The Seventeenth Century Justice of Peace in England

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In seventeenth century England, county government largely devolved upon the justices of the peace. They were a body of trained peace-magistrates who through the detection, apprehension and prosecution of criminals functioned as the agency of police control; who in the exercise of their judicial powers on the criminal side in the county court of quarter sessions constituted the local magistracy; and who by the derivation of their authority acted as instruments of government by the Crown. Justices were commissioned by the King and responsible to him for the maintenance of public order, for furtherance of the policies of the central government and for supervision of internal county affairs. Thus, the justices of that time exercised wide powers of police, executive, administrative and judicial authority, and constituted a unique institution for the unification of national and local control.

In order to properly understand the status of the 17th century justices, it is necessary to see them in relation to other county officers concerned with the keeping of the peace, viz.: the Lord-Lieutenant, the Custos Rotulorum or “Keeper of the rolls of the peace”, and the Clerk of the Peace, as well as in their relation to the King’s Judges and the Privy Council.

The office of Lord-Lieutenant originated as a military one, and took its definite rise by statute in the middle of the 16th century. Its duties included the mustering and organizing of troops; its authority, the enforcement of martial law when necessary. In practice the office of Lord-Lieutenant became connected with another office which had arisen earlier, the Custos Rotulorum. From at least the beginning of the 16th century, this “keeper of the rolls” had been one of the leading justices.

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137 Henry VIII, c. 1 (1546); Webb, English Local Government, I, p. 286.

*4 and 5 P. and M., c. 3.

*Beard, The Office of Justice of the Peace in England, pp. 112, 113; Maitland, Justice and Police, p. 82.
of the county designated as such by the Crown. He was a member of the quorum in the commission, selected for "wisdom, countenance, or credit." It was his duty to attend the sessions in person or by deputy, to guard the records of the general sessions and to produce the writs, processes, indictments, recognizances and other records as required. Somewhat before the reign of William and Mary, and more so from the Revolution onwards, the offices of Lord-Lieutenant and Custos Rotulorum were united in one officer, though ordinarily by separate appointments. Thus, this officer came to be regarded as the representative in the county of the King himself. Known as Lord-Lieutenant, this official personage came to be the head of the county magistracy, presiding over the justices and their sessions, nominally for life. The office was usually filled by one of the most important nobles owning land within the county. It was greatly desired for it entailed little expense and few duties, but carried with it a considerable honorary patronage and frequent opportunities of official contact with the high officers of the King.

While this dual officer in his civil capacity was custodian of the court records, he was not the clerk of the sessions courts. For this function there was provided another officer called the Clerk of the Peace. He recorded the proceedings of the sessions; read indictments; drew processes; recorded the proclamations of wages, the discharges of apprentices, licenses to badgers and laders of corn, presentments for not attending church, certificates of the oath of allegiance; certified transcripts of indictments and other records; and performed in general the numerous other clerical functions of a clerk of court. The Clerk of the Peace attended sessions and performed his duties in person or by deputy. Both the Clerk and his deputy were appointees of the Lord-Lieutenant, and tenure was for the life of the appointing officer. The Clerk was usually a man of some legal training or ability, and was called by Lambard "the attorney of the King." Differently than in the case of the magistracy, he received customary fees of office.

Lambard, Eirenarcha (1619 ed.), p. 387.
4 Ibid.
6 Ibid. I, pp. 373, 483.
7 Lam. Eir. p. 393.
8 Ibid., 394.
9 Ibid., 394.
There were also the King's Judges to whom, with the Privy Council and the court of Star Chamber in the first half of the century, the justices in their capacity as royal officers appointed by the King and removable at his pleasure were responsible. The King's Judges summarily removed cases from the justices' jurisdiction, quashed their proceedings for mistakes of law, and peremptorily ordered them to proceed in matters wherein they were inactive. The King's Judges could try and determine all accusations against justices for venal, malicious, or even mistaken decisions. The justices and all other civil officers of the county were bound by the law to appear before the King's Judges at their periodical assizes in the county, and to report to them on the state of the King's peace and the enforcement of the laws of the realm. By express terms of their commissions, justices were bound to reserve difficult questions for the presence of one of the King's Judges.

More especially as to administration, the justices were directly responsible to the Privy Council, whose primary local functionaries they were. The King largely exercised his powers through his Council; the Council in turn employed the justices as an agency of control. The Council and justices constantly communicated on all local matters, especially those affecting the royal interests. The Council supervised the securing of willing and faithful justices to perform the orders and execute the policies of the King's government.

The justices themselves as we find them in the 17th century, were the product of history. Their office extends in its origins from the assignment of knights to assist in conserving the peace by the Justiciar, Archbishop Hubert Walter, in 1195, through the successive experiments of the central government in appointments of similar custodians or conservators of the peace for about a century and a half thereafter. These experiments, with those made in the institution of justices of laborers ensuing upon the plague of the Black Death in 1349, led up to and resulted in the final consolidation of the conservators of the peace and the justices of laborers in the permanent es-

The establishment of the office of justice of the peace in 1360. The statute of 1360 is regarded as the foundation of the jurisdiction of the county courts of quarter sessions and of the office of justice of the peace as a permanent police and administrative institution. Two years later, in directing the holding of the quarter sessions, the statute itself called these officers justices of the peace.

The fundamental charter of the justices’ powers, their royal commission, was revised into its final form in 1590. Prior thereto it had become unnecessarily long and equivocal. To remedy this, the form of the commission was revised by the Chief Justice of the King’s Bench, Sir Christopher Wray, in conference with the other judges and with the approval of the Lord Chancellor. It was then put into simple general terms, easily including later arising details. This has remained the final form under which the justices of that time and their successors for all time since have served.

The revised commission was virtually a charter of the fundamental law in force relating to the authority and jurisdiction of justices of the peace. In its several provisions, it first assigned the certain persons named to jointly and severally keep the peace in their counties. The first clause conveyed the powers of conservators of the peace according to both common and statute law. The second clause conferred upon any two or more justices, one being of the quorum, power to inquire by jury into a list of specified offenses against the statutes and into official neglect, to try indicted offenders, and to fine or sentence convicted persons. The quorum proviso that for the validity of proceedings one of the justices must be of the select group whose names were expressly repeated in the commission as being...

