CEREMONIES OF THE BI-CENTENNIAL ANNIVERSARY OF THE SUPREME COURT OF PENNSYLVANIA, HELD IN THE COURT ROOM AT HARRISBURG, MAY 22, 1922.

ADDRESS OF

HON. ROBERT VON MOSCHZISKER

CHIEF JUSTICE OF PENNSYLVANIA

1722-1922.

It is entirely appropriate that the State Bar Association should act in calling our attention to this day, which marks the bi-centennial of the Supreme Court of Pennsylvania as a regularly organized and continuously functioning appellate tribunal,—although we can justly claim no little history antedating the year 1722.

Penn's charter permitted the Quaker settlers, sent over by him, to establish courts of justice. It was not until May 3, 1684, however, that the general assembly passed an act, drawn up by the council, providing for a provincial appellate court. Penn designated William Crispin to preside over this body, and wrote to William Markham, the deputy governor, informing him of the appointment, adding, "Pray be very respectful to my cousin Crispin"; but Markham never had the opportunity to obey these instructions, for Crispin died at sea.

Next came Dr. Nicholas More, whose arrogant and imperious manner contributed to render him master of "the gentle art of making enemies"; he was impeached by the assembly less than a year after his appointment. From the retirement of More to 1722, eight men served as heads of the court; but, during the greater part of this period, the provincial council was the dominating figure in the government of Pennsylvania, even including the judicial department, the court being an insignificant factor until David Lloyd, a real jurist, a strong man and persistent

fighter, brought about a reorganization of our judicial system.

Lloyd was the first lawyer to act as chief justice, his predecessors all having been laymen; just two hundred years ago to-day the provincial assembly passed, at his behest, the Judiciary Act of May 22, 1722. This statute, —which was destined to run the gauntlet of the English reviewing authorities unnoticed,—provided, among other things, for the establishment of a Supreme Court of Pennsylvania, consisting of one chief justice and two associate justices, who were to be persons of known integrity and ability, commissioned by the governor of the province. The justices were required to hold sessions twice a year in Philadelphia, and to go on circuit for the trial of cases.

In those early years the mental and spiritual satisfaction which flows from service to one's state had to be relied upon for adequacy of compensation, since the monetary considerations paid the judges were very meagre. Up to 1759 the justices of the Supreme Court received only the statutory fees, the general size of which may be gleaned from the following allowances by the fee bills of 1723 and 1752: for every case brought into court by certiorari, six shillings; for every judgment, six shillings; for every rule, two shillings. As late as 1772 the salary of the chief justice was £200, and that of the associate justices, £150 per annum. In 1791 the salary of the chief justice was fixed at £1,000, and that of his associates at £600 annually. Thirty shillings a day were given to each justice for traveling expenses while on circuit. Even these allowances were less liberal than they seem, for the pounds were not sterling, but Pennsylvania currency, then worth only about three dollars; to offset this the times were simple and money had a large purchasing power.

During the early days of the settlement there was no public building in Philadelphia where courts could be held, and the lower judiciary were obliged to transact business amid the distractions of an ale house, while the

provincial court sought more appropriate quarters in some private residence. This deplorable condition caused the grand jury of the county, in 1705, to recommend the levy of a tax for the construction of a courthouse at Second and Market streets, on the spot where the town bell called the citizens to important gatherings. The suggestion met with favor, and, within a few years, there was erected a small, quaint two-story "Towne House," or "Guild Hall," in the center of Market Street, with a balcony on the east side from which the provincial leaders addressed the people. The colonial assembly and community guilds met in this building, the elections were held there, and it was used as a courthouse; from the balcony the great preacher Whitefield stirred his hearers, raising his voice, it was said, until it could be readily heard by boatmen on the Delaware, "praising faith" and "attacking works." Near by, one saw the stocks, pillory and whipping-post, means of punishment which seem to have been employed in the province up to the Revolution.

