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National Union of Societies for Equal Citizenship.

The Powers and Duties of Justices.

An Address delivered by Sir Edgar Sanders at the Women Justices' Conference at the Mansion House, London, 30th November, 1920.

THE POWERS & DUTIES OF JUSTICES.

AN ADDRESS DELIVERED BY SIR EDGAR SANDERS AT THE WOMEN JUSTICES' CONFERENCE AT THE MANSION HOUSE, LONDON, 30th NOVEMBER, 1920.

The office of Justice of the Peace, which dates from the reign of Edward III., is a very honourable one, intimately bound up with the government and well-being of our country.

The functions attached to the office are of the first importance and the respect paid to the decisions of justices has been well-earned by the general impartiality and integrity of successive generations of those who have filled the office. A step has now been taken in placing women on the Commission of the Peace which should have the effect of making the magisterial bench even more useful in the future than it has been in the past; and the fact that you have chosen such a dull subject for one of the papers at this meeting is a clear indication that you are determined to take more than a perfunctory interest in the details of your office. You are right in insisting upon knowing the nature of, and reasons for, the various official forms and ceremonies which are observed in magisterial courts and it is in the hope that what I say may be of some service to you that I have prepared what is bound to be in its nature a somewhat crude mass of detail.

The duties appertaining to the office of a justice are exceedingly numerous, but may roughly be divided under two heads—(1) administrative and (2) judicial. But in the first place I should mention that the extent of your jurisdiction depends upon whether you are on the commission for a county or a borough. A county justice is capable of acting in any part of the county, but in practice, for convenience sake, a county is divided into petty sessional divisions and a justice

is assigned to one or other of these divisions and does not act elsewhere in the county. A borough justice can only act in cases arising in the borough. Justices exercise their office either in petty sessions—courts of summary jurisdiction is the proper legal description—or in special sessions. In addition, county justices sit in quarter sessions for the trial of indictable cases remitted to them by the petty sessional justices and for hearing appeals. Time will not permit me to say anything of your powers in quarter sessions or of the procedure in such courts.

The licensing jurisdiction of justices is practically the only important duty left to be performed in special sessions. But as this is a subject which by itself could well engage the whole attention of such a conference it is well to pass it by on this occasion.

The administrative jurisdiction of justices has been seriously curtailed in modern times by the transfer of most of the former powers to local government bodies, such as the county and borough councils. Those which remain are not sufficiently important from a practical point of view to detain us to-day.

I should, however, remind you that it is your duty to see that the peace is kept in your jurisdiction. This duty is imposed upon you by the commission on which your names are enrolled. The obligation does not press hardly upon you now that there are police forces to see that the peace is not broken and that offenders are apprehended, but it nevertheless remains as a peculiar charge upon justices, who may be punished for neglect of their duty in this respect.

Most of the judicial duties placed upon justices are statutory and may be divided into three broad classes:—(1) that of a judicial enquiry in the case of a person brought before the court charged with a serious crime, to ascertain whether there is sufficient evidence against the accused to warrant the court in committing him to take his trial before the judge and jury at assizes or quarter sessions; (2) the trying of persons brought up for minor crimes and offences; and (3) the determination of quasi-civil suits which are brought before justices in such difficult matters as complaints under the Bastardy Acts or applications for separation orders under the statutes relating to married women.

The division of the cases triable by courts of summary jurisdiction and punishable by fine or imprisonment, into "crimes" and "offences" is a purely arbitrary one but it is necessary to say a few words upon it, in order that you may appreciate the differences in the procedure to which I shall have to refer.

Crimes are generally described as "indictable offences," and it is under that description that you will have to consider them when called upon to adjudicate in such cases in court. They are so-called because formerly they were only punishable on indictment, which is the legal term for the presentment by a grand jury of an accusation against an offender, who is thereupon tried by judge and jury.

