



1958

The Original Criminal Jurisdiction of Courts in Kentucky

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Recommended Citation

Cherry, H. Wendell and Inabnit, Linza B. (1958) "The Original Criminal Jurisdiction of Courts in Kentucky," *Kentucky Law Journal*: Vol. 47 : Iss. 1 , Article 8.

Available at: <https://uknowledge.uky.edu/klj/vol47/iss1/8>

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upon default where the secured party gets possession, it would be an improvement over the present Kentucky law.

Conclusion

Many articles have appeared in various law reviews concerning an appraisal of Article Nine of the Code, and the trend favors adoption. The broad purpose of Article Nine is to eliminate all the various security devices by substituting one new device called a security interest. In achieving this result the Code has adopted new terminology of its own in order to eliminate any confusion with the various security devices that have been made obsolete. The Code provides a notice type description and abolishes the requirement of acknowledgment, thereby reducing the formal requirements in Kentucky. The Code changes the Kentucky rule which protects a subsequent creditor against an unrecorded mortgage by requiring the subsequent creditor to obtain a lien before the unrecorded mortgage is perfected. The Code presents alternative methods of filing, one of which contemplates local filing in certain instances with central filing in others. The other alternative provides central filing in all cases. Kentucky in adopting the Code rejected both of these alternatives and retained its present system of local filing in all cases. In retaining its present system of local filing Kentucky rejected one of the most important features presented by the Code. The Code broadens the rule in Kentucky in cases where after-acquired property is used as collateral. Because Kentucky's statute permitting future advances to be covered by a chattel mortgage has not been interpreted, it is not possible to determine whether or not the Code broadens the rule. The Code sets out well-defined provisions concerning the rights of the parties upon default. From this perusal of the Code and its effect upon chattel mortgages in Kentucky, the writer believes that the adoption of the Code in Kentucky was a progressive step, and will eliminate much confusion which has resulted in this area.

Richard D. Cooper

THE ORIGINAL CRIMINAL JURISDICTION OF COURTS IN KENTUCKY

As is indicated by the title, this note is limited to the original criminal jurisdiction of courts in Kentucky and does not include their appellate jurisdiction. Since the original jurisdiction of any one of these courts is subject to exceptions, the jurisdiction of each court is

not as easily portrayed to the reader as one might suppose. Therefore the writers, possibly at the expense of being repetitious, have tried to show under each court how the exceptions apply to that particular court. Also as it is believed that a graphic illustration would be helpful in portraying the complete picture, a chart has been appended which attempts to illustrate the jurisdiction of a particular court, and at the same time correlate in the reader's mind those areas where the jurisdiction of several courts overlap or is concurrent.¹

As will be seen, the basis of criminal jurisdiction of the courts of Kentucky derives from the Kentucky Constitution, Kentucky Revised Statutes, and the Kentucky Criminal Code. The system of courts in Kentucky is provided for in the Constitution itself which establishes the Court of Appeals, circuit courts, county courts, quarterly courts, justice of the peace courts, and police courts.² The Constitution further provides that, "No courts, save those provided for in this Constitution shall be established."³

Senate

The judicial power of the Commonwealth is vested in the Senate when sitting as a court of impeachment, and such jurisdiction is exclusive.⁴ This is the only jurisdiction the Senate has over actions criminal in nature, and it extends over the Governor and all civil officers who have committed misdemeanors in office.⁵

Court of Appeals

The jurisdiction of both the Senate and Court of Appeals embraces the whole Commonwealth.⁶ With the exception of the judicial power in the Senate over impeachment the judicial power is vested in the Court of Appeals and the other courts established under the Constitution.⁷ According to the Constitution, "The Court of Appeals shall have appellate jurisdiction only. . ."⁸ However, the Court of

¹ No attempt has been made to make the chart absolutely all-inclusive for to do so, it is believed, would only serve to confuse the reader. In inserting the chart the writers have attempted to give an overall picture of the jurisdiction of a particular court without bogging the reader down in antiquated, highly specialized, or greatly limited areas of jurisdiction.

² Ky. Const. sec. 109-144.

³ Ky. Const. sec. 135.