This court occupied the Town House until 1743, when it transferred its sessions to Independence Hall. Here the court sat twice annually till Philadelphia became the capital of the nation, in 1790; then, interchangeably with the Federal Supreme Court, it occupied a room in the old City Hall at Fifth and Chestnut streets, the restoration of which, to its original condition, was celebrated on the second of this month, when the Chief Justice of the United States and some of the associate justices visited Philadelphia. On that occasion Chief Justice TAFT delivered a notable address, during the course of which he said: "We whose past covers only 132 years feel strongly the honor of [recognizing] the bicentennial of that more venerable court, the members of which grace this presence, the Supreme Court of Pennsylvania. A court which has contributed to the jurisprudence of this country through Judges like MCKEAN, TILGHAM, JOHN BANNISTER GIBSON and GEORGE SHARSWOOD, and in the strength and wealth of whose judg-

ments the genius and learning of Andrew Hamilton, Dallas, Binney, Sergeant, Rawle, the Ingersolls and a host of others of the country's greatest lawyers are manifest, may well command the admiration, pride and profound respect, not only of Pennsylvanians, but of all Americans."

I have interrupted the course of my narrative to recite this tribute from the beloved and able Chief Justice of the United States, so it may not be lost to our records; we may now resume the story of the ancient tribunal on which he bestowed such generous commendation.

In 1802 our court returned to Independence Hall, where its sessions in Philadelphia were held until about 1824. Then it took up quarters in the second story front room of old Congress Hall, at Sixth and Chestnut streets, a building which had served as the capitol of the nation during the first decade of its history. Before many years, however, the court was obliged to vacate, and, for a while, was homeless. The suggestion that the chief judicial tribunal of the Commonwealth should sit in the Declaration Chamber of the State House met with the cry of "desecration"; so it had to make temporary use of the Grand Chapter Room of the old Masonic Hall, on Chestnut Street between Seventh and Eighth. Some years later the second story of the eastern end of the State House was fitted up for our accommodation, and there we stayed until January 1, 1877, when we came to the second floor of the new City Hall at Broad and Market streets. With our final move into our present quarters, January 5, 1891, we seem to have ended our nomadic career, so far as Philadelphia is concerned. I have not had time to trace the court's habitations in the other districts of the State, although I should much like to do so.

The Act of 1722 imposed upon this court the duty of going on circuit twice a year, if occasion required, into the counties of Chester and Bucks; and, in those days these two counties covered a large part of the province. When on circuit the justices were given power to try all

cases as fully as justices of nisi prius in England might do; but they did not exercise the full powers of the court in banc.

As new counties were added, the volume of circuit duties increased until, in 1767, the formation of eight new counties (Bedford, Berks, Cumberland, Lancaster, Northampton, Northumberland, Westmoreland and York) necessitated an additional judge, making four in all.

The system created by the Act of 1722 remained substantially unchanged up to the Revolution, and the war resulted in surprisingly few alterations. The same courts that existed under the province were continued by the Commonwealth. The old laws were reënacted, except such as acknowledged the authority of the King of England and the proprietors. The following were the only important changes affecting the Supreme Court: by the Constitution of 1776 the justices were to be appointed by the president of the council for a term of seven years only, and, though capable of reappointment, they might be removed by the general assembly for misbehavior; process was to run in the name of the Commonwealth instead of the king.

An Act of 1780 created a High Court of Errors and Appeals, which was intended to exercise the same appellate jurisdiction as the Privy Council formerly had; but the life of this so-called "Lost Court" was of such short duration as to merit no special attention here.

The judges found it far easier to cast off allegiance to the mother country than to abandon the system and fashions inherited from her. True, they discarded their wigs, but, while doing so, they put on many of the other trappings of the English judiciary. Picture THOMAS MCKEAN, the first Chief Justice of the Commonwealth of Pennsylvania, clothed in a flowing robe of scarlet, with an enormous cocked hat on his head,—an imposing but anomalous figure to typify democratic ideas. Similarly, the opening of court was an occasion observed with the ceremony of English tradition, the sheriff, in all his

pomp, together with the tipstaffs and attendants of the court, assembling to swell the retinue of the chief justice and his associates, as they proceeded to assume their places on the bench. Such were the customs during the Revolution, but, after the din of war, a far more sober and somber period ensued.

The Constitution of 1776 was soon found to be unsatisfactory, and, in 1790, another was adopted; this followed the new federal Constitution in distinguishing and defining the three arms of government,—executive, legislative and judicial,—and gave to the state a governor and bicameral legislature.

In its judicial aspects, the more important changes wrought by the Constitution of 1790 were the restoration of life tenure to the judges and the grouping of the counties into districts, called circuits, with presidents for the common pleas courts therein, a measure which afforded relief to the arduous work of the Supreme Court.