Indictable offences consist of two kinds:—(1) felonies and (2) misdemeanours. I do not propose to go into the somewhat fine distinction between the two, as it is unnecessary for our purpose. Suffice it to say that felonies include all the most serious crimes, such as murder, stealing and so on, which in olden days were punishable by death; while misdemeanours are, if I may so describe them, the more modern of the lesser crimes. An illustration will make the point clear. Thus to steal a shilling from a person is a felony, but to obtain the same sum by false pretences is a misdemeanour. If there can be a moral distinction between stealing a shilling outright, and misusing the reasoning faculties in order to abstract a shilling from another by cheating, one would certainly regard the former as the less grave of the two offences. There is, however, an adequate margin of punishment given for either offence to enable the calculated crime to be punished more severely than the more open offence, if need be.

I propose to come back to the subject of your jurisdiction in the case of indictable offences after I have dealt with the everyday matters of court procedure which are applicable in practically every class of case coming before justices.

Now before a person appears in court on any charge, certain steps have been taken to ensure his attendance. There are three ways of doing this—(a) by arrest without warrant; (b) by summons; and (c) by arrest under warrant. The first, *i.e.*, arrest without warrant, needs little elaboration, as it

speaks for itself. There are certain crimes for which a private person may arrest, but it so rarely happens in these days of police forces that we may pass over the power with its mere mention. But arrest by a constable is, of course, of frequent occurrence and may take place on any charge of felony, if the constable has reasonable grounds for suspicion that the person is implicated in the charge.

On a charge of misdemeanour a constable cannot arrest without a warrant unless express power is given by statute. Such power is given by many statutes, but speaking generally, it is limited to the arrest of persons found committing the offence. For many minor offences and for assaults, constables may arrest the person actually found committing them, *e.g.*, a constable may arrest a person whom he finds drunk and disorderly in the street, but he cannot, without a warrant, arrest some one to-day for having been drunk and disorderly yesterday. Questions as to whether an arrest has been properly made should not be entertained by the court. If the arrest was not justified an action for damages will lie and all the court has to do is to try the accused on the charge laid against him.

The second means of bringing an offender before the court is by summons. This is founded on an information or on a complaint, according to the nature of the grievance. An information is applicable when a criminal or penal offence has been committed, whereas a complaint relates to matters of a civil nature, such as the payment of money or for an order under the Bastardy Acts or the Married Women Act. In either case the allegation must usually be in writing, and must state the date and description of the offence or the matter of complaint. It must as a rule be laid within six months of the happening of the act and related to one charge only. The justice may then, if he thinks fit, act upon the information or complaint which has been laid and issue his summons. He need not be in court when issuing a summons or a warrant, as it is a ministerial and not a judicial act.

The summons is an order to the person to whom it is addressed to appear at the court to answer to the charge set out therein, and is served upon him or left at his last place of abode with some person a sufficient time before the hearing.

The service is usually effected by a constable, as the officer of the court, but except in indictable cases there is no necessity for this, and service is equally good if effected by a private individual.

Warrants for arrest are of two kinds, those issued in the first instance for serious offences and those issued on non-appearance after a summons. In the former case an information is laid as before stated but the facts must be deposed to on oath when a warrant is required.

When a defendant does not appear in answer to a summons for an offence, there are two courses open to the justices. They may either deal with the case in his absence on proof of proper service of the summons, or the court may issue a warrant for his attendance on proof being given on oath of the facts stated in the information. The latter step must be taken when the defendant has the right to elect to be tried by a jury.

The warrant is a document addressed to the constables of the jurisdiction directing them to apprehend the offender and bring him before the justice issuing the warrant, or some other justice, to answer the charge.