⁴ Ky. Const. sec. 67, 109; Ky. Crim. Code sec. 13(1) (1953).

⁵ Ky. Const. sec. 68.

⁶ Ky. Crim. Code sec. 17 (1953).

⁷ Ky. Const. sec. 109.

⁸ Ky. Const. sec. 110.

Appeals has exclusive original jurisdiction to remove from office clerks of the Court of Appeals, circuit, and county courts.⁹

Circuit Courts

The Constitution provides for the establishment of a Circuit Court in each county, and the General Assembly is authorized to divide the state into circuit court districts with due regard to territory, business, and population.¹⁰

According to the Constitution, the jurisdiction of the circuit court is subject to change at the discretion of the General Assembly.¹¹ The circuit court, in addition to its appellate jurisdiction, has general jurisdiction for the trial of all prosecutions and penal actions of offenses committed within the respective counties in which it is held, unless exclusive jurisdiction has been given to other courts.¹²

The circuit courts, except as noted below, have concurrent jurisdiction with county, quarterly, justices', and, within the city limits, police courts over all offenses for which the penalty is a fine of more than twenty dollars or imprisonment.¹³ However, the circuit courts share their jurisdiction with the quarterly, justices', and, within the city limits, police courts for all offenses committed under KRS Chapter 242, "Alcoholic Beverages-Local Option," only when the penalty does not exceed a fine of one hundred dollars and imprisonment in the county jail not exceeding sixty days.¹⁴ Although generally county

⁹ Ky. Const. sec. 124; Ky. Crim. Code sec. 13(2) (1953).

¹⁰ Ky. Const. sec. 125, 128.

¹¹ Ky. Const. sec. 126.

¹² KRS sec. 23.010 (1956); Ky. Crim. Code sec. 13(3), 18 (1953).

¹³ KRS secs. 25.010, 26.010 (1956); Ky. Crim. Code sec. 13(4), 13(5) (1953). At first blush there appears to be an inconsistency between sec. 13(4) of the Code which gives "City and police courts . . . concurrent jurisdiction with the circuit courts and justices' courts, of prosecutions for misdemeanors committed in the town or city, the punishment of which is a fine not exceeding one hundred dollars . . ." and the provision of KRS sec. 26.010 which, with enumerated exceptions gives "police courts . . . jurisdiction concurrent with the circuit courts of all penal and misdemeanor cases when the punishment is limited to a fine of not more than five hundred dollars, or imprisonment not exceeding twelve months, or both." However, *Baldwin v. Commonwealth*, 314 Ky. 369, 235 S.W. 2d 771 (1951), held that Ky. Rev. Stat. sec. 26.010 impliedly amends sec. 13(4) so that the five hundred dollar provision controls. The same applies to Ky. Rev. Stat. sec. 25.010 and Code sec. 13(5) regarding jurisdiction of quarterly and circuit courts. Ky. Rev. Stat. sec. 25.010 impliedly amends the Code in that the jurisdiction extends to cases in which the fine is not more than five hundred dollars, or imprisonment for twelve months, or both, instead of the one hundred dollar and fifty day provision of Code sec. 13(5).

In regard to the jurisdiction of justices' courts, it should be noted that due to the decision in the case of *Roberts v. Noel*, 296 S.W. 2d 745 (Ky. 1956), justices' courts in counties having less than 250,000 population have in effect, had no jurisdiction to try criminal cases after January 5, 1958.

¹⁴ KRS sec. 242.990(3) (1956); This statute is not a limitation on the jurisdiction of the circuit court but on the concurrent jurisdiction of the courts

courts have exclusive jurisdiction of all criminal and penal cases against juveniles less than eighteen years of age, the circuit court may have jurisdiction of offenses involving moving motor vehicles when the juvenile is between sixteen and eighteen years of age.¹⁵ Also the circuit court upon waiver by the county court may obtain jurisdiction over any juveniles when the crime is rape or murder, or over juveniles between 16 and 18 when the crime is a felony.¹⁶