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24 Edw. 3, c. 1; Beard, op. cit. p. 40; 1 Holdsworth, op. cit. p. 288.
25 Edw. 3, c. 12; Lam. Eir. p. 23.
26 The term "commission" is used in two different connections, in the first sense as meaning the whole body of magistrates appointed in the county, and in the second sense as the charter of the officers' appointment and authority issued from the Chancery.
28 Reeves, History of English Law, p. 467.
29 Beard, op. cit. p. 142.
31 Lam. Eir. p. 36, pp. 48-49; Beard, op. cit. pp. 142, 168.
learned in the law, was in conformity to early statutes. Another provision reserved cases of doubt and difficulty for consideration by the justices when there should be present with them one of the King's judges. The justices were charged to be diligent in performance of duty, with a saving of amerce-ments to the King. The final provisions commanded the sheriff to return the jury upon the certain days and at the places to be designated by the justices, and concluded with instructions to the Custos Rotulorum, to produce at court from his custody the records of the peace, such as the writs, proceedings, and indictments. It was early determined that justices were not to be elected locally, nor appointed by Parliament, but that they were to be "named by the King and his continual Council." Later, a statute provided that they should be appointed by the advice of the Chancellor and the King's Council. It was and is the custom to issue a new commission for the county from time to time, especially at the beginning of each new reign, or to insert new names in the old commission. The high standing of the office made appointment on the commission an object of desire. Influence and the personal and social standing of candidates necessarily entered into the procuring of appointments. Down to the Rebellion, the Judges of Assize were expected by the Privy Council to nominate suitable justices. After the Restoration, there followed a period of courtly manipulation of the commissions in which there were removals from and additions to the lists according to individual disaffection or subserviency. Gradually, the practice obtained of appointing justices on the nomination of the Lord-Lieutenant of the county, who thus exercised his influence in the award of patronage, although the Lord Chancellor always retained his right to appoint persons of his own choice.

18 Edw. 3, c. 42; 34 Edw. 3, c. 1; 13 Ric. 3, c. 7; 1 Holdsworth, op. cit. p. 230.
* 2 Hen. V. st. 2, c. 1.
*Lam. Eir. p. 27; Maitland, op. cit. pp. 82, 83.
*Lam. Eir. 30-32; Beard, op. cit. pp. 140-141; Peyton, op. cit. xv.
The qualifications of a justice were a practical consideration. As to character, he must be "a good man and lawful," "of the best reputation," "the most worthy," and in Lambard's rendering, "the most valiant." (Eir. 30.) Respect of the law would be best promoted by officers of good example. A residential qualification limited appointments to be made of "the most sufficient persons dwelling in the county," as it was undesirable that outsiders should interfere in the administration of the county. As to property, a justice must have lands or tenements to the value of £20 a year, for as the preamble of the law states, otherwise the temptation offered to men of small means for bribery and extortion interferes with the purposes of the institution. In the absence of substantial persons to meet this requirement, the Chancellor could appoint other discreet persons "learned in the law" even if they did not possess this income.

In order to understand the records and handle proceedings before them, justices needed a certain knowledge of Latin and a certain knowledge of law. To safeguard the legality of justices' actions, members of the commission who were of the quorum were required by statute to know law. It was necessary that such a member be present as one of the two or more justices in the determination of cases, and usually in the transaction of administrative business as well. In time it became the practice to place all, or nearly all, of the justices of the commission in the select quorum group. By 1689, the quorum clause became

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1 Edw. III, c. 16.
2 18 Edw. III, c. 2.
3 34 Edw. III, c. 1.
4 Peyton, op. cit. v.
5 2 Hen. V, st. 2, c. 1; Lam. Eir. 30.
6 Peyton, op. cit. xv.
7 18 Hen. VI, c. 11. Owing to the later depreciation of money, this qualification became practically nugatory. Lambard conjectures (Eir. pp. 31-32) that in his time its inadequacy was met by the selection of men whose incomes were proportionately increased.
8 Ibid.
9 Hamilton, Quarter Sessions from Queen Elizabeth to Queen Anne, p. 347; Peyton, op. cit. xvi; 18 Edw. III, c. 1; 34 Edw. III, c. 1; 13 Ric. III, c. 7.
10 Lam. Eir. p. 48; Beard, op. cit. p. 146.
11 Peyton, op. cit. xlvi.
a mere form; all justices in each commission being named as of the quorum.46

Because of the dignity and honorable esteem with which the office was regarded, justices possessed of the practical ability and learning could usually be obtained by selection from a large group of candidates among the landed gentry. It was part of a country gentleman’s education to read law for two or three years at the Inns of Court in London.47

Upon issuance of the commission, justices appointed were required to take oath in order to qualify as active justices of the peace. “To take out their Dedimus Potestatem,” as it was known, involved going before an officer authorized to administer the oaths by a writ of dedimus potestatem directed out of the Chancery with the commission. The oaths in Lambard’s time included the official oath of a justice of the peace, an oath of supremacy or ecclesiastical allegiance, and an oath of political allegiance to the Sovereign.48 For this, the justice was put out of pocket for fees to the amount of about £4.49

The tenure of office was usually for life. While it was legally for the life of the Sovereign and his death thus determined it,50 in practice, the policy of the Lord Chancellor was to continue the name of a magistrate on the list for his county,51 and he would therefore be reappointed. The long service of justices produced a body of trained magistrates. However, the prevailing fixity of tenure was accompanied by the possibility of quick removal. For the unusual instances of this, all that was necessary was the issuance of a new commission leaving undesirable members off the list. Individual justices could thus be removed by the Lord Chancellor for refusal to attend to complaints, for delay, or any serious misconduct.52

The number of justices for each county varied in different periods. In 1360, one lord and three or four of the most worthy were assigned; in 1388, six justices were allotted to each shire; in 1390, the number was increased to eight, after which time no

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47 Hamilton, op. cit., p. 347.
48 Lam. Eir., pp. 53-56.
50 Lam. Eir., pp. 69-70.
51 Webb, op. cit., I, pp. 380-381.
52 4 Hen. VII, c. 12; Peyton, op. cit., xiv.
further statutory regulation was made.\textsuperscript{52} By necessity, with the increase of population and the multiplication of duties imposed upon the office, additional justices were appointed from time to time and it came about that no fixed or traditional number of justices was set for each county.\textsuperscript{53} By the 17th century as many as fifty or more justices were named on the commission for a county in addition to the names of men included in an honorary capacity.\textsuperscript{54}

