on a wise plan, like the city of Philadelphia, but keeping a large square in the center."

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<sup>1</sup> This address was later published at the first article in the new edition of the *Dauphin County Historical Review* 1 (December, 1952).

In 1794 Harrisburg contained 300 houses and Dauphin County developed so rapidly that in 1790 – five years after its establishment, its population was 18,177. A substantial factor in persuading the Legislature to designate Harris' Ferry as the County Seat of Dauphin was probably because John Harris had written a letter to that body, dated March 3, 1784, in which he proposed laying out a town of 200 lots and that he would convey to the proper commissioners a lot for a Court House and Jail and a square of 4 acres to the State "for such purposes as the government may apply the same."

After the selection of Harris' Ferry as the County Seat another controversy ensued as to whether Harris' Ferry should be called Harrisburg or Louisbourg. Dr. William Henry Engle, in his "History of Dauphin County" thus tells the story:

"The town was called by the founder HARRISBURG, and the minutes of the second court held in the town are dated Harrisburg. On the 3<sup>rd</sup> of August, 1786, the following appears: "The name of the County Town or Seat of the Courts is altered from Harrisburg to Louisbourg in consequence, of the Supreme Executive Council of the said Town.' This was surely a piece of impertinence. When the act of assembly was passed in 1785 establishing Dauphin County, it fixed the seat of government near Harris' Ferry. As John Harris had laid out the town, and offered lots therein for county purposes, the privilege was accorded him of naming the town. But Chief Justice Thomas McKean and some other of the judges of the Supreme Court conceived the notion that as the county was called after the Dauphin of France, the town should be called Louisburgh, after Louis XVI. At this time the prejudices of the people ran high in favor of France for the aid that kingdom had given America during the Revolution. Besides, Judge McKean and John Harris had had a personal difficulty, which occurred about the time the former was

leaving Harrisburg, after his residence here; and perhaps, being influenced by motives of hostility towards Mr. Harris, Mr. McKean strongly urged that the town should be called Louisburgh. Accordingly, in the first precept for holding the courts here, the court was directed to be hold at Louisburgh. John Harris, however, told the judges that they might ‘Louisburgh’ as much as they pleased, but that he would never execute a title for any lot in any other name than that of Harrisburg, and his determination prevailed.”

The first court session of Dauphin County was held May 17, 1785. All of the Judges were actually Justices of the Peace, not learned in the law. All had served as soldiers in the Revolutionary War. Timothy Green then lived in Hanover Township, now a part of Lebanon County, and presided at the meeting when the “Hanover Resolves” – a forerunner of our Declaration of Independence, were adopted in 1774 by the residents of southeast Dauphin County. An historical marker of the meeting place has been erected by the Pennsylvania Historical Commission on Route 22 near Grantville.

Fiver years after Judge Green was in office, the Pennsylvania Constitution of 1790 was adopted requiring all Judges to be “learned in the law”. Judge Green then retired and became an operator of a grist mill at Dauphin. He is buried in the Dauphin cemetery and an historical marker has been erected in his memory on the Peters Mountain Road near the Dauphin baseball park.

The second Judge – Samuel Jones – was a large land owner and the son of the founder of Jonestown, Lebanon County. Judge Jonathan McClure, a very learned man, was a resident of Paxton Township where Paxtang is now located.

On May 17, 1785 the first Court of Quarter Sessions was held. There were nine townships and eight constables reported. One George Foulke was charged with stealing a

roan mare. He did not appear and his bail was forfeited. On this first day viewers were appointed to open a road from Harrisburg to Middletown.

At the first session of the civil side of the court, known as the Court of Common Pleas, Stephen Chambers from Lancaster County was admitted to the Bar on his own motion, thereafter he moved the admission of ten other lawyers, all of whom were non-residents of Dauphin County. The first entry in the Common Pleas, No. 1, May Term 1785, was John Bickle vs. Nicholas Gebhart, in which Peter Hoofnagle appeared for the defendant and confessed judgment against him and issued execution on the judgment the same day.