Circuit courts have exclusive jurisdiction over all penal and misdemeanor offenses punishable by a fine of more than five hundred dollars or imprisonment for more than one year.¹⁷ Exclusive jurisdiction is exercised for violation of Kentucky Revised Statutes Sections 183.530 to 183.620 which confer upon the Department of Aeronautics the power and authority to supervise and regulate the transportation of persons and property in aircraft operated in intrastate commerce, between termini located within the Commonwealth of Kentucky.¹⁸

Exclusive jurisdiction is also exercised in prosecutions in which the members of a fiscal or county court wilfully fail to perform any duty required of them by certain provisions of Chapter 178,¹⁹ "County Roads; Grade Crossing Elimination," and Chapter 179,²⁰ "County Road Engineer and Maintenance of Public Roads," of the Kentucky Revised Statutes. In certain cases the Franklin Circuit Court has exclusive or concurrent jurisdiction to try violations of statutes relating to state and local officials, railroads, banks and trust companies, and insurance companies.²¹

inferior to the circuit court. The statute reads as follows: "Quarterly courts, justices of the peace, and police courts shall have concurrent jurisdiction with the circuit court in the trial of all offenses committed under this chapter (242), where the penalty does not exceed a fine of one hundred dollars and imprisonment in the county jail for not exceeding sixty days." Therefore, where the penalty exceeds that just set out, the circuit court by implication has jurisdiction exclusive of these courts.

¹⁵ KRS sec. 208.020 (1956); H.B. 49 (1958). Such juvenile traffic offenders are treated as any adult offender and are tried for such offenses in the courts which would try comparable adult offenders.

¹⁶ KRS sec. 208.170 (1956).

¹⁷ KRS secs. 25.010, 26.010 (1956).

¹⁸ KRS sec. 183.990(3) (1956).

¹⁹ KRS sec. 178.990(5) (1956).

²⁰ KRS sec. 179.990(19) (1956).

²¹ KRS sec. 41.990(2), Provides that any officer, agent or employee of a budget unit who fails to comply with certain sections of KRS Chap. 41 shall be subject to indictment in the Franklin Circuit Court; KRS sec. 42.990(1) Provides that any officer, agent or employee of the Department of Finance who wilfully fails or refuses to comply with KRS 42.160 shall be subject to indictment in the Franklin Circuit Court; KRS sec. 43.990(1), (3), (5) provides that Franklin Circuit Court has jurisdiction to prosecute certain persons who violate sections of KRS Chap. 43, that prohibits these persons from obstructing an examination by the auditor of Public Accounts; KRS sec. 45.990(1) provides that

When the fine for a misdemeanor does not exceed twenty dollars the circuit court has no original jurisdiction.²² Since police courts have exclusive jurisdiction in cases of violations of municipal ordinances and by-laws, the circuit court has no original jurisdiction.²³ The same is true of prosecutions for contributing to the delinquency of minors,²⁴ and for violating certain statutes regarding the instruction of deaf children,²⁵ of which the county court has exclusive jurisdiction.

However, it should be noted that if an indictment be found in the circuit court for an offense within its jurisdiction, such court has jurisdiction in the prosecution of all degrees of such offense and all offenses included in the one charged, although some of those degrees or included offenses are within the exclusive jurisdiction of an inferior or local court.²⁶ Also the circuit court of any county may

any officer, agent or employee of any budget unit who wilfully fails or refuses to comply with certain sections of KRS Chap. 45, shall be subject to indictment in the Franklin Circuit Court; KRS sec. 46.080 provides that the Franklin Circuit Court shall have concurrent jurisdiction of all civil and criminal actions brought to enforce any of the provisions of subsection (2) of KRS 46.030 or of subsection (1) of KRS 46.990; KRS sec. 46.990(3), (4) relates to accounting of State funds by local officers, and provides that the Franklin Circuit Court may prosecute violations of certain sections of KRS Chap. 46, if against certain local officers; KRS sec. 118.990 (2) relates to conduct of elections and provides that if the Secretary of State violates KRS 118.170 he shall be subject to indictment and prosecution in the Franklin Circuit Court; KRS sec. 134.990(7) relates to collection and refund of taxes and provides that any sheriff who fails to report as required in KRS sec. 134.320 shall be subject to indictment and prosecution in the Franklin Circuit Court; KRS sec. 135.990(2) relates to collection of public claims and provides that any circuit clerk who fails to make and forward the report requested by subsection (2) of KRS 135.030 is subject to indictment in the Franklin Circuit Court; KRS sec. 136.990(13) relates to corporation and utility taxes and provides that certain persons who violate statutes specified in subsections (8), (9), (10) and (11) of KRS 136.990 shall be subject to prosecution in the Franklin Circuit Court; KRS sec. 304.990(1) (c) relates to insurance regulations and provides that any insurer who transacts insurance in the state without a license shall be penalized \$100 per day, and such penalty may be recovered by a suit in Franklin Circuit Court.