The commission of appointment bore the names of a large number of persons who did not in fact serve as justices. In the first place, it was the custom to place on it the names of a considerable number of dignitaries, such as the highest officials of the central government, the highest judicial officers, the judges of the King’s Bench, of the Common Pleas and of Assize.\textsuperscript{55} In the second place, the commission bore the names of a considerable number of other persons in the county who could have actively served, but who did not choose to do so and did not qualify by taking the oaths. Moreover, a large number who actually qualified did not devote themselves to the service. An estimate of the activity of the 2,500 to 3,000 appointees in the seventy or eighty commissions in force between 1650 and 1700, states that probably not over half would have qualified as justices, and that of those who had qualified, not over half can be supposed to have habitually devoted themselves to the work. Of the 3,000 appointed justices in the last half of the 17th century, not over 700 to 800 are supposed to have actively served as such and were probably inversely distributed as the need for their presence existed.\textsuperscript{56}

When due allowance is made for the necessary deductions of inactive appointees and justices on the commission, it appears that in practice the burden fell on the few most willing or able to serve. Earlier in the century this condition would seem to have been in accord with the apparent policy of the Privy Council,\textsuperscript{57} yet in 1665 the Lord Chancellor complains of

\textsuperscript{52} 34 Edw. III, c. 1; 12 Ric. II, c. 10; 14 Ric. II, c. 11; Peyton, \textit{op. cit.}, xvi.
\textsuperscript{53} Peyton, \textit{op. cit.}, xvi, xvii; Beard, \textit{op. cit.}, pp. 146-147; Lam. Eir., pp. 32-34.
\textsuperscript{55} Ibid.; and xix-xx, pp. 33, 34, 36; Hamilton, \textit{op. cit.}, 3-4, pp. 321-348.
\textsuperscript{56} Webb, \textit{op. cit.}, I, p. 321.
\textsuperscript{57} Saunders, \textit{op. cit.}, xx-xxi.
the inactivity of many persons of the commission who neglect to be sworn, and threatens proceedings against them by the Attorney-General.\textsuperscript{58} The threat was unheeded and apparently never enforced.\textsuperscript{59} As the commission was an honor in itself, many persons in attaining it achieved sufficiently thereby their desire, and did not care to assume its responsibilities.\textsuperscript{60}

In the honor of the office, and not in the pecuniary compensation afforded them, lay the rewards of the justices. The wages of the justices were but four shillings a day for attendance at regular sessions, limited to three days each, and limited in the number who could receive payment to eight justices. It was further provided that peers of the realm serving as justices could not receive payment.\textsuperscript{61} For attendance at the sessions to be held twice a year, not exceeding three days each, for administration of the Statute of Laborers, justices were to be paid five shillings a day.\textsuperscript{62} A few other small perquisites provided were: (1) a part of the goods seized in possession of “Egyptians”;\textsuperscript{63} (2) half the twelve pence fee received for taking recognizance from an alehouse keeper;\textsuperscript{64} (3) a fee of one to two and a half shillings according to value for enrollment of a bargain and sale—often avoided by the process of “lease and release”;\textsuperscript{65} (4) half the penalty of forty shillings for the refusal to serve of one appointed as overseer of cloth.\textsuperscript{66} It is considered doubtful that justices benefited to any extent from the latter provision. The trifling payments made little difference to the principle of gratuitous service.\textsuperscript{67} The wisdom of the property qualification for holders of the justices’ office is readily seen.

The more substantial rewards of the service were found in the benefits of its honorary status, and in the attainment of political prestige. The practical training received in the actual work of government fitted justices for efficient service as mem-

\textsuperscript{58} Bohn, The Justice of the Peace: His Calling, vii, xiv.
\textsuperscript{59} Webb, \textit{op. cit.}, I, pp. 303, 321.
\textsuperscript{60} Alexander, The Administration of Justice in Criminal Matters in England and Wales, p. 70.
\textsuperscript{61} 12 Ric. II, c. 12; 14 Ric. II, c. 11.
\textsuperscript{62} 5 Eliz., c. 4, s. xxxi.
\textsuperscript{63} 22 Hen. VIII, c. 10.
\textsuperscript{64} 5 Edw. VI, c. 25.
\textsuperscript{65} Pollock, The Land Laws, pp. 105–107; 27 Hen. VIII, c. 16.
\textsuperscript{66} 3-4 Edw. VI, c. 2, s. 12.
\textsuperscript{67} Peyton, \textit{op. cit.}, xli.
bers of Parliament. The experience and public recognition gained by the justices promoted their influence and directly contributed to their political opportunities.

The sphere of the justices' activity extended throughout their own counties. Within these boundaries, they served to administer justice from a first-hand knowledge of local conditions, to suit the general control of local government to the personal elements or details of its administration, to suppress smouldering embers of discontent and protect the safety of the Crown. Hence, the office of justice of the peace was one of broadly inclusive functions, the sources of which were to be found partly in the commission and in customary development, but more especially in the statutes which added to the number and miscellaneous character of the justices' duties.

The justices were primarily police officers. From the early conservators of the peace whose functions were those of constable on a larger scale with regard to suppressing disturbances and apprehending offenders, this attribute of the office has always survived, and was retained in the final form of the commission. Such police duties were greatly augmented by a long line of enactments prior to and especially during the Tudor reigns. In the exercise of its control over justices, the Privy Council in the 17th Century increased their duties by imposing upon them further police burdens in connection with the enforcement of measures relating to the social and political order as well as those relating to recusants and dissenters.

In the apprehension of offenders, a justice could exercise a large power of police control through his authority to command others, and he could himself make an arrest for a felony or breach of the peace committed in his presence. But it seems that the statutes did not expressly give justices more power

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68 1 Holdsworth, op. cit., p. 292.
69 2 Hale, P. C., p. 50; Beard, op. cit., p. 147.
70 Peyton, op. cit., xvii.
71 1 Holdsworth, op. cit., pp. 289-290.
72 1 Edw. III, s. 2, c. 16; 34 Edw. III, c. 1, clauses 2-6; Lam. Eir., p. 20; 1 Stephen, op. cit., p. 112, 216; Beard, op. cit., p. 165.
73 Clause 1, Commission of the Peace, after 1530; Beard, op. cit., pp. 142, 183; Lam. Eir., pp. 45-46.
over the apprehension of felons than that possessed by private persons to arrest criminals, which was the power to arrest persons actually committing, or who had actually committed a felony, or to arrest persons suspected on reasonable grounds of having actually committed a felony.\(^7\) However, the issuance of warrants of arrest of justices of the peace had grown up and gradually extended throughout England.