### **First Criminal Case**

The first criminal case actually tried in the Quarter Sessions Court of Dauphin County was that of Res Publica vs. Wm. Courtney, Jesse Rowland and James Lackey, who were charged with stealing a blanket. Jesse Rowland was acquitted. Wm. Courtney and James Lackey were found guilty and sentenced to be whipped on August 18, 1785, between the hours of four and six in the afternoon, with fifteen lashes each and pay a fine of fifteen shillings and make restitution. In this connection it may be of interest to this humane community to know that whipping was resorted to until the August sessions of the court of 1789. It does not thereafter appear to have been inflicted as part of the punishment meted out by the Court. In addition to whipping, however, there are a number of cases between the first court and the August sessions, 1789, in which the defendants were required to stand from one to three hours in the pillory and the sentence also included that the "ears of the culprit be cut off and nailed to the pillory." This was

the sentence for horse stealing, which seemed to be about the most heinous offense then committed, certainly the only one for which that penalty was prescribed, the apparent purpose being that a horse thief should be permanently branded.

It should be noted that Blackstone relates that in England as late as 1763 there were 160 criminal offenses punishable by death. Blackstone's Commentaries, Book IV, Chapter 1, page 18 (Lewis' Edition, Book 4, page 1437).

The docket of the November session of 1794 shows five cases of "Tippling House" out of a total of twelve, but there never seems to have been a conviction. At the June session of 1794 George Fisher, a member of the Bar, was charged with assault and battery, pleaded guilty and was sentenced to a fine of three pounds and costs. On September 11, 1799 there was a trial and conviction of blasphemy. Those very early quarter sessions courts contained only an average of from three to ten criminal cases. The caption of the criminal cases was always Res Publica vs. defendant until the June Sessions 1792, when Res Publica was changed to Commonwealth.

At the June Quarter Sessions of 1952 in Dauphin County there were 205 cases. In 67 of these cases a plea of "not guilty" was entered by the defendant but only 3 jury trials were requested. The remainder were tried, at the request of the defendant, by a Judge without a jury.

### **Where the Early Courts Were Held**

The first courts were held in a log house which stood, until about 1843, at the corner of what is now Washington and Front Streets, several blocks south of the location of the present Court House at Front and Market Streets. The pillory and whipping post

stood about 60 yards below the grave of John Harris, just above the old Ferry House, at the junction of Front and Paxton Streets.

The first prison was built about 1790 on a part of the lots conveyed by John Harris for that purpose and on which the present Dauphin County Jail now stands, then located a short distance northeast of the corner of Strawberry and Raspberry Alleys (Raspberry Alley being now Court Street). The original of the present jail was erected 1839-1841 at a cost of \$40,000. The courts were held for a time in the old log jail, and also in another log house which formerly stood on the lot now 311 Market Street at the corner of Dewberry Street where the Kinney Shoe Store now stands. The erection of the first court house consumed from 1792 to 1799 and the histories of Dauphin County contain detailed items of the expenditures in pounds which, figured in our currency, show the Court House to have cost about \$6,000, included in which, however, are two bells; for the first bell, 131 pounds, 18 shillings, 10 pence was paid and for the second, 112 pounds and 10 shillings. When the Capitol was removed from Lancaster to Harrisburg in 1812, the Court House was given up to the uses of the Legislature, which occupied it until the completion of the State Capitol, January 2, 1822. During part of this period a building known as the White Hall Tavern was used as the Court House. This building was on the site of the present Murphy Store and was directly opposite the site of the former Court House on Market Street where the Kresge Store is now located. The Commissioners erected brick buildings at the northeast corner of Walnut and Raspberry Streets into which the court subsequently moved and which were occupied until the Legislature vacated the old Court House. The Court House, completed in 1799, was used until 1860, when the original part of the former Market Street Court House was erected, at a cost of

\$57,102 on the site occupied by the old buildings. The annex in which Courts Nos. 2 and 3, the Law Library and the Judges' Chambers were housed, was built in 1894, at a cost of about \$11,000.

### **The Judges**

The first Presiding Judge in Dauphin County after the Pennsylvania Constitution of 1790 was William Augustus Atlee of Lancaster, who was commissioned August 17, 1791. He was the first Judge "learned in the law," as required by the Constitution. On December 16, 1793 John Joseph Henry of Lancaster succeeded Judge Atlee. Judge Henry was succeeded by Walter Franklin, also from Lancaster, who was commissioned January 19, 1811. During Judge Franklin's term of office the Twelfth Judicial District was created, to consist of Dauphin, Lebanon and Schuylkill Counties by the Act of 1815. Dauphin County today is the only County comprising the Twelfth Judicial District. Judge Franklin thereafter presided in Lancaster County. Two attempts were made to impeach him. The first attempt failed and before the second was ended he resigned.