In the following instances the Franklin Circuit Court or the Circuit Court of the county in which the offense is committed has jurisdiction to try violations of: KRS sec 277.990(2), organization and regulation of railroads and provides that any railroad that violates certain enumerated statutes in KRS Chap. 277, shall be subject to a fine to be recovered in the Franklin Circuit Court or in the Circuit Court of any county through which the railroad operates; KRS sec. 287.990(12) relates to bank and trust company regulations and provides that whenever any penalty enforced by subsections (6), (8), (9), (10) and (11) of KRS 287.990 is not paid, an action in the name of the State may be taken to the Franklin Circuit Court or the Circuit Court of the county in which the offense was committed, for the recovery of the penalty.

²² KRS secs. 25.010, 26.010 (1956).

²³ KRS sec. 26.010 (1956); Ky. Crim. Code sec. 13(4) (1953).

²⁴ KRS sec. 199.990(2)(c) (1956).

²⁵ KRS sec. 167.990(3) (1956).

²⁶ Ky. Crim. Code sec. 14 (1953).

by writ of prohibition restrain all other courts of inferior jurisdiction in the limits of the county from exceeding their jurisdiction.²⁷

A judge of a circuit court may issue a writ of habeas corpus and such power is co-extensive with the State.²⁸ As will be later noted, the judges of certain inferior courts have the power to issue a writ of habeas corpus in the absence of the circuit judge from the county.²⁹ However, the circuit court has no jurisdiction as an examining court.³⁰

County Courts

The Constitution provides for the establishment of a county court in each county to be presided over by the county judge.³¹ The jurisdiction of such courts is uniform throughout the State and regulated by the General Assembly.³²

Except as indicated below, county, quarterly, justices', and, within the city limits, police courts have concurrent jurisdiction with the circuit court in all penal and misdemeanor cases where the punishment is limited to a fine of not more than five hundred dollars or imprisonment for not more than twelve months or both.³³

The county, quarterly, justices', and, within the city limits, police courts have jurisdiction exclusive of the circuit court in all penal and misdemeanor cases in which the punishment is limited to a fine of twenty dollars.³⁴ The county court has exclusive jurisdiction of prosecutions for violating Kentucky Revised Statutes Section 167.090 which requires every resident of the state who has custody, control, care, or supervision of any deaf child between the ages of seven and sixteen to provide that child with instruction for the deaf, and also, for violating Kentucky Revised Statutes Section 167.110 which prohibits any

²⁷ Ky. Crim. Code sec. 25 (1953).

²⁸ Ky. Crim. Code sec. 399 (1953).

²⁹ *Ibid.*

³⁰ Ky. Crim. Code secs. 49, 26, 71 (1953).

³¹ Ky. Const. sec. 140.

³² Ky. Const. sec. 141.

³³ *Supra*, note 21; See KRS sec. 455.010 providing for transfer to, and prompt trial by the county court when a person charged with a misdemeanor is imprisoned in default of bail and the court in which he was indicted or before which he was ordered to appear is not in session. However, as the Court of Appeals has interpreted the statute it does not extend the jurisdiction of the county judge, but merely provides for the transfer from the circuit court of such misdemeanors as were already within the jurisdiction of the county court. *Commonwealth v. Carter*, 152 Ky. 463, 153 S.W. 35 (1913).

It should be noted that despite the extensive original criminal jurisdiction conferred by the Constitution and the statutes upon the County Court, the prevailing practice in the counties of Kentucky is that the quarterly court of a county handles the criminal cases therein, with certain exceptions, e. g. cases involving probation of wills, etc.