The power of justices of the peace to issue warrants of arrest came not by virtue of statute, but seems to have come about by a practice begun and found so useful that it took firm root and spread as a common law practice over the country. No dates are therefore assignable for the origin nor for the definite establishment of this practice. It may be supposed that as the justices became more and more an efficient agency of local control, their authority increasingly flourished in the minds of the people who looked to them for leadership in the apprehension of criminals. The device of a written precept would be useful in the prosecution of the hue and cry after felons from one jurisdiction to another, especially on the authority whereby it had been raised. At all events it came about that the hue and cry was ordinarily raised under the authority of a justice’s warrant, and the phrase “to grant a hue and cry” came into common use by some time in the 17th century to mean the issuance of a warrant of arrest by a justice of the peace.\(^7\) Such warrant provided not only unquestionable authority for the raising and pursuit of the hue and cry, but it carried with it for pursuers immunity from their acts in arresting suspected persons encountered, whether or not a crime was found to actually have been committed.\(^8\)

The legality of the use of warrants was long disputed, es-

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\(^7\) Holdsworth, op. cit., p. 294.


\(^8\) 2 Hale, P. C., pp. 100-103. The conception of the justice’s warrant according to Hale is that of a magisterial precept issued upon careful determination as the initial step in prosecution. In keeping with this view, Hale stressed the examination of a person charging a felony as one to be made upon oath touching the whole matter, and the necessity of reducing such examination to writing as preliminary to the issuance of a warrant. Such complainant was also to be bound by recognizances to prosecute at the next sessions or assizes (page 111). Subsequent writers approved Hale’s view, sustaining it both in the matter of public policy and on fundamental principle. See 4 Blackstone, op. cit., p. 290, and 1 Chitty, Criminal Law (1826), pp. 13-14.
especially in the case of the arrest of persons suspected of felony before their indictment, unless the suspicion had originated in the mind of the officer or person making the arrest. Practice to the contrary was admitted by both Lambard and Coke, however. But by the time of Hale (1609–1676) the great convenience and even necessity of the practice of the justice’s warrant had resulted in its customary use and firm entrenchment. Hale justified its use as the legal exercise of a judicial power residing in a justice of the peace.\textsuperscript{82}

\textsuperscript{81} Lam. Eir., pp. 188–189; 4 Coke, Inst. (1809 ed.), pp. 176–177. Coke’s dates were 1552–1634. He held the resolution of the court in 14 Hen. VIII, f.16, a, to be the law to the effect that “a justice of the peace could not make a warrant to take a man for felony, unless he be indicted thereof, and that must be done in open sessions of the peace. For the justice himself cannot arrest one for felony, unless he himself suspect him (as any other may) and by the same reason he cannot make a warrant to another”. He carried his reasons back to the constitutional rights of individuals granted by Magna Carta and the law of the land, and contended that the statutes of 1 and 2 Phil. and Mary, c. 13 (1554), and 2 and 3 Phil. and Mary, c. 10 (1555), providing as to bail in suspected felony and other cases on examination of such prisoners before justices, authorized only a warrant to a constable to preserve the peace while the person having the suspicion himself arrested the accused, merely “to assist the party that knoweth or hath suspicion of the felony,” and that it did not even authorize breaking open any one’s house to effect the arrest in such case.

\textsuperscript{82} 2 Hale, P. C., pp. 105–110, 80, 91, 579. Hale took issue with Coke: “My lord Coke in his jurisdiction of courts . . . hath delivered certain tenets, which, if they should hold to be the law, would much abridge the power of justices of the peace, and condemn the constant and useful practice, and give a loose to felons to escape unpunished in most cases . . . The opinion of my lord Coke, 4th Inst. 177, is too straitlaced in this case, and, if it should be received, would obstruct the peace and good order of the kingdom; and the book of 14 H. 8, 16, upon which he grounded his opinion, was no solemn resolution, but a sudden and extrajudicial opinion, and the defendant had liberty to mend his plea as to the circumstances of time, to the end it might be judicially settled by demurrer, which was never done; and the constant practice hath obtained contrary to that opinion; \textit{quod vide} Dalt. cap. 117.” Hale went further into the matter to show that the practice was not in contravention of the law to which Magna Carta required judicial procedure and process to conform, nor of such later laws as that providing that “no man shall be put to answer without presentment before justices or matter of record, or by due process and writ original according to the old law of the land.” (Magna Carta, c. 29; 42 Edw. 3, c. 3.) He maintained that inasmuch as it was always the law of the land that if a felony was committed, or was suspected to have been committed, a man could be arrested by a man who knew him to be, or upon probable grounds suspected him to be the felon, or by a constable upon complaint, or upon hue and cry, that therefore a justice’s warrant or preparatory process having only the same effect as other existing modes of arrest was not in reason nor in fact illegal. He goes on to support his stand by citing the statutes enlarging the powers of justices as conservators of the peace and sustaining the principle contended for. He shows the judicial competence of a justice to judge of
The preliminary inquiry in criminal cases as conducted by justices in the 17th century was very different from the examination of accused persons as conducted in England and America today. The early law held accused persons for trial on presentment of the grand jury or on the finding of a coroner's inquest, and did not allow for any inquiry before trial on the question of guilt or innocence. In the 17th century, preliminary inquiry was based on the statutes of Philip and Mary. These did not contemplate any judicial inquiry for the benefit of the accused. The design, insofar as such persons were concerned, was to arm the justices with greater powers against them.

The conduct of the justices was clearly defined. In the case of a prisoner charged or suspected of felony before them, it was first incumbent upon the justices to take the sworn information or accusations by the prosecutor and witness, reduced to writing, and the written but unsworn examination of the person accused. In the case of a prisoner expressly charged with felony upon oath, justices had no power to discharge him in any event, but had either to bail or commit him. However, if the accused were charged only with suspicion of felony and no felony in fact proved to have been committed, or if the fact charged constituted no felony in point of law but only trespass, the justices might discharge him as to felony. In the latter case he would probably be bound over to sessions for a trespass if the facts so warranted. For killing by accident or in self-defense, or for assaulting an officer of justice in the performance of his duty, though not felony, the prisoner had to undergo trial and was committed or bailed meantime. But little margin of the reasonableness of the grounds of the complaint on suspicion, and demonstrates the soundness of the principle of the justice's adoption of the suspicion as his own in the issuance of an arrest warrant, just as a constable might act in his police capacity in arresting upon complaint made to him in such cases. Thus two propositions were upheld: (1) "That a justice of the peace hath power to issue a warrant to apprehend a person accused of felony, though not yet indicted"; (2) "He may also issue a warrant to apprehend a person suspected of felony, though the original suspicion be not in himself."