JUDGE AMOS ELLMAKER, of Lancaster, was appointed to succeed Judge Franklin, July 3, 1815, but resigned on December 21, 1816. He continued to practice law at Harrisburg until he moved to Lancaster in 1821. He was considered a good lawyer and his arguments clear and forceful. He was Attorney General under Governor Findlay and was a candidate for Vice-President on the Anti-Mason ticket with William Wirt who ran against Andrew Jackson and Henry Clay in the year 1832 and received seven electoral votes.



DAVID SCOTT, a resident of Bradford County, was appointed by Governor Snyder to succeed Judge Ellmaker, December 21, 1816. He served less than two years, resigning July 29, 1818, when he was transferred to the district composed of Luzerne, Pike and Wayne Counties. It was said of him – “he was an honest, upright judge, a little overbearing sometimes and always of irascible temper.”

SAMUEL D. FRANKS, of Reading, was appointed July 29, 1818. He was a talented man, possessed of humor and an agreeable personality. His talents, however, were not always exercised in the law. Due to his lack of industry, two attempts were made to impeach him but he resigned while the second was in progress.

CALVIN BLYTHE, of Mifflin, who had been Attorney General and Secretary of the Commonwealth, was appointed February 1, 1830. He had excellent understanding and undoubted integrity, was well versed in the law but was considered too indulgent to the members of the bar and too lenient in the punishment of criminals. He resigned June 20, 1839 to become Collector of the Customs at Philadelphia, whereupon JAMES M. PORTER was appointed. He held office a year and a half.

ANSON V. PARSONS, of Williamsport, was appointed to succeed Judge Porter, July 18, 1840. In contrast with Judge Blythe he was a strict disciplinarian. He was author of the two volumes of “Parsons’ Equity Cases”. Judge Parsons was transferred to Philadelphia and Judge Blythe was recommissioned. Judge Blythe then remained until he, in turn, was appointed to the Custom House in Philadelphia by President Tyler, in 1842.

NATHANIEL B. ELDRED, of Wayne County, succeeded Judge Blythe March 30, 1843. He possessed fine legal attainments but was engaged extensively in lumber

operations in the west while occupying the Dauphin County Bench and his outside business interests materially interfered with his duties as a Judge. By the Act of 1844 Schuylkill County was detached from the Dauphin County District and Judge Eldred was transferred to Wayne County.

The next Judge appointed to the Dauphin County Bench was JOHN J. PEARSON, of Mercer County, in April 1849. He was the father of a former Prothonotary of the Supreme Court for the Middle District of Pennsylvania and the grandfather of John B. Pearson, presently a member of the Dauphin County Bar. The Judges of the State became elective in 1851. The practice of appointing Judges residing elsewhere was never satisfactory, as shown by their short service and transfer to other districts. They did not identify themselves with the community. They never had a deep rooted interest in the county. No judge, at the time of his accession to the bench, here ever resided in this county until the election of Judge Simonton, in 1881. Judge Pearson, however, promptly identified himself with the county, and was elected in 1851, 1861 and 1871; in each instance without opposing candidates.

By the Act of 1874 there was an additional law judge provided for this district and ROBERT M. HENDERSON, of Carlisle, was commissioned December 3, 1874. Judge Pearson declined to be a candidate in 1881. Judge Henderson was then commissioned President Judge in January, 1882. Judge Simonton was commissioned December 8, 1881. Judge Henderson resigned very shortly after he became the President Judge, whereupon Judge Simonton was commissioned President Judge, February 8, 1882, and JOHN B. McPHERSON, of Dauphin County, was commissioned additional law judge. He had been District Attorney of the County, a partner, first of Wayne MacVeagh and

later of Lyman D. Gilbert; he was elected in 1882 and again in 1892 and took up his residence in Lebanon but, when Lebanon and Dauphin Counties were each constituted a separate judicial district in 1893, he returned to Harrisburg and served until appointed a judge of the United States District Court for the Eastern District of Pennsylvania, in 1899.