³⁴ KRS secs. 25.010, 26.010 (1956).

person with the intent to evade the provisions of Kentucky Revised Statutes Section 167.090 from making a false statement concerning the age of a deaf child or the length of time the child attended a school for the deaf.³⁵ The county court has exclusive jurisdiction of all prosecutions under Kentucky Revised Statutes Section 199.320 which requires any person having custody of any child to take action to prevent such child from becoming delinquent, neglected, or charged with a crime, and also prohibits any person from knowingly contributing to the delinquency or neglect of a child.³⁶

An important segment of the county court's jurisdiction is that over juveniles,³⁷ and when dealing with such cases the court sits as a "Juvenile Court" which maintains a separate docket.³⁸ The county court has exclusive jurisdiction in proceedings concerning any child who has not reached his eighteenth birthday, living or found within the county who has committed a public offense except those involving juveniles between sixteen and eighteen years of age who are charged with offenses involving motor vehicles.³⁹ The county juvenile court has no jurisdiction over prosecutions of juveniles between the ages of sixteen and eighteen where such prosecutions are of offenses involving moving motor vehicles.⁴⁰ However, if, during the course of any proceedings in the County Court, it appears that a child has committed a felony and at the time of the commission of the offense the child was at least sixteen years of age, or was less than sixteen years old but the offense was murder or rape, and if the court is of the opinion that the best interest of the child and the public require that the child be tried and disposed of under the regular law governing crimes, the court in its discretion may transfer the case to the circuit court of the county in which the offense was committed.⁴¹

The county court has no jurisdiction of violations of municipal ordinances,⁴² or of violations of certain statutes governing intra-state air transportation,⁴³ or of prosecutions of members of the fiscal court

³⁵ KRS sec. 167.990(3) (1956).

³⁶ KRS sec. 199.990(2)(c) (1956).

³⁷ KRS sec. 208.020 (1956); however, nothing in KRS sec. 208.010 to KRS sec. 208.590 is to be construed to deprive other courts of the right to determine the custody of children upon writs of habeas corpus, or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of other cases pending in such other courts. Nor is anything in such statute to affect the jurisdiction of Circuit Courts over adoption and proceedings for termination of parental rights.

³⁸ KRS sec. 208.030 (1956).

³⁹ *Supra*, note 41; KRS sec. 208.010 (1956); H.B. 49 (1958).

⁴⁰ H.B. 49 (1958).

⁴¹ KRS sec. 208.170 (1956).

⁴² KRS sec. 26.010 (1956); Ky. Crim. Code sec 13(4) (1953).

⁴³ KRS sec. 183.990 (1956).

for wilful failure to perform certain duties required under Chapters 178 and 179 of the Kentucky Revised Statutes.⁴⁴

If no circuit judge is present in the county, the county court judge may issue a writ of habeas corpus. Although the power of the circuit court to issue such a writ is co-extensive with the state,⁴⁵ the power of the county judge to issue a writ of habeas corpus is co-extensive only with the county.⁴⁶

County courts have jurisdiction concurrent with justices', and, within the city limits with police courts in all examining trials except homicide, and exclusive jurisdiction in all examining trials where homicide is charged, except that police courts in cities of the first class have exclusive jurisdiction as examining courts of all offenses committed within the city limits.⁴⁷

Quarterly Courts

The Constitution provides that a quarterly court shall be established in each county of the State and be presided over by the county judge, the jurisdiction of which is to be regulated by the General Assembly.⁴⁸

Except as indicated below, quarterly, county, justices', and, within the city limits, police courts have jurisdiction concurrent with the circuit court in all penal and misdemeanor cases when the punishment is limited to a fine of not more than five hundred dollars or imprisonment for not more than twelve months, or both.⁴⁹ The quarterly courts have jurisdiction under Kentucky Revised Statutes Chapter 242 which relates to violations of local option law only when the penalty does not exceed a fine of one hundred dollars or imprisonment in the county jail not exceeding sixty days.⁵⁰

Quarterly courts, together with county, justices' and, within the city limits, police courts, have jurisdiction exclusive of the circuit court in all penal and misdemeanor cases in which the punishment is limited to a fine of twenty dollars or less.⁵¹

Quarterly courts have no jurisdiction in cases of violations of municipal ordinances,⁵² or of violations of certain statutes govern-

⁴⁴ KRS secs. 178.990(5), 179.990 (18) (1956).