The hearing of cases triable summarily usually takes place before two or more justices, and it must be in open court. A few cases can be dealt with by one justice only when the usual limit of punishment is restricted. The accused should be told the particulars of the charge and should be asked whether he pleads guilty or not guilty. In the former case it is open to the justices to hear evidence if they desire to do so, but in any event they should allow the defendant to make a statement before passing sentence. If a plea of not guilty is tendered the evidence must be given on oath, or affirmation, and the defendant allowed to ask questions, give evidence on his own behalf, and call witnesses. There is no legal necessity to write down the evidence when a case is being tried summarily, though a note is usually taken of the chief facts. In some busy courts it is the practice to have a shorthand note taken which can be transcribed if necessary. When more than two justices hear a case the decision is that of the

majority. If the bench are equally divided, the chairman has no casting vote, and the defendant is entitled to be discharged, unless the bench decide to adjourn the case to be reheard by another court.

It is important to remember that the same justices must hear a case throughout, and if a justice takes his seat on the bench after a case has commenced, he must not take part in the adjudication.

The case for the complainant is first opened and the witnesses called. Then the defendant's case is opened and his evidence called. There is no right of reply, except on a point of law raised by the defence; but if the defendant tenders evidence of new facts, rebutting evidence can be called by the complainant.

If the defendant is not represented by an advocate he should be informed of his right to ask the witnesses questions, and in practice it will be found that it is a very difficult matter to get uneducated people to understand the difference between a question and a statement. In such a case it is useful to gather the nature of the question which the defendant evidently desires to put from the statement he may make, and for the court to ask the question on his behalf.

Justices are entitled to ask questions on any point they wish to have elucidated, and to call or re-call any witnesses they may think necessary; but when a case is being conducted by advocates it is convenient for justices to reserve any questions they may think desirable to the end of the examination, or the cross-examination.

I do not propose to go into the rules of evidence, as that is a large subject and would occupy too much time. But one or two points of everyday occurrence may be mentioned:—

(*a*) Leading questions are only allowed in cross-examination.

(*b*) Hearsay evidence, *i.e.*, what a witness had heard someone else say, is not admissible, unless it was said in the presence of the accused.

(*c*) Evidence must relate to facts, and not to opinions except in the case of an expert, who may express his opinion on a given set of facts.

(*d*) In criminal cases the defendant cannot be compelled to give evidence, nor, except in cases of violence and in special cases provided for by statute, can a husband be a witness against his wife, or a wife be a witness against her husband. Where a defendant does not choose to give evidence on his own behalf, after being informed of his right to do so, the court is entitled to draw its own conclusions from such omission.

When the whole of the evidence has been heard the court must decide either to convict or dismiss the defendant. Having decided to convict, it is usual to ask questions of the police or to seek information from other sources, as to the defendant and his general character and his means of livelihood; and the information so obtained may be acted upon in fixing the penalty, or in deciding to deal with the case under the Probation of Offenders Act, 1907. To bring a case within this Act it is necessary for the justices to be of opinion that having regard to the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment, and they may then dismiss the charge or order the offender to enter into a recognizance with or without sureties to be of good behaviour and to appear for conviction and sentence when called upon. A probation order under that Act may also be made in such cases.

If a fine is inflicted there is an obligation upon the justices to take into consideration the means of the offender, and a period of not less than 7 clear days must be given in which to pay the sum, unless a special reason can be shown for immediate committal.

Until a justice is thoroughly acquainted with the usual punishments inflicted for the more common offences he should be guided by those with larger experience and by the advice of the clerk, as it is desirable to secure a certain amount of uniformity in similar cases.

I do not propose to say anything as to the amount of fine or punishment by imprisonment which should be imposed in summary cases. It is customary in every statute which creates

an offence to set out the maximum punishment. The punishments vary extensively, and with no apparent reason; but the statutory maximum will never be exceeded in any case. Some of the variations are absurd, *e.g.*, for drunkenness on licensed premises (a serious offence) the maximum penalty is 10/-, whereas for allowing a dog to be in the street without a collar with the owner's name and address upon it the maximum penalty is £20.

Any fine imposed includes the court and police fees payable in the case, and these fees should not be taken into consideration in fixing the amount. This will not preclude the addition by the court of such sums as it thinks reasonable to reimburse the prosecutor his expenses for witnesses or advocate or other like expenses reasonably incurred in bringing the case before the court.