In speaking of Judges Simonton and McPherson at the ceremonies of the Sesqui-Centennial Anniversary of the Organization of the Courts of Dauphin County at the State Forum, May 17, 1935, Judge Hargest said:

“The great impress upon the jurisprudence of Pennsylvania emanating from this court which was started by Judge Pearson was augmented to a large degree by Judges Simonton and McPherson. As the activities of the State government became increasingly more diversified, the court of Dauphin County was correspondingly called upon to determine questions increasing in number and importance, affecting the State Government, and it fell to Judges Simonton and McPherson to largely develop that phase of our jurisprudence. Judge Simonton was one of the greatest judges that Pennsylvania has ever produced, or that any other State could produce. He was so wonderfully logical and analytical and if he started from a wrong premise (which, however was rare) he was likely to reach a wrong conclusion. He was a master of pure English, a good student, and a lover of, and interested in, music. He was impatient of long arguments. Sometimes he was regarded as severe in his judicial attitude but as time passed he became mellowed in his attitude on the bench. He was proud of his bar and his bar was proud of him.

JUDGE McPHERSON was also a learned judge, quick and decisive in his rulings and exceptionally quiet on the bench. He seldom interrupted counsel unless impatient to what seemed to be a useless waste of time. He wrote and rewrote his opinions, and his

style was clear and incisive. Judge McPherson was tall and handsome and precise in his attitude both on and off the bench. He had the appearance of being cold-blooded, yet his interest in the profession and the individual members of the bar was deeper than appeared on the surface. Upon the occasion of the banquet tendered him when parting with the bar of Dauphin County, his emotion completely overcame him. Judge McPherson was the author of the Witness Act of 1887 and took a deep interest in the advancement of the profession.”

JOHN H. WEISS was appointed March 14, 1899 to succeed Judge McPherson. Prior to that time as a member of the firm of Weiss and Gilbert, he had enjoyed a large and important practice. He was a hard-working, painstaking judge, who took his work very seriously and, at the same time, saw the funny side of things and enjoyed a joke, even at his own expense. On one occasion a member of the bar (not of the first rank) had been persistently arguing an untenable proposition. The judge finally said, “The Court knows a little law.” Whereupon the retort was, “That’s the only thing your honor and I agree upon this morning.” Judge Weiss lost none of his affable, genial disposition by assuming judicial honors. Upon the death of Judge Simonton in 1903 he was appointed President Judge in which position he served until his death, November 22, 1905. Judge Weiss although for nearly a quarter of a century Chairman of the Republican Committee of Dauphin County, never held public office until his appointment to the Bench. He was the father of John Fox Weiss, who was District Attorney of Dauphin County at the time of the trial of the famous Capitol Graft Cases.

MICHAEL WILLIAM JACOBS was appointed by Governor Pennypacker upon the death of Judge Simonton March 9, 1903. Judge Jacobs was recognized as the greatest

student of the law in this county, in his generation. He was the author of “A Treatise of the Law of Domicile”, a classic among the legal publications. Judge Jacobs had been counsel for Daniel Drawbaugh of Eberly’s Mills, Cumberland County, Penna., who many believed to have been the inventor of the telephone, and held a one-fourth interest in Drawbaugh’s claim. Judge Jacobs appeared as counsel for Drawbaugh in a suit against Bell, which ultimately reached the Supreme Court of the United States in 1887 and was decided in Bell’s favor by a 4 to 3 vote. Chief Justice Waite and Justices Miller, Matthews and Blatchford upheld the Bell claim while Justices Bradley, Field and Harlan upheld Drawbaugh’s claim. Two Justices did not participate. (126 US 1; 392; 531; 547) Judge Jacobs resumed the practice of law after his defeat by George Kunkel by a very narrow margin in a strenuous political campaign that split the Dauphin County Bar wide open. He was known as a lawyer’s lawyer but his desk and office resembled, “the old curiosity shop”. Books and papers were piled several feet high on the floor and thickly strewn over his desk. On one occasion a client entered his office while he and his son, M.W. Jacobs, Jr., also a member of our Bar, were searching for a lost paper amidst an animated discussion. The Judge solved the dilemma by gathering all the loose papers from his desk into his hands and letting them trickle on to the floor and desk, during which process he retrieved the lost paper.