⁴⁵ Ky. Crim. Code sec. 399 (1953).

⁴⁶ Ky. Crim. Code sec. 399 (1953); *Fudge v. Brown*, 311 Ky. 301, 224 S.W. 2d 137 (1949); See *Bard v. Bard*, 295 Ky. 254, 173 S.W. 2d 569 (1943).

⁴⁷ KRS sec. 26.020 (1956); Ky. Crim. Code secs 26, 49, 71 (1953).

⁴⁸ Ky. Const. 139.

⁴⁹ KRS secs. 25.010, 26.010 (1956).

⁵⁰ KRS sec. 242.990 (1956).

⁵¹ KRS secs. 25.010, 26.010 (1956).

⁵² KRS sec. 26.010 (1956).

ing intrastate air transportation.⁵³ Further, the quarterly court has no jurisdiction in prosecutions regarding contributing to the delinquency of a minor,⁵⁴ or in prosecutions regarding the instruction of deaf children,⁵⁵ or in criminal or penal cases against juveniles less than eighteen years of age except those involving juveniles between sixteen and eighteen years of age who are charged with offenses involving moving motor vehicles.⁵⁶ Also the quarterly court has no jurisdiction of prosecutions of members of the fiscal court for wilful failure to perform certain duties required under Chapters 178 and 179 of the Kentucky Revised Statutes.⁵⁷

No power to issue a writ of habeas corpus is vested in the quarterly court since the county judge has such power under certain circumstances,⁵⁸ and there would be no reason to vest the power in both the county and quarterly courts since the same judge presides.⁵⁹

Police Courts

The Constitution provides for the establishment of a police court in each city and town of the state with exclusive jurisdiction in cases of violations of municipal ordinances and by-laws occurring within the corporate limits of the city or town in which it is established, and such criminal jurisdiction within the said limits as justices of the peace have.⁶⁰

Except as indicated below, police courts, within their corporate limits, along with county, quarterly, and justices' courts have jurisdiction concurrent with the circuit court in all penal and misdemeanor cases where the punishment is limited to a fine of not more than five hundred dollars or imprisonment for not more than twelve months, or both.⁶¹ Police courts as to offenses committed within their corporate limits have jurisdiction concurrent with the circuit courts of all offenses committed under Kentucky Revised Statutes Chapter 242, which relates to violations of Local Option Laws, when the penalty does not exceed a fine of one hundred dollars and imprisonment in the county jail not exceeding sixty days.⁶²

Except as noted below, police courts, within their corporate limits,

⁵³ KRS sec. 193.990 (1956).

⁵⁴ KRS sec. 199.990(2)(c) (1956).

⁵⁵ KRS sec. 167.990 (1956).

⁵⁶ KRS sec. 208.020 (1956); H.B. 49 (1958).

⁵⁷ KRS sec. 178.990(5), sec. 179.990(18) (1956).

⁵⁸ Ky. Crim. Code sec. 399 (1953).

⁵⁹ KRS secs. 25.010, 26.010 (1956).

⁶⁰ Ky. Const. sec. 143; KRS secs. 25.010, 26.010 (1956).

⁶¹ KRS secs. 25.010, 26.010 (1956).

⁶² KRS sec. 242.990 (1956).

together with county, quarterly, and justices' courts have jurisdiction exclusive of the circuit courts in all penal and misdemeanor cases where the punishment is limited to a fine of twenty dollars or less.⁶³

Police courts have no jurisdiction of violations of certain statutes governing intrastate air transportation,⁶⁴ of prosecutions for contributing to the delinquency of a minor,⁶⁵ of prosecutions regarding the instruction of deaf children,⁶⁶ or of criminal or penal cases against juveniles less than eighteen years of age except those involving juveniles between sixteen and eighteen years of age who are charged with offenses involving moving motor vehicles.⁶⁷ Naturally police courts have no jurisdiction of prosecutions of members of the fiscal court for wilful failure to perform certain duties required under Chapters 178 and 179 of the Kentucky Revised Statutes.⁶⁸