1 Holdsworth, op. cit., p. 296.
2 and 2 Phil. and Mary, c. 13 (1554); 2 and 3 Phil. and Mary, c. 10 (1555).
1 and 2 Phil. and Mary, c. 13; 2 and 3 Phil. and Mary, c. 10; 2 Hale, P. C., p. 120.
Ibid., p. 121.
determination existed to be exercised in the discharge of a prisoner, and that little was required to be grounded upon proof of no crime in fact.

In examination of the prisoner and of the witnesses against him by the justices, they took more the manner of a prosecutor than of a judicial officer. This was in line with their police function, and is shown in the frequent employment by justices of methods now exercised by detective officers. A multitude of cases are to be found in the sessions records going to prove the statement that "The great object of an English justice then, as of a French procureur now, was to get a confession." The proceedings in these examinations were of an inquisitorial character. They were secret and were intended only for the use of the prosecution and the court. The prisoner on the one hand, and his accuser and prosecuting witnesses on the other, were examined apart. The defendant was not permitted to be present at nor to be represented by counsel in the examination of his accusers, and in fact he was to be kept in ignorance of the testimony against him up to the moment of his trial. Furthermore, in many instances wherein justices worked up the case against

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1 Stephen, op. cit., pp. 193, 221. This procedure is partly illustrated in the Indictment Books of the West Riding Sessions Records. Not infrequently in marginal notes in these records, after the word "witness" is written "confession" and sometimes the word "examination". This means that upon his being arrested and brought before a justice by the constable, the accused was subjected to examination and questioning much in the same manner as is now practiced upon the continent, the chief object being to get the prisoner to confess. (Lister, West Riding Sessions Records, II, vii-viii.) The use of torture to wring confessions from accused persons was commonly practiced in the reigns of Elizabeth and James I, but in 1617 Lord Coke in Peacham's case and in 1628 the Judges in Felton's case declared such practice illegal. Whether it was ever a means employed to get sessions prisoners to confess is uncertain, but it seems clear that justices deemed it their duty to obtain confessions from accused persons, if possible. (Bund, Worcestershire County Records, I, cxi-cxii.) The words, "and further he confesseth not," are the usual ending of the records of these examinations, even when the accused has confessed nothing at all. Other statements as to the use of torture in the 16th century may be found in Beard, op. cit., p. 129, and in Domestic Papers, 1591-1594, p. 297.

It is further observed by Mr. Bund, the editor of the Worcestershire County Records (p. cxii), that "it is a curious fact in the legal history of the country how in two-and-a-half centuries the ideas as to prisoners being questioned has so completely changed that a proposal to allow them, if they desired it, to give evidence on oath was for a long time most strenuously opposed as being too hard upon the prisoners."
a prisoner, the justices were not infrequently among the principal witnesses against him.\textsuperscript{90}

We now come to the matter of recognizances and bail which is closely related to that of preliminary examination. Justices were accustomed to determine from the accusation and examination whether the suspicion or presumption of guilt was great or small. If the latter case, the accused who was but lightly suspected of felony might be admitted to bail, but even then the prisoner might be committed to jail unless he himself tendered bail, justices not being first bound to demand it.\textsuperscript{91} In the cases of great presumption of guilt, especially those on heinous charges or of offenders taken with the mainour, the only course for the justices was to commit the prisoner to jail to be there held for trial until the sitting of the assizes.\textsuperscript{92}

From earliest times in their character of police officers, justices took recognizances from numerous persons and for various purposes.\textsuperscript{93} The ordinary recognizance was a formal instrument or bond in the nature of an admission of record that the parties bound owed to the King the sums therein admitted to be due, and that they would pay the sums fixed in case a condition stipulated in the bond was not performed. These conditions required additional persons as sureties. Most of these instruments were for the purpose of securing appearance of persons at sessions: (1) to answer some charge that should there be made against them; or (2) to prosecute some person charged with an offense; or (3) to give evidence.\textsuperscript{94} It is likely that in the 17th century the most usual act justices had to perform was the taking of a recognizance in a case wherein a person was bound over to appear at sessions to answer to some charge there to be made, and to insure his good behavior and bearing toward the keeping of the peace.\textsuperscript{95}

\textsuperscript{90} 1 Stephen, op. cit., pp. 221–228; 1 Holdsworth, op. cit., p. 297.
\textsuperscript{91} 2 Hale, P. C., pp. 123-124.
\textsuperscript{92} 3 Axon, Manchester Quarter Sessions, 1616–1643, I, x; 7 Bacon's Works (Spedding ed.), pp. 469–471.
\textsuperscript{93} 4 Beard, op. cit., p. 165.
\textsuperscript{94} In the Calendar of the Quarter Sessions Papers of the Worcestershire County Records, Vol. I (1551–1643), 5,780 documents are calendared. Of these, 3,077 are recognizances, 993 indictments, and 1,800 miscellaneous documents. Of the 3,077 recognizances, 2,933 bonds, or over 95 per cent., were taken for appearances to answer, to prosecute, or to give evidence at sessions. (Bund, op. cit., xi-xvi.)
\textsuperscript{95} 5 Bund, op. cit., xv.
While single justices exercised the power of taking recognizances in a great variety of situations, the matter of admission to bail of those accused of felony was one standing on an entirely different plane. The regulation of admission to bail had been one of considerable concern in English law for several centuries. The abuses of discretionary power regarding bail by the sheriffs was recited in and regulated by the Statute of Westminster, I (1275), which for about 550 years thereafter was basic in the law of bail, especially in defining the classes of offenders which could be and those which could not be bailed. The matter was finally regulated by a more stringent statute in 1554.

If the prisoner, as in most cases, were held to answer to the court, and if, as probably in most cases, he were not admitted to bail, he was then usually committed to the common jail of

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96 3 Edw. I, c. 12. See 1 Stephen, op. cit., pp. 234, 236, 237; and Lam. Eir., pp. 342-343. Even after this statute the sheriff's abuse of power and exactions relating to bail continued and probably contributed to the causes of the transference of his power over bail largely to the justices by several statutes. A statute of 1330 prohibited the sheriff from admitting to mainprise (or bail) persons indicted or taken by the keepers of the peace. (4 Edw. III, c. 1.) The statute of 1360 gave in general terms the power of bail to justices. (34 Edw. III, c. 1.) The statute of 1444 required the sheriff to admit persons to bail in certain cases. (23 Hen. VI, c. 7, c. 9.)