GEORGE KUNKEL was elected over Judge Jacobs in the most vigorous political campaign ever waged in Dauphin County up to that time. Judge Kunkel took office in January 1904. He was reelected and served until his death in June 1920. He had been a former member of the legislature and District Attorney. Judge Kunkel was a great orator and a keen student of the law. He could express the law in choice but simple and terse

language. It was said of him that he could condense in one sentence the phosphorescence of a page. In the case of Joseph M. Huston, the architect who designed the State Capitol and was convicted of cheating and defrauding the Commonwealth of Pennsylvania with respect to the furnishings of that building, Judge Kunkel wrote a seven page opinion refusing a new trial. The Superior Court in affirming Judge Kunkel's decision, wrote a thirty-nine page opinion. Trial of this case consumed many weeks. During his term many important cases affecting state taxation and the administrative affairs of the state government were decided, including the Capitol Graft cases, to which reference will later be made. Judge Kunkel was held in high esteem, not only by the members of his own bar, but by the bar of the entire state. His son, George Kunkel, Jr., is a member of the Dauphin County Bar, a County Commissioner and a former member of the State Senate.

THOMAS H. CAPP, a leading lawyer of Lebanon County, was appointed early in 1906 to fill the vacancy created by the death of Judge Weiss. His appointment was not popular with the Dauphin County Bar, which was evenly divided among local aspirants for the appointment. Governor Pennypacker in his autobiography of Pennsylvania, says he appointed the Lebanon County lawyer to preside in the Dauphin County Courts because he did not wish to antagonize either of the two contesting factions. A year or two previously all the Dauphin County lawyers had signed a petition to Governor Pennypacker requesting him to appoint Capp to the Superior Court, which the Governor failed to do. Hence, he thought he could forestall all criticism of the Capp appointment. One of the older members of the bar has informed me that Congressman Olmsted, the political leader of Dauphin County at that time, feared that Capp might become a candidate for Congress from this district and felt that his appointment as Judge would

remove him from the contest. Judge Capp was elected for a full term the year following his appointment but his service was short for he died July 3, 1907. He was considered a man well versed in the law and of a very kind and amiable disposition.

SAMUEL J. M. McCARRELL was elected in the fall of 1907 and began his service in January 1908. In partnership with David Fleming he had been a leading member of the bar. He was District Attorney from 1881 to 1887, State Senator from 1892 to 1896; United States Attorney from the organization of the Middle District until he was elected judge in 1907. He died June 25, 1920. Judge McCarrell was a brilliant orator, a conscientious and kindly judge, particularly interested in the young members of the bar, having had perhaps more law students in his office than any other leading lawyer of his day.

On one occasion when Judge McCarrell was ill, Judge Kunkel called at his residence during the time when liquor license applications were before the court under the old Brooks License Law. Judge McCarrell was disturbed because he could not attend court but Judge Kunkel reassured him, saying: "Don't worry, I'll go to the Court House and tread the winepress alone." Judge McCarrell's nephew, Thomas C. McCarrell, is a member of our Bar.

Upon the death of Judge Kunkel, Judge McCarrell automatically became president judge, but he was then in a coma from which he died five days later and never knew that the president judgeship had come to him.

On June 20, 1920, WILLIAM H. HARGEST, a former Deputy Attorney General, was appointed to fill the vacancy caused by the death of Judge Kunkel. He served for 28 years as President Judge until his death on February 16, 1948. Judge Hargest was an

eminent jurist and had the reputation of knowing more tax law than any other Judge in Pennsylvania. During his tenure the Commonwealth cases involving intricate problems of taxation and administrative law increased many fold over what they had been in prior years. His son, William M. Hargest, Jr. is a member of the Dauphin County Bar.

FRANK B. WICKERSHAM, a former resident of Steelton, where he served as Borough Solicitor, was appointed Judge July 13, 1920, only twenty-three days after the appointment of Judge Hargest. Judge Wickersham served twenty-two years until he retired January 5, 1942. Judge Wickersham had been a member of the Legislature and an Assistant District Attorney for many years. He was highly esteemed by the members of the Bar. In addition to his other duties he also presided in Juvenile court and his administration of that branch of the law, together with his work in civil and criminal court, was of a high order. Judge Wickersham was a great fraternalist and was well known throughout the United States and Canada, having served as Supreme Regent of the Royal Arcanum, a fraternal beneficial society, in 1913-1914. His son, F. Brewster Wickersham, is a member of the Dauphin County Bar.