By the Act of April 13, 1791, organizing the judicial branch of the government under the new constitution, it was provided that the Supreme Court should hold three terms annually, and sit at nisi prius on such intermediate dates as the justices should deem most convenient.

As time went on, the hardship of compelling suitors from remote parts to journey to Philadelphia for the trial of cases became so evident that the Act of March 20, 1799, abolished the nisi prius sessions theretofore held by this tribunal, sitting in banc at that point, and established in their place what were called circuit courts. These were of the same nature as the courts of nisi prius, except that the justices, or any one or more of them, when on circuit, were empowered to give judgment, to pass decrees and award execution in as ample a manner as when sitting in banc. They were required to determine in advance the times and places for holding these itinerant sessions, publishing prior notices thereof; and the right of appeal to the Supreme Court in term was

preserved under special conditions. The justices continued to sit at Philadelphia, however, for the trial of local cases.

It was the custom for two judges to sit in these circuit courts, and four at nisi prius in Philadelphia, an arrangement which one of the judges (BRACKENRIDGE) tells us prevented the dispatch of business. The clogging of the machinery of justice, together with the temper of the times, which was disposed to throw off all restraints of law, resulted, for some years after 1800, in adverse public sentiment toward the courts, particularly the Supreme Court. This feeling is reflected by an amusing incident told in Judge BRACKENRIDGE'S "Law Miscellanies." In the year 1807, while on circuit in the neighborhood of Lake Erie, the judge fell in with a stranger, who expressed himself as generally dissatisfied with the country and disposed to leave it,—the hills and roads being unpleasant, the seasons unfavorable, and, above all, the administration of justice intolerable. "For example," said the stranger, "at the trials the juries are sworn, but the judges are not." BRACKENRIDGE then suggested that this was no great cause for alarm, because the judges were sworn when they first took their oaths of office, and though the local judges might not be above criticism, surely the Supreme Court judges, who came on circuit, were true servitors of justice. "Well," answered the stranger, "I have been at some of their courts, and have heard their charges, and they seem to steer pretty clear for awhile, but, towards the wind-up, I have observed they always lean a little more to one side than the other; and as to the judges being sworn at first, that is like a man saying grace over a tub of beef when he salts it down, but none as he eats it up."

The general dissatisfaction with the judiciary is more vividly illustrated, however, by the fact that between 1800 and 1836 there were twenty-four attempts to impeach various judges of Pennsylvania, four of whom were justices of the Supreme Court.

One by one, the chief sources of popular irritation disappeared. In 1806 the nisi prius trials, theretofore held for the County of Philadelphia, were abolished; also, a western district was ordained, the court being required to hold its September term in Pittsburgh.

This method of hearing cases by holding the terms at different places proved so successful that, a year later, a middle district was created, and in 1809 two more, the Lancaster (composed of the Counties of Lancaster, York, Berks and Dauphin), and the southern (consisting of the Counties of Cumberland, Bedford, Franklin, Huntingdon and Adams) were added. At the same time the circuit duties were abolished, and the number of judges reduced from four to three.

In 1810 the original nisi prius jurisdiction of the court for Philadelphia County was restored in cases involving over $500, and the judges were required to hold trials there thirty-three weeks a year; but no further experiments were made until 1826, when the number of justices was increased from three to five and circuit duties were once more imposed upon them.

The cup of the tribunal, which had long been full, was now overflowing. The justices had to hear appeals in five districts, to hold a court of nisi prius at Philadelphia, and to go on circuit to every county at least once a year, besides exercising original jurisdiction in cases of quo warranto and mandamus.

Relief came by the Act of April 14, 1834, which finally abolished the circuit courts, and reduced the number of districts to four (viz, the eastern at Philadelphia; northern at Sunbury, which was subsequently discontinued; middle at Harrisburg; and western at Pittsburgh); trial courts were to be held as formerly within the City and County of Philadelphia, but not elsewhere. Thus it took exactly one hundred and fifty years, from the time of the founding of the first provincial appellate tribunal, to develop the method of judicial administration followed by this court to-day, except, of course, we now have no nisi prius duties.