97 The statute of 1 and 2 Philip and Mary (c. 13) which prescribed the mode of preliminary inquiry was intended to guard against any collusion between justices and prisoners. The statute provided that before a prisoner be admitted to bail his examination and the depositions of his accusers be taken in writing and certified to the next jail delivery (or court). It also provided that no one arrested for manslaughter, or felony, or for suspicion of either, even if bailable by law, should actually be admitted to bail by any justice of the peace except in open sessions. In case of admission to bail out of sessions the statute required the presence of two justices at least, one being of the quorum, to be together at the time of the bailment, and that each should subscribe and certify it in his own handwriting. See Lam. Eir., pp. 343-344; and 1 Stephen, op. cit., p. 237.
the county. The mittimus or warrant of commitment directing
the jailer to hold the prisoner in custody to abide the order of
the court was required to be in writing and under seal of the
justices. While the justices were allowed a reasonable time,
wanting in several days for the conduct of the examination, their
power of further detention upon its completion was only for
long enough to enable them to issue the mittimus. This had
to be specific as to the nature of the felony charged, for the
scrutiny of the judges of the King's Bench in a possible habeas
corpus proceeding, and to provide information needed for the
sheriff's calendar of prisoners and charges pending. The writ-
exten examinations and depositions, whether in the case of a pris-
oner admitted to bail or in the case of one committed to jail, also
constituted an essential part of the record of the cases. Verified
and certified as prescribed by law, at the conclusion of the ex-
amination, these were required to be returned to the proper
court. Another important function of the justices was their per-
formance as judicial officers. This came permanently into being
with the establishment of the justices' office by the provisions
of 34 Edward III, which is regarded as the foundation of the
jurisdiction of the county courts of quarter sessions. The
judicial powers of justices subsequently developed very rapidly
by statute, and their general scope is indicated in the second
clause of the commission giving instructions for the holding of
sessions. Justices of the peace in the 17th century were judges
of record; the county courts of sessions were then as now courts
of record. It was the duty of the Clerk to record the pro-
cedings with great care, so as to be capable of proof after term
time ended.

The courts held by the justices of the peace in the 17th cen-
tury functioned in three kinds of sessions: (1) the courts of
quarter or general sessions of the peace; (2) discretionary ses-

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89 2 Hale, P. C., pp. 120–122.
90 Ibid.
90a 1 and 2 Phil. and Mary, c. 13; 2 and 3 Phil. and Mary, c. 10.
90b 34 Edw. III, c. 1 (1360); Lam. Ear., pp. 21–23; 1 Stephen, op. cit.,
p. 113; Beard, op. cit., pp. 40–41; 1 Holdsworth, op. cit., p. 293.
90d Lam. Ear., pp. 64–66; Alexander, The Administration of Crimi-
nal Justice, p. 78.
sions being courts of general sessions; (3) special sessions of more restricted character. The courts of quarter sessions were the regular courts provided to be held for the whole county four times a year, quarterly as the name implies and at times fixed by statute.\textsuperscript{106} It is seen that the statutes authorized extra sessions to be held at other times than those fixed, and these sessions were called at will by the justices and could be convened by any two of them, one being of the quorum, by a precept issued to the sheriff requiring him to summon the personnel for the sessions.\textsuperscript{106} Hence, these extra sessions held at a place and time directed in the writ convening them, are called discretionary sessions. These also were justices' courts of general sessions, called sessions of the peace or simply sessions, and having the same general powers and jurisdiction as quarter sessions with some exceptions. The procedure and organization of discretionary sessions and quarter sessions were also the same.\textsuperscript{107} The special sessions were also called at the discretion of any two justices, one being of the quorum, to be held in certain localities in the county and at times between general sessions. The purpose of such sessions was mainly for the transaction of the special business for which they were called, although they could probably take up all matters within their commission which the statutes prescribed to be taken up at "sessions" in the use of the word "indifferently." They were not to burden the county in service but with the aid of a jury from the hundred in which they were held, they could advise perform the duties of a petty court in delivering the jails of misdemeanants, unruly servants, vagabonds, petty thieves, and the like.\textsuperscript{108}

In its organization, the court of quarter sessions or its dis-

\textsuperscript{106} The times for holding quarter sessions were set to be within the first week each after the Feast of St. Michael, Epiphany, the close of Easter, and the translation of St. Thomas the Martyr, and oftener if need required. The quarter sessions were also termed "principal sessions" and "open sessions". (12 Ric. II, c. 10; 2 Hen. V, c. 4; 4 Hen. VII, c. 12; 27 Eliz., c. 19.)

\textsuperscript{107} The number of "standing sessions of the peace" summoned yearly varied from six to sixteen in some counties according to Lambard (Eir., p. 593). "Monthly meetings" seem to have been held in Worcestershire, usually attended by three or four magistrates. (Bund., op. cit., xxxi.)

\textsuperscript{108} Lam. Eir., pp. 373-382, 605; Beard, op. cit., pp. 158-162; Peyton op. cit., xxxvii.
cretionary meetings called "session" or "sessions of the peace," was practically simple. The personnel of the sessions included the following: Two or more justices of the peace including one of the quorum, the Custos Rotulorum or his deputy, the clerk of the peace or his authorized deputy, the coroners, the sheriff with the precept returned, the bailiffs of franchises as ministers of the court, the constables of hundreds as jurors, stewards, the twenty-four honest and lawful men from each hundred, and twenty-four knights and other honest and lawful men of the shire at large, being summoned as jurors, and other persons voluntarily attending as a privilege, whether they were of those bound to keep the peace and required to appear, or citizens attending of their own accord. The clerical official known as the Ordinary was expected to attend only when called for matters of clergy. The officially summoned members of this personnel constituted the machinery of a court of justice which the sheriff was required to provide for a general sessions of the whole county. These sessions were to continue for three days each if business required.

In the absence of the Custos Rotulorum who was assumed to preside, there was no provision for a presiding chairman of the court, and during the 17th century it was probably the frequent custom to have no chairman at all. As a practical matter, one of the justices present could informally act as spokesman of the court.