After the passage of the Act of 1921 creating a second Additional Law Judge for this district, JOHN E. FOX was appointed as the third judge. He was a former resident of Hummelstown and after his removal to Harrisburg, served as City Solicitor for a number of years, being the senior member of the firm of Fox and Geyer, Judge Fox as State Senator at the time of the trial of the Capitol Graft Cases and was associated with the Commonwealth in prosecution of those cases. He always liked to tell the members of the Bar that he received a fee of \$25,000 for his services as counsel and particularly in selecting the jury in those cases, and that he had refused a fee of \$100,000 to represent



the defendants. After the old Capitol was destroyed by fire, there was considerable agitation for building the new Capitol in the city of Philadelphia. This agitation was aggravated by the publication in local newspapers of criticism of the conduct of members of the Legislature. Judge Fox journeyed to Washington where he pleaded with U.S. Senator M.S. Quay to have the Capitol retained at Harrisburg. Senator Quay acquiesced, stating that he wanted “to keep the boys where he could find them rather than have them wandering around in the large city of Philadelphia.”

Judge Fox was a gentleman of the old school. He was an intense student of Latin and of the English language and insisted that lawyers use good English in their trial of cases. Judge Fox was a stickler for professional etiquette and decorum in the court room. On one occasion when he heard a noise in the corridor outside of his court room during the trial of a case, he sent an old tipstaff to restore order. In a few minutes the loud conversation again was heard by the Court. Whereupon Judge Fox insisted that the tipstaff bring the persons in the corridor before the Judge. The tipstaff became very nervous and whispered something in an excited manner to the Court. Judge Fox stated in a loud tone – “It does not matter who they are, bring them in here at once,” whereupon two of the most prominent members of the Bar, one of whom was E.E. Beidleman, the political leader of the County and who had been instrumental in securing the Judge’s appointment to the Bench, were brought before the Court, together with several other lawyers. The Judge admonished them in the manner that a school teacher would use toward school children. When he concluded, Mr. Beidleman apologized to the Court and expressed his keen regrets on behalf of himself and the other lawyers. Judge Fox was a world traveler and visited Europe on various occasions with his personal friend, George

W. Reily, President of the Harrisburg Trust Company. Judge Fox's nephew, Robert T. Fox, is a member of the Dauphin County Bar and a former District Attorney of this County.

Early in 1937 a separate Orphans' Court was created by the Legislature for Dauphin County. J. DRESS PANNELL was appointed by Governor Earle as the President and sole Judge of that court. Judge Pannell was a brilliant lawyer and a capable Judge. Prior to his appointment, he had been a leading member of the Democratic Party. In the fall election of 1937, Judge Pannell was defeated by KARL E. RICHARDS a former District Attorney for six years and Assistant District Attorney for eight years.

Judge Richards was commissioned January 3, 1938, and subsequently was elected for a full ten year term. At present he is completing his fourteenth year on the Bench. In addition to his duties in the Orphans' Court, Judge Richards sits as a member of the Commonwealth Court, together with the four Judges of the Common Pleas Court. By reason of his ability and experience, Judge Richards has rendered valuable service to the Commonwealth Court and in all other matters in which he has served. Orphans' Court sessions are held by Judge Richards every Monday of the year except during the months of July and August. In addition, there are the regular argument court days in the Orphans' Court as well as in the other courts, together with hearings in adoption cases and other matters relating to the settlement of decedents' estates, which is the chief business transacted in the Orphans' Court.

In the fall election of 1941, J. PAUL RUPP and ROBERT E. WOODSIDE were elected to fill the vacancies created by the retirement of Judges Fox and Wickersham, January 5, 1942. After the death of Judge Hargest there was a vacancy in the office of

President Judge. Judges Rupp and Woodside having gone on the Bench at the same time, they flipped a coin and Judge Rupp won the toss, whereupon he became President Judge and served until the expiration of his term January 7, 1952.

Judges Rupp and Woodside were capable in every respect and performed their duties in an efficient manner in accordance with the best traditions of this court. Judge Rupp was formerly County Treasurer; Judge Woodside, a member of the Legislature, 1932-1942.

PAUL G. SMITH was commissioned Judge, December 24, 1948 to fill the vacancy caused by the death of President Judge Hargest. Judge Smith had been City Solicitor for Harrisburg for many years and during that period and prior thereto had been associated with the firm of the late Judge Fox and John R. Geyer. He possesses a profound knowledge of municipal, civil, corporation and banking law. Judge Smith became President Judge on January 7, 1952, Judge Woodside having resigned meanwhile to become the present Attorney General of Pennsylvania.