A judge of a police court may issue a writ of habeas corpus when no circuit judge is within the county. However, the power of a police judge to issue such a writ extends only to the corporate limits of the city or town.⁶⁹

As to offenses committed within the city limits, police courts have jurisdiction concurrent with the county and justices' courts in all examining trials except when homicide is charged.⁷⁰ However, police courts in cities of the first class have exclusive examining jurisdiction of all offenses committed within their corporate limits.⁷¹

Justice Of The Peace Courts

The Constitution provides for the establishment of justices courts and that the General Assembly shall divide each county into justice districts consisting of three to eight districts to be presided over by an elected justice of the peace, whose jurisdiction is co-extensive with the county and equal and uniform throughout the State.⁷²

Except as indicated below, justices', quarterly, county, and, within the city limits, police courts have jurisdiction concurrent with circuit courts in all penal and misdemeanor cases where the punishment is limited to a fine of not more than five hundred dollars or imprison-

⁶³ KRS secs. 25.010, 26.010 (1956).

⁶⁴ KRS sec. 183.990(3) (1956).

⁶⁵ KRS sec. 199.990(2)(c) (1956).

⁶⁶ KRS sec. 167.990(3) (1956).

⁶⁷ KRS sec. 208.020 (1956); H.B. 49 (1958).

⁶⁸ KRS secs. 178.990(5), 179.990(18) (1956).

⁶⁹ Ky. Crim. Code sec. 399 (1953).

⁷⁰ KRS sec. 26.020(2) (1956); Ky. Crim. Code secs. 49, 26, 71a-1 as to when a police judge of other than a first class city may act as an examining judge where homicide is charged, see Ky. Crim. Code sec. 71a-3.

⁷¹ KRS sec. 26.020(1) (1956).

⁷² Ky. Const. sec. 142.

A GENERAL CHART OF THE ORIGINAL CRIMINAL JURISDICTION OF KENTUCKY COURTS

Offenses

Circuit Court County Court Quarterly Court Justices Court Police Court

Felonies and misdemeanors when the fine is over \$500 or imprisonment for more than 12 months.

Exclusive

None

None

None

None

Felonies and misdemeanors when the fine is more than \$20 but not more than \$500, and where the imprisonment is for not more than 12 months.

Concurrent

Concurrent

Concurrent

Concurrent

Concurrent

Misdemeanors when the fine is not more than \$20.

None

Concurrent

Concurrent

Concurrent

Concurrent

Violations of city ordinances.

None

None

None

None

Exclusive

Local option violations under KRS ch. 242 when the fine is more than \$100 or imprisonment for more than 60 days.

Exclusive

None

None

None

None

Local option violations under KRS ch. 242 when the fine is not more than \$100 and imprisonment for not more than 60 days.

Concurrent

Concurrent

Concurrent

Concurrent

Concurrent

Offenses committed by juveniles.

None, except in case of waiver.

Exclusive*

None

None

None

Power to issue a writ of habeas corpus.

Exclusive, generally

In absence of circuit judge.

None

In absence of circuit, county and police judge

In absence of circuit judge.

* Juveniles between 16 and 18 years of age may be tried as adult offenders in the case of moving motor vehicle violations.

ment for not more than twelve months, or both.⁷³ Justices' courts have concurrent jurisdiction with the Circuit Court of all offenses committed under Kentucky Revised Statutes Chapter 242 when the penalty does not exceed a fine of one hundred dollars and imprisonment in the county jail not exceeding sixty days.⁷⁴

Except as noted below, justices' courts, together with county, quarterly, and, within the city limits, police courts, have jurisdiction exclusive of the circuit courts in all penal and misdemeanor cases where the punishment is limited to a fine of twenty dollars.⁷⁵ Justices of the Peace courts also have certain specialized jurisdiction.⁷⁶