If the fine and costs are not paid in the time allowed a commitment warrant is issued. This is signed by one justice, who need not be one of the justices who heard the case, as the act is merely a ministerial one and need not take place in court. The imprisonment for non-payment of a fine, which must not be made subject to hard labour, is apportioned on a scale prescribed by statute, and if part payment of the fine is tendered when the person is in prison a proportionate part of the imprisonment is remitted.

For certain offences there is an absolute right of appeal from a conviction by a court of summary jurisdiction to the court of quarter sessions, but for other offences such a right is dependent on the defendant having pleaded not guilty. Such an appeal is a rehearing, and the justices are not parties to it.

So far the procedure has been described which is applicable to the trial of a person charged with a non-indictable offence before a court of summary jurisdiction. There have now to be considered the powers and duties of justices when called upon to deal with an adult charged with an indictable offence. In all such cases it is essential that the accused person shall be present at all stages of the enquiry or trial. The question of the trial of children and young persons will be deferred for the moment.

It will be remembered that an indictable offence is a serious crime—a felony or a misdemeanour—and the appearance of the prisoner before the justices may be the preliminary to his being tried at the assizes or at quarter sessions. In such a case it is only necessary for one justice to hear the evidence tendered against the prisoner, to whom the charge must be read. The evidence and the answers to any relevant questions put to the witness by or on behalf of the prisoner, who must be given the opportunity of asking them, must be reduced to writing by the clerk of the court, read over to the witness in the hearing of the prisoner, and signed by the witness in the presence of the justice who himself signs the document. This is then known as the deposition of the witness.

When all the evidence against the prisoner has been so taken, it is the duty of the justice to decide whether a *prima facie* case has been made out against him. If this has not been done the prisoner should be discharged. But if there is a *prima facie* case the justice then says to him: "Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything, but whatever you say will be taken down in writing and may be given in evidence against you on your trial." In some courts an exhortation is added that the prisoner has nothing to hope from any promise of favour and nothing to fear from any threat held out to induce an admission of guilt, but this addition is not necessary and is calculated to confuse rather than help the prisoner.

Any remarks then made by the prisoner may either be in the nature of evidence on oath or a simple unsworn statement. If the prisoner desires to say anything about the charge he should be informed of his right to be sworn and to give his evidence from the witness box in the same way as the other witnesses. But whatever he says must be written down, and signed by him as well as by the justice. The prisoner must then be told that he has the right to call witnesses, and if any are forthcoming their evidence is written down, read aloud, and signed in the same way as the depositions for the prosecution.

If, after all the evidence is taken, the justice thinks there should be a trial by jury, the witnesses must all be bound

over to appear and give evidence at the trial, and the prisoner is committed to take his trial at the next assizes or quarter sessions as the case may be. The liberation on bail of the prisoner is optional in all felonies and a few misdemeanours, but if refused in any misdemeanour the justice is bound to inform the prisoner of his right to apply to a judge of the high court. In exercising the option the justice should only consider the likelihood of the prisoner appearing to take his trial, and should not refuse bail merely because the case against him appears to be a clear one.

The depositions of the witnesses and the prisoner's statement are forwarded through the clerk of assize or clerk of the peace to the judge of assize or the chairman of quarter sessions as the case may be, so that he may charge the Grand Jury upon the case before they consider whether the charge should be investigated by the common jury in court.

If after hearing all the evidence tendered the justice is of opinion that it is not sufficient to put the accused on his trial for any indictable offence, he should order him to be discharged. But by several statutes justices have been given power to try certain classes of indictable cases in a court of summary jurisdiction, if the offender, being an adult, elects to be tried in this way instead of by a jury. Such cases consist of larceny, false pretences and like offences. If the value of the property concerned is not over £20, it is immaterial whether the accused pleads guilty or not guilty, the trial may proceed and the accused on being convicted is sentenced by the court. But if the value exceeds £20 the case can only be dealt with by justices on a plea of guilty being tendered.