Early in 1949, the General Assembly created a fourth judgeship for Dauphin County and WILLIAM H. NEELY was commissioned Judge May 2, 1949, four months after the appointment of Judge Smith. Judge Neely had been an able and active practitioner and had served as Deputy Attorney General and Special Legal Advisor to the Pennsylvania Securities Commission. He, too, is regarded by the Bench and Bar as an authority in insurance, banking and other branches of the civil and commercial law.

WALTER R. SOHN was commissioned Judge April 2, 1951. He had been in the active practice of law for thirty-five years, in which he had tried with outstanding success practically every kind of case that comes before the civil and criminal courts. He served

as an Assistant District Attorney for several years and thereafter as County Solicitor for 26 years.

In 1937, Judge Sohn, then County Solicitor, represented the Dauphin County Commissioners in a friendly proceeding brought against them by William A. Pearson and his son, John B. Pearson, each a member of the Dauphin County Bar and heirs at law of John Harris, to determine the right of the County of Dauphin to sell the property upon which the Court House and Prison were then located so that another site might be selected for the same purposes. The plaintiffs contended that the Commissioners had no power to breach the contract made by John Harris and the original Commissioners of Dauphin county, which provided that the lots conveyed on July 6, 1785 to the original Dauphin County Commissioners should be held “in trust by them for the use of the inhabitants of Dauphin County for the purpose of erecting a Court House and Gaol thereon.” Judge Wickersham wrote the opinion for the Dauphin County Court in 1937 and held that there was no reversionary interest in the heirs of John Harris to the four lots of ground on which the Court House and Prison were erected; that the County of Dauphin was the owner in fee of these lots and that the County Commissioners had the power to sell the same and convey to the purchasers a fee simple title. The judgment of the Dauphin County Court was affirmed by the Supreme Court of Pennsylvania in *Pearson et al. vs. Nelley, et al.*, 331 Pa. 376 (1938); 44 Dauphin Co. Reports 146. Mr. Justice William I. Schaffer, a member of the Supreme Court, did not participate in the decision in this case because he, too, is a descendant of John Harris.

In the election of 1951 there were two judgeships to be filled, Judge Woodside had resigned to become Attorney General and Judge Rupp was a candidate to succeed

himself. In a strenuous contest, Judge Sohn and your speaker became the nominees of the Republican and Democratic Parties and were elected and subsequently commissioned January 7, 1952 for a term of ten years.

### **Important Cases**

The jurisdiction of Dauphin County is unique. The court where the seat of government is located has from very early days had exclusive jurisdiction in many classes of cases in which the Commonwealth is concerned. All appeals from settlement of state taxes and other public accounts and all suits for accounts or penalties in which the Commonwealth is a party plaintiff, come to this court. Defaulting state officers are prosecuted here. All mandamus cases against state officers and members of administrative boards are brought here. Questions of the right of state officers to hold the offices they claim and the legality of nominations and elections of State legislators and congressman, as well as appeals from the action of many administrative boards and commissions, must be tried here.

From the days of Judge Pearson the number of important cases which the Court of this county has been called upon to decide has continuously increased. Two of the most spectacular were known as the Riot Bribery Cases, and the Capitol Graft Cases. The first involved the bribery of members of the legislature to vote for an act to authorize the appointment of a commission to ascertain and adjust losses caused by the riots of 1877 and to make an appropriation to pay for those losses. One of these cases was Commonwealth vs. Petroff (2 Pearson 534). He was convicted but promptly pardoned.

The Capitol Graft Cases were tried in Dauphin County in 1907. They involved charges of conspiracy to cheat and defraud the Commonwealth in connection with the furnishings of the new State Capitol. The defendants were Sanderson, Contractor; Huston, Architect; Shumaker, Superintendent of Public Grounds and Buildings; Snyder, Auditor General; Mathues, State Treasurer. Hon. M. Hampton Todd, Attorney General, Hon. J. E. B. Cunningham, Deputy Attorney General, and John Fox Weiss, District Attorney, had charge of the prosecutions. Associated with them were James Scarlet of Danville and Hon. John E. Fox.