Justices' courts have no jurisdiction of violations of municipal ordinances,⁷⁷ or of violations of certain statutes governing intrastate air transportation,⁷⁸ or prosecutions for contributing to the delinquency of a minor,⁷⁹ or prosecutions regarding the instruction of deaf children,⁸⁰ or of prosecutions in criminal cases against juveniles less than eighteen years of age except those involving juveniles between sixteen and eighteen years of age who are charged with offenses involving moving motor vehicles.⁸¹ As one would expect, justice of the peace courts have no jurisdiction of prosecutions of members of the fiscal court for wilful failure to perform certain duties required under Chapters 178 and 179 of the Kentucky Revised Statutes.⁸²

A justice may issue a writ of habeas corpus when no circuit, county, or police judge is in the county, and his power to issue such a writ is co-extensive with the county.⁸³ Justices' courts have jurisdiction concurrent with the county, and, with police courts in all examining trials except where homicide is charged⁸⁴ or where the offense is committed within the corporate limits of a first-class city.⁸⁵

⁷³ KRS secs. 25.010, 26.010 (1956). ⁷⁴ KRS sec. 242.990(3) (1956).

⁷⁵ KRS secs. 25.010, 26.010 (1956).

⁷⁶ Justice of the peace courts have jurisdiction of violations of KRS sec. 280.990(4) relating to private toll bridges and ferries which provides that any person who violates any provision of subsection (3) of KRS 280.190 shall forfeit \$15, to be recovered before a justice of the peace by the owner of the ferry whose rights were infringed; KRS sec. 423.990 relating to regulation of notaries provides that any notary who violates KRS 423.030 shall be fined \$5, to be recovered by warrant before any justice of the peace in the county.

⁷⁷ KRS sec. 26.010 (1956); Ky. Crim. Code sec. 13(4) (1953).

⁷⁸ KRS sec. 183.990(3) (1956).

⁷⁹ KRS sec. 199.990(2)(c) (1956).

⁸⁰ KRS 167.990(3) (1956).

⁸¹ KRS sec. 208.020 (1956); H.B. 49 (1958).

⁸² KRS sec. 178.990(5); KRS sec. 179.990(18) (1956).

⁸³ Ky. Crim. Code sec. 399 (1953).

⁸⁴ Ky. Crim. Code secs. 49, 26, 71a-1 (1953); as to when a justice of the peace may act as an examiner when homicide is charged, see Ky. Crim. Code sec. 71A-3 (1953).

⁸⁵ KRS sec. 26.020(1) (1956).

From January 5, 1958, to March 28, 1958, justices of the peace in Kentucky counties having less than 250,000 population had no jurisdiction to try criminal cases. The Court of Appeals of Kentucky in the case of *Roberts v. Noel*⁸⁶ held that justices in counties having less than 250,000 population had no jurisdiction to try criminal cases. The *Roberts* case held that under *Tumey v. Ohio*⁸⁷ there is denial of due process of law under the Fourteenth Amendment of the United States Constitution when a defendant is tried by a judge whose compensation is directly dependent upon a conviction. The Kentucky Court held that a court is without jurisdiction to try criminal cases if the trial judge is paid for his services only when there is a conviction. Justices of the peace in counties of less than 250,000 population were the only judges in Kentucky affected by the decision as all other judges were compensated by means other than the fee system. Also the Court postponed the effective date of its ruling until the newly elected justices took office January 6, 1958.

However, on March 28, 1958, the Governor signed a bill, carrying an emergency clause making it effective immediately, which provides that justices of the peace in all counties upon authorization by the fiscal court may be paid salaries so that they can again try criminal cases.⁸⁸ Therefore at present the jurisdiction of justices of the peace in counties having less than 250,000 population to try criminal cases is restored in counties where, but only in counties where, the fiscal court has provided for compensation of the justices by straight salary.

Conclusion

As the reader is quite well aware by this time, the original criminal jurisdiction of Kentucky courts is in a confused state of affairs and there is a great need for a wholesale revamping of the Statutes and Code or at least a systematic codification of the existing law. It is understood that some efforts are being made in regard to the latter suggestion. However at this time these efforts have not materialized into any concrete improvements.

In the final analysis the writers strongly suggest that constructive steps be taken in order to improve the existing situation by at least supplying clarity.

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⁸⁶ 296 S.W. 2d 745 (1956).

⁸⁷ 273 U.S. 510 (1927).

⁸⁸ S.B. 229 (1958).