While the organization of the court was a comparatively simple matter, the procedure of quarter sessions as a court of criminal jurisdiction was quite elaborate. It differed in no essential manner from that of the higher court of assize held twice a year in the county by the King's Judges. By means of a grand jury all complaints and offenses requiring attention

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11 Lam. Eir., pp. 39, 50-51, 381-382, 606; Beard, op. cit., pp. 158, 170-171; Webb, op. cit., I, pp. 295-296, 421, 456. The sheriff, his bailiffs, high constables of hundreds and franchises, the coroners, petty constables, etc., were obliged to attend and to report any offenses or derelictions of duty within their jurisdictions. A sufficient number of residents from each hundred were provided to furnish the local juries. The county at large provided a grand jury of leading gentlemen and qualified freeholders or copyholders (4 Wm. and Mary, c. 24, 1692), for the trial juries in criminal cases.
13 Webb, op. cit., I, pp. 296, 446.
were investigated and their presentments and indictments made to the court. Upon the return of indictments, some cases were removed from the justices' courts to the King's courts, either for want of sessions' jurisdiction to try them as in treason or misprision of treason, or by the interposition of writs of certiorari issued by the King's Judges at the instance of aggrieved parties. If the accused were present and confessed the charge in court, no process for his appearance nor any trial was necessary to be had, the accused being sentenced at the discretion of the court. If the indicted person stood trial in some exceptional cases, the trial could proceed by examination of the accused and the witnesses, or upon certificate of certain high officials of the King, without a jury. However, the general course of procedure on traverse or upon arraignment was that of trial before a jury of twelve men. The accused had the right of exercising challenges to the jurors, both for cause and for peremptory reasons. The trial then proceeded in the usual manner of a criminal trial by jury in the King's court. If found guilty, the prisoner was sentenced in accordance with the common law or statutes, or as determined within the discretion of the justices in certain offenses wherein the penalties were not defined by law.

The subjects of the justices' jurisdiction included: all felonies, poisonings, enchantments, sorceries, magic acts, trespasses, forestallings, regratings, engrossings and extortions; persons who ride armed or lie in wait to maim or kill anyone; the enforcement of the laws as to innkeepers, abuses of weights and measures, or acting wrongfully in the sale of victuals; the mis-

\[\text{Ibid., pp. 463, 474; Lam. Eir., pp. 396-400, 404-409, 410-484, 508-509, 513-516. The high and petty constables were bound to make certain presentments to the court, especially of those under the head of public nuisance and national nuisance, being under the one local government delicts and under the other such offenses as sedition, recusancy, disaffection to the dynasty, blasphemy, disorderly drunkenness and public gambling. Individual justices could from their own knowledge or information make presentments to the sessions, especially concerning the highways. Suggestions and voluntary information, oral or written, from private persons was to be received as but of force to move the justices to refer the matter for investigation.}\]

\[\text{Lam. Eir., pp. 529-530.}\]

\[\text{Ibid., pp. 531-539; Payton, op. cit., xxxvii; Beard, op. cit., p. 161.}\]

\[\text{Lam. Eir., 554-568; 22 Hen. VIII, c. 14; Beard, op. cit., pp. 161-162.}\]

\[\text{Lam. Eir., pp. 568-572.}\]
behavior of all sheriffs, bailiffs, stewards, constables and jailers in their offices; and all other crimes and offenses of which such justices might or ought lawfully to inquire. In cases presenting difficult questions as to law or jurisdiction, justices were cautioned to reserve their decision for the presence and advice of a judge of one of the benches or of assize. Subject only to this condition, the jurisdiction of the justices' courts nominally extended to all felonies and to all crimes except treason.

Justices tried capital offenses at their sessions, especially throughout the 16th century and to some considerable extent during the 17th century, and sent many persons to the scaffold who were executed upon their sentences. It was, however, becoming increasingly customary in the 17th, and became invariably so in the 18th century, to reserve jurisdiction in capital offenses for assizes. It seems that the criminal jurisdiction of justices in the 17th century was undergoing a gradual narrowing from the trial of felony cases to the field of misdemeanors, although the jurisdiction of the sessions in capital crimes was not abrogated by law until the 19th century.

But however the justices' jurisdiction was narrowing in the 17th century with respect to felonies—which were very common at that time and usually punishable with hanging—they were sufficiently occupied with the lesser crimes and misdemeanors and many offenses peculiar to the time. Offenses coming before them included minor breaches of the peace, petty theft, receiving stolen goods, bastardy, disorderly drunkenness, vagabondage, recusancy, and non-conformity. The value limit between larceny and petit larceny was that above twelve pence.

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1 Chitty, op. cit., p. 138.
3 Lam. Eir., p. 606; 1 Stephen, op. cit., p. 114.
7 Between the ten years 6 and 15 James I, 704 persons were hanged in Middlesex County. See Jeaffreson, op. cit., II, xvii.
for the former,\textsuperscript{125} a limit amazingly low but probably compensated for in a tendency on the part of the justices to undervalue stolen goods in order to save the culprit from hanging. Not only was the stealing of goods above twelve pence in value a felony, but the repetition of offenses in petit larceny was also so treated,\textsuperscript{126} likewise incorrigible roguery, or repeated vagrancy.\textsuperscript{127} While petty thieves were whipped for the first offense, repeated offenders were considered to deserve hanging and this penalty was inflicted on both men and women, if not commonly in the sessions in the 17th century yet very frequently in the assizes.\textsuperscript{128} At this time, corporal penalties in great variety were inflicted by the sessions not only for the now recognized misdemeanors, but also for many offenses whose affront to society was peculiar to the day and age.\textsuperscript{129}

In the 17th century neither in nor out of sessions were the justices vested with a general power of summary jurisdiction, nor with any such special power except in the instances wherein it was conferred by statute.\textsuperscript{130} Even for offenses summarily cognizable, the maximum penalties were fixed by law, leaving only a minimum of discretion.\textsuperscript{131} The powers of justices were too well defined to allow much freedom in practice. They were, moreover, warned not to "play the Chancellor."\textsuperscript{132} Even for very trivial offenses, the want of merit in charges had to be very plain in order for the justices to dismiss the charges. In doubtful cases they referred the matter to quarter sessions for further investigation and bound over the prisoner by recognizance for his appearance there and his good behavior mean-