While this system of holding terms in various districts met with almost immediate and general satisfaction, yet other phases of the court's history remained sources of contention,—the method of selecting the justices and the length of their tenure of office. The life tenure of the judges was the leading issue of the gubernatorial campaign of 1805, and was only preserved by the election as governor of former Chief Justice McKean. Its foes renewed their attack in the constitutional convention of 1837; this time they succeeded in eliminating it, and in reducing the term to fifteen years, if the judges so long behaved themselves well. The Constitution of 1838 further provided that, for any reasonable cause which should not be sufficient ground of impeachment, the governor might remove a judge on the address of two-thirds of each branch of the legislature.

In 1850, by constitutional amendment, the judiciary were made elective, and this system, which had been defeated in the constitutional convention of 1837, has prevailed ever since.

When the convention assembled to draft our present constitution, the Supreme Court consisted of five judges, who had pending before them some eight hundred appeals, a number which was constantly increasing. Various plans for relief were suggested; eventually, the simple expedient of adding two more judges, making the total seven instead of five, was adopted, and their term of office was fixed at twenty-one years; but, at the same time, they were made ineligible to reëlection,—a very wise provision.

The courts of nisi prius were completely and finally abolished by the new constitution; and, in 1876, we were given authority to transfer the various counties from one appellate district to another, at our discretion. This has resulted in all the counties being satisfactorily apportioned among the three judicial districts, with the right of any county bar to be transferred to another district, if a majority of its members certify they so prefer, —for our rules thus provide.

In 1895 the work of the Supreme Court seemed hopelessly behind; then the State came to our aid by creating the Superior Court, thus giving Pennsylvania a unique judicial organization involving two appellate tribunals, with different jurisdictions, to a certain degree changeable by the legislature, so as to keep the work evenly divided. Although, on its face, this plan seems impracticable and likely to lead to unendurable confusion in the law, yet, as a matter of fact, it has worked out more than satisfactorily, as you all know; that it has so eventuated is attributable to the general high standard of ability of the judges of the Superior Court,—and never has the average in that regard been better than to-day.

The two courts differ in this, however: the form and very life of the Superior Court are wholly subject to the will of the legislature, while the Supreme Court, surrounded by its own traditions, is part of the constitutional frame-work of our government.

Since the great war, the business of this court, which fell off during the struggle, has come back to normal and, at the present time, is as near up to date as possible or advisable to have it. This satisfactory condition of affairs is due to the fact that the judges have all kept in good health and constantly at their labors.

As at present established, the ancient judicial body whose founding, as a regular organized appellate tribunal, we to-day commemorate, is the culmination of the work of centuries. It is the central nave of Pennsylvania's temple of justice, erected by the masterbuilders of our Commonwealth; let us constantly remember the years of toil and experimentation spent in its making, and ever regard the structure so created as a sacred trust which we should be quick to defend, though slow to change.

ADDRESS OF HON. HAMPTON L. CARSON, EX-ATTORNEY GENERAL:

May it please the Court: The Bar of the Commonwealth, through its representative, the Pennsylvania Bar Association, has commissioned me to undertake the agreeable service of wishing you, on this two hundredth anniversary of your birth, very many happy returns of the day. You, Mr. Chief Justice, with clearness and accuracy have described the superstructure built upon the Act of Assembly of May 22, 1722, and with characteristic generosity you have refrained from glancing at its prior history, leaving it to me to dig into the past, to examine the character of the foundation stones of your jurisdiction, and to analyze the nature of the soils upon which those foundation stones rest. Institutions, Sir, are not the creations of single minds, nor are they product of a separate age. They are the result of evolutionary processes, and they progress as social conditions change.

The history of the building of this court is a part of the story of the making of the government of Pennsylvania. This court was the result of a travail which lasted forty years before a satisfactory tribunal could be established; and behind those forty years lie seventy years of varied history, divided into four periods.

Although Henry Hudson, an Englishman in the employ of the Dutch East India Company, discovered the mouth of the Delaware Bay in the year 1609, it was not until 1616 that Cornelius Hendrickson, a Dutchman, explored the river as far up as the mouth of the Schuylkill. In 1623 Cornelius Mey, after whom Cape May is named with a slight change in the spelling, established a trading post known as Fort Nassau just south of Camden, New Jersey, and in 1631 David Pietersen De Vries, a Dutch master of artillery, a seaman of great experience, established the first colony on the shores of the Delaware in a beautiful valley, a natural breeding place

for thousands of wild swans, close to the present town of Lewes, Delaware. One year later De Vries revisited the spot. His sad eyes gazed on the bleaching bones of men and animals, his colony having been extinguished by an Indian massacre, and many were the evidences of the woeful tragedy that overtook the first effort to settle through the Dutch in that blackened and blood-stained "Valley of the Swans." For some seven years unbroken solitude prevailed, save for the existence of the little trading post at Fort Nassau.