Before the prisoner is asked to elect whether he will be dealt with summarily, or by a jury, the charge against him must be reduced to writing and read to him, and in the case of false pretences the meaning of the charge must be explained. In some courts a very long statement as to the meaning of being dealt with summarily is read to the accused before he is asked to plead. It is unintelligible to most prisoners and calculated to confuse all except hardened criminals who have often heard it before. To tell a prisoner that he can either

be tried immediately by the justices or sent to the assizes or quarter sessions to be tried by a jury is the best way of conveying to him his right of election, and I do not recommend the use of the long form provided by the statute.

The sentence which may be passed by justices in indictable offences tried by them depends upon the value of the goods. If the value does not exceed 40/- the maximum is three months' imprisonment with or without hard labour, or a fine not exceeding £20. But if the value is above 40/- and does not exceed £20, six months' imprisonment may be given or a fine up to £50 may be imposed. If the value exceeds £20 no fine can be inflicted, but any sentence up to the maximum sentence of six months' imprisonment may be imposed. This does not preclude recourse being had to the Probation of Offenders Act in suitable cases. Two or more terms of consecutive imprisonment may be inflicted for separate offences, the maximum being six months, unless two indictable offences are included, when twelve months is allowed.

Here it may be mentioned that even in certain non-indictable cases, where justices have power to impose more than three months' imprisonment, the defendant may elect to be tried by a jury and must be informed of his right of election at the outset of the hearing. In such cases, therefore, it is essential that the defendant should attend the hearing.

No paper on the powers and duties of justices would be complete without a reference, however brief, to the trial of children and young persons.

During the last few years an effort has been made by the legislature to transform the administration of justice, so far as the trial of juveniles is concerned, from unsympathetic methods into a broad and enlightened scheme, whereby these offenders may if possible be rescued from a life of crime. The Children Act, 1908, aptly called the "Children's Charter," amended and consolidated the law on the subject and marked a great advance in this direction.

The expression "child" means a person of the age of 7 and under the age of 14 years; while "young person" is one of 14 years of age or upwards and under the age of 16 years. Either may be tried by a court of summary jurisdiction for any offence except homicide.

The court must be held in a different room or court or on different days or at different times from the ordinary courts. Only those concerned in the case are admitted to the court, except members of the Press. In most circumstances the court resolves itself into a more or less domestic enquiry. When charging the offender the simplest of language should be used and every effort made to see that the child thoroughly understands the nature of the offence which is being investigated.

The parent or guardian must be present unless a valid reason to the contrary exists. If the court comes to the conclusion that the parent or guardian conduced to the commission of the offence, the court may, and must, if the offender is a child, order any penalty imposed to be paid by the parent or guardian. No child can be sent to prison in any case, and a young person only when the court certifies that he is of so unruly or depraved a character that he cannot be detained in a place of detention.

Places of detention are usually established by the police authorities, and are in substitution for gaols. They are under the supervision of the Secretary of State. Children and young persons can be ordered to be detained for any offence for a period not exceeding one month. Every care must be taken to prevent juvenile offenders from associating with adult criminals.

A child found begging, destitute, or not under proper control may be sent to an industrial school, as also he may be for offences punishable, if he were an adult, by absolute imprisonment. Offenders under 16 years of age convicted of any offence which if they were adults would be punishable by absolute imprisonment, may be sent to a reformatory for 5 years or until 19 years of age. The broad line of demarcation between reformatory and industrial schools is that the former are intended for young persons who have committed crime, and the latter for those who are free from its taint. Any male child who is guilty of an indictable offence may be ordered six strokes of the birch rod.

But naturally the Probation of Offenders Act, to which I have already referred, plays an important part in the proceedings of all children's courts. In every case tried in such courts which can be brought within the scope of that Act (and there are few which cannot be), it is open to justices to take one of three couses: (*a*) To dismiss the offender; (*b*) to order him to enter into a recognizance to be of good behaviour and to appear for conviction and sentence when called upon; or (*c*) to place him under the supervision of a probation officer.