\textsuperscript{125}Lam. Eir., p. 422.
\textsuperscript{126}Hamilton, op. cit., p. 34.
\textsuperscript{127}Peyton, op. cit., xxvii.
\textsuperscript{128}Hamilton, op. cit., pp. 30–34; 1 Stephen, op. cit., pp. 466–468. About 1600, the difference of jurisdiction between sessions and assizes seems to have been very small. (Hamilton, p. 30.)
\textsuperscript{129}Aside from occasional imprisonment, among the penalties most frequently meted out were: the stocks, the pillory, the ducking stool for scolds, mutilation, branding, and whipping as the most common. The imposition of a money fine was a customary penalty for a wide range of offenses. In some cases as of offenses in recusancy or in non-conformity the penalty was a heavy fine or an alternative of imprisonment upon refusal to pay. See Hamilton, op. cit., pp. 178–181, 238, 31–34, 155–160; Lam. Eir., 442–444; Peyton, op. cit., xxvi–xxxiv, xi, p. 99.
\textsuperscript{130}Bund, op. cit., xv.
\textsuperscript{131}Webb, op. cit., I, pp. 281–283; Peyton, op. cit., xlvii.
\textsuperscript{132}Lam. Eir., pp. 57–58.
time. In cases where no statute expressly gave the justices power to bind over, they were limited to admonishing the party and if this admonition were neglected, justices could present such neglect at sessions where a bill might be found and the accused tried by jury. The justices’ practical influence in such cases was probably wider than their powers and likely to secure efficacious heed to warnings.

Occasionally statutes authorized one justice, and in other cases two justices, to inflict penalties of different kinds for various kinds of offenses. The policy seems to have been to enable them to deal with offenses in the nature of trifling nuisances or disturbances, jurisdiction in the more serious offenses being reserved for juries. Such statutes generally prescribed fines as penalties to be collected for the use of the poor fund, and provided imprisonment or other penalty for default of payment.

The justices determined fact from their own view of some such offenses, as seeing tippling or hearing swearing, or upon the testimony of two witnesses (one alone being sufficient for some offenses), or upon confession in any case, depending upon the particular statute violated. Examples of the kind of offenses dealt with summarily by a single justice were: cases of pilfering from orchards or lands, not repairing to church every Sunday, drunkenness, continuing drinking or tippling in an inn or alehouse, cursing and swearing, keeping an unlicensed alehouse by allowing tipping or continual drinking, and offenses against the Sabbath. Offenses summarily

138 Bund, op. cit., xv, xxxiii-xxxiv.
139 Ibid., xxxi; Lam. Elr., p. 46.
140 1 Stephen, op. cit., pp. 122-123.
141 Webb, op. cit., I, pp. 300-301.
142 43 Eliz., c. 7. Penalty: whipping
134 3 Jac. I, c. 4, s. 27. A fine of 12d for each offense or imprisonment until payment.
143 4 Jac. I, c. 5, s. 2, extended by 21 Jac. I, c. 7, s. 3. A fine of 5s for each offense, or if not paid the stocks for 6 hours, and for a second offense bound also for good behavior as if convicted in sessions.
144 4 Jac. I, c. 5, s. 4, extended by 21 Jac. I, c. 7, s. 2. A fine of 3s. 4d for each offense, or if not paid the stocks for 4 hours.
145 21 Jac. I, c. 20. A fine of 12d for each offense, or if not paid the stocks for 3 hours in cases of offenders above 12 years; if under 12 years the fine of 12d to be paid or the offender to be whipped.
146 1 Jac. I, c. 9, extended by 1 Car. I, c. 4. A fine of 10s or offender committed to jail until payment. Undermeasuring ale or beer sold was alike cognizable, with a fine of 20s or commitment to jail until payment.
147 1 Car. I, c. 1, and 3 Car. I, c. 1. The first prohibits Sunday
cognizable by two justices were such as: cases of assaults by servants upon their masters, certain offenses under the game laws, and making of deceitful cloth. However, there were but few statutes giving summary powers to justices in force at the time, and a court of petty sessions administering a summary jurisdiction had not yet developed in the 17th century.

The work of justices in cooperation with the central government and under the orders and control of the Privy Council constituted a large part of their activities in the 17th as well as in the preceding century. This work included the performance of duties of two general classes: (1) duties more directly concerned in cooperation with the national government; and (2) duties more especially concerned with the local administration in the county of the central government's policies as affecting the inhabitants. Examples of the first were the assisting in raising the quotas of purveyance, subsidies, loans, sales of privy seals, quotas of men, equipment, and supplies for the military and naval service, and in the carrying out of political and ecclesiastical policies of the state. Examples of the second were the cooperation of the justices with the Privy Council in the regulation of "reasonable" prices and prevention of speculation in food-stuffs, the restraint of badgers, the regulation of wages and industry, the supervision and relief of the poor, the repression of vagabonds, idlers and fomentors of sedition and meetings for sports, pastimes, bear-baiting, bull-baiting, interludes, common plays, etc. A fine of 3s.4d on every offender or in default of payment the stocks for 3 hours. The second prohibits carriers or drovers traveling on Sunday under penalty of 20s for each offense, or butchers killing or selling meat on Sunday under penalty of 6s.8d for each offense, with rewards out of fines to informers, and fines recoverable by execution or suit of any citizen.

5 ELiz., c. 4, s. 21. The penalty was imprisonment for one year or less at discretion of these justices, with a power of sessions at discretion to inflict further punishment not extending to life or limb.

1611 Holdsworth, op. cit., p. 294.
revolution, and other economic and social control measures of the Council.\textsuperscript{148}

The justices administered the civil business of their counties in much the same way they handled judicial matters. No sharp distinction was made. All decisions whether concerned with the civil or criminal administration were in legal theory required to be based upon evidence and made in strict accordance with the law of the land. Not only was the county business largely carried on in the court of quarter sessions, intermingled with transactions of the criminal business, but the supervision of all county business was cast in a judicial mold. In the nature of the justices' authority they were concerned with the obligations of the individual under the law. Hence in the execution of 17th century county business, the numerous duties and obligations of citizens and local officers were enforced through the process of presentment and indictment in the quarter sessions. By this means the justices supervised the whole administration of county government.\textsuperscript{149}

\textsuperscript{148} Beard, \textit{op. cit.}, pp. 124-138; Saunders, \textit{op. cit.}, xxii, xxx-xxxix, xl. An interesting account for the 17th century of the cooperation of the justices with and under the various governments is afforded also in Mr. Hamilton's book. A remarkable feature is the showing of the stability of the tenure of this official class throughout the vicissitudes of changing governments. The traditional conservatism and legal training of the justices as a class evidently contributed to the recognition of the value of their service to the successive governments.

\textsuperscript{149} Webb, \textit{op. cit.}, I, pp. 281, 296, 437, 445; 1 Holdsworth, \textit{op. cit.}, p. 293.