Then in 1638 the Swedes appeared. Their coming was, as has been asserted by some authorities, entirely without a shadow of right under the law of nations. Once I held that opinion, but subsequent study has satisfied me that it will not do to judge of the actions of nations in former generations and centuries by tests of the present. The very same argument that the Dutch had used as against the English to justify their intrusion, was employed by the Swedes as against the Dutch. The English had claimed through the voyages of John Cabot in 1496 and Sebastian Cabot in 1497, the ownership by virtue of discovery of the entire coast from Maine to Florida, but at the time that the Dutch attempted settlement on the Delaware there was not a single English occupation along the vast stretch of coast from Jamestown, Virginia, to Plymouth, Massachusetts. The Dutch argued: "It is utterly idle by mere vague sailing along a coast marked by a dim, indistinct line on the western horizon to establish, without occupation, a definite title against a colonizing nation, hence the whole Delaware territory was open to us." Later the Swedes made use of the same argument and said "We came to the Delaware because you had no posts there save the little trading post at Fort Nassau." The coming of the Swedes was extraordinary in the influences which produced it. Peter Minuit, the first Swedish governor, was a discharged Dutch director general of the Dutch colony at New Amsterdam. He soured on his allegiance to Holland because of his dismissal from office in 1628, and

combined with William Usselinx, a Belgian and by expatriation a Dutchman, a founder of the Dutch East India Company, who, finding his own plans did not meet with ready acquiescence, was ready with Minuit to offer themselves and their plans to the Court of Sweden. Gustavus Adolphus, the great Protestant hero of the Thirty Years War, at that time was on the throne, and, Oxenstierna, the great chancellor, became the most active agent in carrying out the plans, which, in 1638, resulted in establishing a Swedish colony at Christiana, the present City of Wilmington. In 1642, the year before William Penn was born, Governor Johan Printz came to Tinicum Island, and there, in Printz's Hall, held and maintained the first Court of Justice on the shores of the Delaware.

Printz brought more weight than law to the bench, for he weighed four hundred pounds and drank three horns at every meal. He was a somewhat arbitrary, high-tempered and excitable individual, but if we examine his judgments, particularly in a case which had it occurred during the days of law reporting, would have been regarded as a cause celebre, involving a contest of title in the nature of ejectment, in which English and Swedish titles came under review, I think we would conclude that he was a pretty good lawyer. He established his court with an appeal to the courts in Sweden. In 1655 the Dutch determined to expel the Swedes from the Delaware. An insult having been offered to Dutch authority by the violent action of Rising, the successor of Printz as Swedish governor, in capturing the Dutch settlement at New Amstel, now New Castle, Delaware, Peter Stuyvesant, of Knickerbocker fame, came with a fleet to the Delaware, and reduced all the Swedish settlements to Dutch rule. A court was then established with Swedish judges but under Dutch authority and commission, at New Amstel or New Castle. A schout or sheriff was the presiding justice and five scheppens, or magistrates, acted as associates, the establishment of justice remain-

ing in this form until 1665, when Dutch-Swedish rule fell into English hands.

In 1664, Charles the Second, awoke to the effect of the driving in of a Dutch wedge between the Virginia and the Massachusetts colonies, a situation which had it not been changed would have affected our history by having Swedish and Dutch settlements for nearly three hundred miles in our midst. A charter for all this territory was granted to the Duke of York afterwards James the Second. Without a declaration of war between Holland and England, the Duke of York, at that time High Admiral of England, sent a fleet under Sir Richard Nicholls to New Amsterdam, which, appearing without notice, overpowered Peter Stuyvesant in the same way in which Stuyvesant had overpowered Rising on the Delaware. Such was the beginning of the English establishment. It was followed up by sending Sir Robert Carr with a fleet of seven or eight vessels into the Delaware, who easily took possession of the Dutch-Swedish settlements. The introduction of English law was gradual, and, subject to interruption, took more than ten years. At Hempsted, Long Island, there is the original manuscript of the Duke of York's laws, a codification of all the customs and all the ordinances which ruled the English colonies in the Virginias, Carolinas and New England. It had been whipped into shape by the accomplished father-in-law of the Duke of York, the great Earl of Clarendon, and was in force in New Amsterdam or New York and subsequently on the Delaware. In 1673, war having again broken out between England and Holland, a Dutch fleet under Admiral Evertsen appeared suddenly before New York and retook the post. Part of the same fleet retook the settlements on the Delaware, and for the third time Dutch authority was established on our shores. The Dutch in establishing courts adopted what the English had already done under the Duke of York, utilizing the jurisdiction of the county courts of quarter sessions and orphans' courts. They established these tribunals at New Amstel or New Castle, at Lewes and at Upland, now