In practice it will be found that juveniles usually come before the court in gangs, and there is a temptation to sentence them in gangs. This should be carefully guarded against. Individual treatment is essential if they are to be reformed. To properly apportion the punishment to each one it may be necessary to have exhaustive enquiries made as to the home life, the school record, the physical and mental condition and other aspects of the offender's previous life. Recourse must therefore be had to the education authorities and many social agencies, and remands and adjournments are therefore frequently necessary. If there is a remand home for children in the area it will often prove advantageous to send the child there while the enquiries are being made. Much useful information can often be supplied to the court by the person in charge of such a home, as the result of his observation of the offender during the remand period.

The problem of juvenile delinquency and its proper treatment is a most difficult one, but it will certainly receive far more attention now that women are being made justices. If, as a result, one of the sources of the supply of criminals is lessened a great benefit will have been conferred upon the country by this strengthening of the magisterial bench.

In the administration of justice generally it is so essential that the judge should not only be just but appear to be just, that I venture to make a suggestion or two on magisterial deportment before concluding this address.

In the first place I would urge patience. When it is realised that the vast majority of those who find themselves in a court are there for the first time and are exceedingly nervous when called upon to give evidence or to say anything in their own defence, it is only right to give them great latitude. The object to be attained is to get at the truth, and many people are quite unable to give an accurate description of any event if they are flustered and hurried, or made to give their account in a way which is unnatural to them. Time is seldom saved by endeavouring to take a short cut in this respect, while a witness or the accused invariably suffers from a sense of injustice if he is not allowed to tell his story in his own way in the first instance. I do not suggest that questions should not be asked by justices—far from it. All I say is that there is a right and wrong time to put them. A judicious question carefully put at the right moment often disposes of the whole case, especially if the witness allows the truth, which he may be carefully holding back, to slip out in an unguarded moment.

Then I would recommend gravity. There is a great temptation to interject remarks tending to enliven proceedings which are often very dull and monotonous, but it is always out of place to take undue advantage of what is undoubtedly a serious matter to someone present in court, and it is a justice's duty to do nothing which may lead that person to think that his case or trial has not been approached with becoming solemnity.

It would be easy to lengthen the list of precepts, but I will only refer to one more requisite, namely, attention. This seems so elementary as to make its mention almost impertinent, but you will find that many of the questions asked from the bench refer to matters which have already been stated in the evidence, so much so, that the asking of them betrays an inattention which is sometimes appalling. Attention should carry observation with it, although it does not by any means always do so. To observe the demeanour of a witness and the manner in which he gives his evidence is all important. Much may be gained by noting small points which apparently have little to do with the main story, and following them up before the witness leaves the box. Then again, it is usually easy to tell whether a witness has a bias against the accused, or whether he has the sense of accurate description, which comes naturally to some and is entirely absent in others. One should be sceptical of the truth of evidence when the facts relating to a particular incident are described almost identically by two or more witnesses. Everyday experience teaches one that it is rare indeed to find different people who, having viewed the same scene, give precisely the same account of it. As one does not expect this in ordinary affairs, one should not look for it in a court. The evidence on essential points need not be doubted because some of the smaller details may differ materially.

Questions of policy must be rigidly excluded from your mind when you sit in court. Sentiment must not be allowed to disturb your judgment, nor must compassion for the offender make you forget your duty to the community. You must base your decision upon the evidence before you and upon that alone, endeavouring as far as possible to free your mind from all pre-conceived notions of the subject.

In the words of the judicial oath which you have all taken you will do right to all manner of people after the laws and usages of the realm without fear or favour, affection or ill-will, ever remembering the prayer which is offered for you in the Litany that you may be given grace to execute justice and to maintain truth.

National Union of Societies for Equal Citizenship,

Evelyn House, 62, Oxford Street, London, W. 1.

President : Miss ELEANOR F. RATHBONE, J.P., C.C.

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