

Historic Hamilton County Courts and Their Records

by Jim Dempsey editor

Court of Common Pleas 1803 to 1940 (p.61)

The court of common pleas began in England about 1160 during reign of Henry II. Which then was transplanted to colonial America. (9) The 1788 territorial act brought the court to Ohio territory, to be composed of from 3 to 5 members, who were to be appointed by the territorial governor and to have jurisdiction in all civil matters (10). These courts were to continue as provided by the 1802 Ohio constitution, to have a president and associate judges. (11) The members to be appointed by both houses of general assembly with courts held in 3 judicial districts created by legislative action. **The court was assigned common law and chancery jurisdiction, in probate** and testamentary matters and appointment of guardians. Common pleas and supreme court both assigned original cognizance (the right to deal with a legal case in the court system; jurisdiction) of criminal cases as provided by law. Appeals in civil cases might be made from county commissioners, justices of the peace and other courts inferior to the court of common pleas. The court was authorized to appoint a clerk (12).

Since the constitution required legislative action, such an act was passed in 1803. The act gave common pleas the original jurisdiction in all cases in law and **equity when the matter in dispute exceeded the jurisdiction of justices of the peace**. The court had original cognizance of all **probate, testamentary and guardianship matters**. It was given all criminal matters that exceeded the jurisdiction of justices of the peace, except for capital cases. Adjustments to chancery cases were made in 1804, 1807 and 1824 with subject to appeal to the supreme court. (13) In capital cases if the accused so elected, the case could be tried in Common Pleas court. The 1824 Chancery Act conferred general **chancery powers to the court**. (13.5) In 1843, divorce and alimony cases were given concurrency to common pleas and supreme court. (14)

The new Ohio constitution of 1852 divided the court into 9 districts, of which Hamilton County was one. Also it created a separate court for **probate, testamentary and guardianship** matters thereby removing such from the common pleas court. Judgments and **final decrees of the probate court** could be "**reversed, vacated, or modified**" by error proceedings in the common pleas court. (15). In 1852, common pleas was given exclusive jurisdiction in divorce cases. (16)

At this time, the common pleas court was also given original jurisdiction of all crimes and offenses, except minor criminal cases that were invested in the justices of the peace (17). But shortly thereafter, the criminal court in Hamilton County was re-established with the transfer of jurisdiction of criminal cases from common pleas court which was left with civil matters (18). The superior court in Cincinnati was also re-established (19). Except for divorce, alimony and bastardy, superior court had same jurisdiction as common pleas in civil cases. (20). After 1906, Federal courts have exclusively exercised authority in naturalization proceedings. (21)

With the 1912 constitutional amendment, the divisions made in 1851 were abolished. The number of judges and creation of a chief justice were made with changes in 1923 and 1927. (22). Originally the court appointed public officers. The following became elected officials - Recorder (1829), county surveyor (1831), prosecuting attorney (1833), Clerk of Courts (1851). New appointments have been added: Soldier's & Sailors relief commission (1886), jury commission (1891), assignment commission (1914) and a probation officer (1925). (23) Since then in Hamilton County appointments of interpreter, criminal bailiff, psychiatrists, psychologists or other examiners or investigators hold office at the will of the court. The clerk is liable for all law reports furnished by the state for use of the court and the bar. (24)

Supreme Court

The 1802 constitution under which the state of Ohio **operated until 1851** made provision for a supreme court, consisting of three judges appointed for seven year terms by a joint ballot of the legislature. Sessions were to be held once per year in each county. (25) This court was given original and appellate jurisdiction in "both common law and **chancery**" cases. Also original cognizance in the trial of capital offenses.(26)

Also exclusive cognizance of all cases of divorce and alimony and concurrent jurisdiction of all civil cases, of law and equity, **where title to land or the matter in dispute exceeded \$1000 dollars. Also appeals from the court of common pleas "in all cases respecting the title of lands, or where the matter in controversy exceeds the value of one-thousand dollars, and all cases where the proof or validity of wills or the right of administration shall be in question. "** All cases where the title to land or freehold was in question were to be tried in the county where the land was situated. This court had appellate jurisdiction from the court of common pleas where it had original jurisdiction. (27) From 1803 to 1848, the legislature granted decrees of divorce.

In 1831, the supreme court was directed to meet annually in Columbus for final adjudication of all questions of law as had been reserved in any county for decision. This session, known as the "court in bank", was required to have its decisions, in each case, reduced to writing, and sent to the clerk of the supreme court in each county in which such questions were reserved. (28) In an act of 1837, final judgments in the supreme court, in any county, could be re-examined and revised in the "court in bank" upon a writ of error. (29)

This arrangement continued until the revised Ohio constitution of 1851 provide for a judicial system modeled upon the federal system existing at the time. The Ohio supreme court then became for the first time, a reviewing court of last resort. At the same time, the courts' jurisdiction was restricted. The original cognizance of divorce, alimony and all crimes and offenses was given to the supreme court from 1803 to 1843 but was denied after 1852. Since supreme court decisions in circuit and "in bank" were sent to each county clerk, those for Hamilton county were probably destroyed in the courthouse fire of 1884. (30)

Superior Court of Cincinnati, 1836 to 1852, 1854 to 1921

On March 15, 1838, the state legislature made provision for a superior court in Cincinnati. This court with a single judge, had concurrent jurisdiction with the court of common pleas. It was authorized to **hear and determine causes**, punish contempt, and appoint and remove officers of "civil causes at common law in chancery". **The judgments and decrees "shall be liens upon the property of the judgment debtor, in the same manner and to the extent, that judgments and decrees are in the court of common pleas."** Cases could be removed to the supreme court by appeal, writ of error or other process. **Sheriffs, coroners and constables were bound to attend the court, preserve order and return its processes.** (32)

The court was abolished by the 1852 constitution and last operated on the second Monday, in February 1852 when cases were transferred to the common pleas court. (33)

However, the Cincinnati superior court was re-established in 1854. It was given jurisdiction over matters that exceeded the justice of the peace. **It was authorized to hear, try, and determine action for the: recovery of real property; performance of a contract for the sale of real estate; action for the recovery of fines; actions against companies; action against a railroad company** or the owner of a mail stage or other coaches passing through Cincinnati; **actions against turnpike companies, actions brought**

against a non-resident of the state, or a foreign corporation where the property or debts owed to the defendant were to be found in Cincinnati. (34) Any parties to any suit at common law, or in chancery, or to a civil action originally commenced in the court of common pleas of Hamilton County might, upon the written consent of the parties or their attorneys, remove the cause to the superior court. (35)

The court terms began the first Monday of each month, except for July, August and September. Special terms could be held (36). At special term, the court had the same power to vacate or modify its own judgment or orders, rendered at a special term, and to enter judgment by confession, as was vested in the court of common pleas. Error in the record, decrees rendered at a special term, could be reversed, vacated or modified by the court at the general term.

This court, and insolvency court, was abolished by the 1921 legislature and its powers vested in the Hamilton county court of common pleas. (37) However, it continued to operate until the expiration of the term of office of the incumbents.

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Inventory of the County archives of Ohio #31 Hamilton County(Cincinnati) WPA 1940

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