

## Women May Be Justices of the Peace.

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The justice of the peace is the humblest judicial official in the jurisprudence of Illinois. The antiquity of his office takes us back hundreds of years, before there were municipal courts, probate courts, county courts, superior courts, circuit courts, appellate courts or supreme courts as we now know them.

Through the centuries his court has continued much the same—the conservator of the peace, the court of the poor man, with small fees, modest equipment and a patient hearing for the humble and those unskilled in the law. Lord Coke said “the whole Christian world” (outside of England) “hath not the like offices as justices of the peace if duly executed.” If it has ever been diverted from its beneficent purpose into being an instrument of extortion or injustice, it has been the fault of the individual justice.

This court has been so well known to the English common law on which our system of jurisprudence is founded that it has not seemed necessary to define it in our constitution. As the statute of Edward III. adopted in 1344 made no sex qualification, but provided “that two or three of the best of reputation in the counties shall be assigned keepers of the peace by the king’s commission,” so our constitution prescribes no qualifications. In reference to even the higher judicial positions of judges of the circuit and supreme courts, there is no word used which would exclude

women from holding these offices. "Citizen" and "resident" are words which apply to women as well as to men. "Our Supreme court has decided that "a woman is both a 'citizen' and a 'person' within the meaning of the section of the constitution which prohibits states from abridging the privileges or immunities of citizens or denying to any person the equal protection of the law. No sex qualification is mentioned in our constitution or statutes with reference to any judicial position, and the section of the constitution that prescribes the form of the oath of office also provides that no other test shall be required as a qualification.

These provisions concerning the holding of judicial offices differ radically from the provisions relating to the voting for constitutional officers. In the article relating to suffrage the right to vote is given to "male" citizens. Before women can vote for officers mentioned in the constitution that word "male" must be eliminated, but there is no word "male" in the provisions relating to justice of the peace.

Not only is there nothing in the law to prevent women from holding the office of justice of the peace, but as a matter of fact, there is plenty of precedent for women holding judicial positions under the old common law, sometimes by reason of birth, sometimes by payment of certain sums for the privilege, sometimes by the terms of their tenure of land, and again through special favor of kingly appointment.

In the time of Edward I many women were entered as holding courts of Frank-pledge, as Johanna de Huntingfeud in the Hundred of Poppeworth, Elena de la Zouche also, Agnes de Vescy and Elene de Valtibus, in Dor-

setshire, and the Countess of Leycester in Essedon in Buckinghamshire. The Countess Lucy held courts at Spalding, during the banishment of her husband. She agreed to pay the king, Henry I, one hundred marks for the privilege of administering justice among her tenants. In the famous Anne Clifford's Diary, written during the seventeenth century, are many references to keeping her courts in her several manors in the country. In Swansea there is an old charter preserved which gave to Aliva Mowbray various powers and "all manner of jurisdictions which the Earl of Glouster had in his land of Glaymorgan." This included judgeships. Lady Margaret, Countess of Richmond, was justice of the peace under Henry VII., and the Lady of Berkeley under Queen Mary. Peeresses and abbesses were summoned to parliament, where, as part of the house of lords, they constituted a portion of the court of highest powers. Names of women are found as holding motes, another kind of courts. They could also act as judges in county courts.

Goldsmith in "She Stoops to Conquer" referred to women being Justices of the Peace.

In the courts of our ancestors the great majority of the judges were undoubtedly men, both in England and in the colonies established here. But occasionally some qualified women held the office of justice of the peace, or some other judicial position, and helped to maintain the precedent and hold the right open for other women who might be qualified. Few women have been justices of the peace in Illinois, but some years ago Miss Amelia Hobbs of Jersey county, Illinois, was elected and held her office without question, although she only defeated her rival

by twenty-six votes. Helen A. Schuchardt was a master in chancery, a position of much greater judicial importance and financial returns. The Supreme court passed on the question of her eligibility, and she continued to hold the office and receive the fees.

The reason Evanston has never had a woman justice of the peace is because the sovereign voters never elected one. The men voters are sovereigns, and take the place of the king of earlier times. He sometimes selected women for justices and sometimes he did not. Evanston sovereigns do not doubt but they have the same power to select a woman if they consider her qualified or to choose a man if they consider him better qualified.

The thought of a woman justice need not amaze an Evanstonian, because perhaps many of our fair-minded, justice-loving voters might trace back their descent a century or more to some of the early women justices of the peace in the mother country.

CATHARINE WAUGH McCULLOCH.

Evanston, March 27, 1907,