A brilliant array of counsel represented the defendants, including Hon. George S. Graham of Philadelphia, Hon. Wm. U. Hensel of Lancaster, Hon. Wm. I. Schaffer of Chester, Hon. Lyman D. Gilbert of Harrisburg, Charles H. Bergner of Harrisburg, A.L. Shields, Samuel Clements, and P. Fred Rothermel, Jr. There were several of these cases tried, consuming many weeks, and as already indicated, Judge George Kunkel presided. All the defendants were found guilty by a Dauphin County jury and motions for a new trial were overruled by Judge Kunkel (11 Dauphin Co. 197; 13 Dauphin Co. 267). These decisions were sustained by the Superior Court of Penna. in 40 Pa. Super. 416, 485, 546, 547 (1909) and 46 Pa. Super. 172 (1911).

The famous Credit Mobilier cases, at least six of which reached the Court of the United States from various parts of the country, had their inception in Dauphin County. The Credit Mobilier of America was a construction company organized somewhat according to the plan of Societe General due Credit de Mobilier in France to take over the construction of the Union Pacific Railroad. In 1870 during the administration of President Grant, it was charged that Congressman Oakes Ames, the leading spirit of the

organization, had distributed 30,000 shares of its stock to members of Congress and others, and when the bubble burst and the corporation was dissolved, many persons, some innocently, were hurt. The case in Dauphin County, reported in 67 Pa. 233 (1870), involved a tax on the capital stock of the concern.

There have been many important tax cases, some involving serious constitutional questions such as the right to tax freight transported on railroads through the state from other states (1 Pearson 346); *Commonwealth vs. Philadelphia and Reading R.R. Co.* (62 Pa. 286; 15 Wallace 232). The right to tax bonds where the interest is paid out of the state (113 U.S. 620), the right to tax anthracite coal, the constitutionality of the Administrative Code involving the question as to whether an Act of Assembly regulating all the Executive Departments of the State Government contains but one subject (*Com. vs. Snyder*, 26 Dauphin 294; *Com. vs. Snyder*, 26 Dauphin 320, and *Com. vs. Lewis*, 26 Dauphin 327); the constitutional right of the General Assembly to authorize bond issues aggregating more than \$50,000,000 (31 Dauphin 350); the question whether amendments to the Constitution may be voted upon by the people oftener than once in five years (*Armstrong vs. King* 281 Pa. 207); the right to restrain the presiding officers of the Senate from violating the Constitution by improperly certifying and transmitting bills to the Governor for action (34 Dauphin 267); construing the constitutional provision with reference to the long and short haul of railroad freight (35 Dauphin 34); the question as to whether the Governor, in calling a Special Session of the Legislature, cannot only prescribe the subjects but limit the Legislature to the consideration of certain details of the prescribed subjects (35 Dauphin 179); the question of the constitutionality of both the Act of Congress and the Pennsylvania Statute providing machinery for electing delegates

to a convention to vote upon the ratification of the 21<sup>st</sup> Amendment to the Federal Constitution (30 Dauphin 337); and numerous questions involving constitutional appropriations to hospitals and other institutions (36 Dauphin 291); are some of the matters of constitutional interpretation which have engaged the attention of this court.

There have been many other cases of state-wide importance, such as involving the right of the Sesqui-Centennial to open on Sunday (29 Dauphin 313, 30 Dauphin 1); the right to play organized baseball for profit on Sunday (30 Dauphin 21); the dissolution of the corporation known as the Seventh Day Baptists at Ephrata, which maintains the historical Cloisters at that place (36 Dauphin 53) and a most interesting and important case in which one of the principal questions was whether “gas”, generally speaking, is “oil”, which, in turn involved the right of eminent domain in a pipe line company organized for the transportation of petroleum products, which mainly transported gasoline. Other cases include appeals under the State Board of Medical and Dental licensure, the Milk Control Law, Professional Engineers’ Act and many other professions and businesses over which the State exercises supervision.

In my opinion, the Dauphin County Court, due to the number of Commonwealth cases that come to it from every County in Pennsylvania, is one of the busiest, if not the most busy court in the Commonwealth. Each of our five judges is striving hard to keep abreast of the work. This arduous task is made more pleasant by the harmony and good fellowship that prevails among all the members of the Court and the valuable support given to the Court by the members of the Dauphin County Bar, whose professional skill and personal conduct rank among the best in this Commonwealth.