Chester. The original record of the Upland court is in the possession of the Historical Society of Pennsylvania, and indicates the continuity and uniformity of practice that then prevailed. Appeals were carried from these local courts to the Court of Assize sitting at New York. In 1676 under the Treaty of Westminster, the captures on both sides were restored, the Dutch resuming possession of their East India colony at Surinam, and the English resuming possession of the Dutch colony at New York, and the Dutch-Swedish colonies on the Delaware. Thus Dutch and Swedish authority in America came to an end.

In September, 1676, by express ordinance, the Code of the Duke of York's laws was formally established and put into effective operation on the Delaware, and so continued until the proclamation of Charles the Second, in March, 1681, that he had granted to William Penn the territory on the west bank of the Delaware. The three lower territories, now constituting the State of Delaware, Penn secured by deed from the Duke of York. Penn not being quite ready to make his personal advent, sent out his cousin, William Markham, as deputy to take possession. Before Penn arrived, but after he had received his charter, he had agreed to make certain concessions to those termed first purchasers. He also agreed in London with his first purchasers upon certain fundamental laws, some forty in number. These concessions and fundamental laws constituted a framework of government. These laws were submitted to the first assembly which met at Chester in December, 1682, and were embodied in a great statute, with sixty-one chapters, known as the Great Law, becoming the foundation of all subsequent jurisdiction. Besides these, Penn presented a frame, which was his charter to his people.

We should distinguish in our study of these documents between the grants of legislative power and the power to administer justice. There is confusion through the years that succeeded between executive and judicial authority. Jurisprudence had not reached the present

scientific separation into three departments. Although Penn was directed by royal charter, so far as legislative power was concerned, to base his laws on popular assent in an assembly and a council to be summoned by him in such manner as he saw fit, yet there was expressly conferred upon him exclusive jurisdiction in himself and his heirs to erect courts of justice. He did not stand strictly on this ground. His original frame, in the 17th section, shared the power, which under the royal charter was exclusive, to erect courts, with the provincial assembly, but in a sudden nervous twitch, by the 18th section, he guarded against any invasion on the part of the provincial council upon his personal prerogative, by reserving to himself during life the exclusive power to nominate judges and erect courts. Under his frame he had imparted the further semblance of a popular establishment as the basis of the judiciary, by giving to the provincial council, who were elected by the people, the right to send in a double list of names from which he would make selections of judges, and to the assembly, also popularly chosen, the right to send in a double list of names from which he would select justices of the peace, a sheriff and county treasurer. That frame of government, however, in less than six months was found to be so top-heavy and unwieldy that the people themselves petitioned Penn for a modification. Originally, the provincial council was to consist of seventy-two members, twelve from each of the six counties, three in Pennsylvania and the three lower counties on the Delaware, while the assembly was to consist of not less than two hundred members, to be augmented as population grew, to the number of five hundred. In point of fact only about forty individuals were willing to accept positions in the council and only about sixty in the assembly. The people, finding themselves unable to handle the details and technique of government, petitioned Penn for a modification of his original frame. He granted a second frame in 1683, by which the provincial council was cut down to eighteen members and the house or assembly cut to thirty-six.

Thus did he introduce the representative system. It was under the second frame of 1683 that he made his judicial appointments. He had the wisdom to accept the existing tribunals and the sitting judges, who, since the time of the Duke of York, had been transacting the ordinary jurisdiction of quarter sessions, common pleas and orphans' court, subject to an appellate right in the provincial council and the governor, which lasted until the year 1701.

In 1684 a provincial court was established consisting of five judges, which was also endowed with appellate power. As a consequence, there were two appellate courts in existence, the provincial council with its eighteen members, and the provincial court with its five members. It was of the provincial court that Doctor Nicholas More was the Chief Justice, impeached, as you, Sir, have stated, for misconduct in less than a year. Such was the condition of judicial affairs when Penn left his colony in the autumn of 1684 to be absent for a period of sixteen years.

Then conflicts occurred between the council and the house. Bills in those days were passed to be effective only for a single year, hence there was an opportunity for the house to deadlock the government unless the council would concede to the people what they wished. Under both the first and the second frames of Penn's government the house had no right to originate legislation. Their function was simply to approve or disapprove bills formulated for them by the provincial council, and if the provincial council sent down a measure which they did not like they would reject it. There was a constant agitation in the assembly: "Give us the right to originate bills." The controversy lasted for over eighteen years. Penn, absent as he was, had to commit the executive functions of government to others, and in experimenting he tried out seven methods. At first, all executive functions were entrusted to the provincial council of eighteen. That was found to be impracticable. Then he tried a commission form of government. He

withdrew the powers from the council and concentrated them in a select body of five. This too was unsatisfactory. Then he selected a single deputy governor, but instead of selecting a Quaker he went all the way to Boston and took an old Cromwellian soldier, Captain John Blackwell. The experiment of putting a soldier in charge of a Quaker colony was not successful, and in eighteen months Penn returned to the provincial council of eighteen strong and seasoned men. The device again broke down and once again there was substituted a single man, Thomas Lloyd. Then came collapse.

It was now the year 1692. The English revolution had taken place. James the Second had abdicated. King William and Queen Mary were on the throne. Penn had fallen under the suspicion of conspiring with the adherents of James the Second to restore a Catholic to the throne, and was deprived of his government. Everything that had been done by him was endangered. His charters and his laws were abrogated. It is hard to realize the quaking condition of the quicksands on which Penn's proud and much-applauded government was resting. Let me repeat it: Penn was deprived of his government, not simply suspended but absolutely stripped; all laws were abrogated and the royal Governor Benjamin Fletcher of New York was placed in charge. There was a further complication, the outbreak of the French and Indian War. The colony of New York, in a critical position along the great lakes and down the Valley of the Hudson and Lake Champlain, and threatened by the tomahawks of the Indians, called on the surrounding colonies for aid. An order issued from the crown admonishing Pennsylvania, Virginia, Massachusetts and the rest of the colonies to make appropriations to save New York. Fletcher appealed to Penn's Quaker colonists. They saw their chance. They said: "Restore our rights, restore our fundamental laws or we withhold supplies." The fight went on for twenty-four months. Then Penn, having exonerated himself of the charges of treason and conspiracy and satisfied William and Mary, was restored to

his government. Not being able to return in person, he appointed William Markham his deputy. Markham had a struggle with the assembly which lasted for four years. "Give us back our laws," said the people, and Markham replied: "Give me supplies to defend the province." Finally, as most controversies end, there was a compromise. Supplies were voted, but Markham was compelled to establish a third frame of government for Pennsylvania which conceded to the popular body the right to originate legislation. It was a beginning of popular control. Penn never assented directly to the Markham frame, but returning in person, in the year 1700, for over a year had the matter under discussion, asking his colonists—"What has become of my frame of laws, is it alive or is it dead or is it simply asleep?" Without answering specifically, they thrust at him the necessity of recognizing the right of the people through the popular body to originate legislation. Then the final frame, the fourth in fact, in the shape of the charter of 1701 was established, and remained as a stable basis until the American revolution. The main feature was that all judicial and all legislative power in the provincial council was absolutely withdrawn, and full legislative power bestowed upon the assembly alone. Thus a new establishment resulted, and one to which judicial institutions had to be shaped.

The popular leader of that day—the first of American commoners, was David Lloyd, a Welshman by birth, but a Pennsylvanian by adoption, heart and soul. Lloyd, who had made himself conspicuous in the conflict with the admiralty, a crown jurisdiction outside of Penn's government, had been a veritable tribune of the people. When he found that under the frame of 1701 it belonged to the house to originate bills, that the provincial council was no longer a constituent part of the legislature, that it no longer had jurisdiction in judicial matters, and that the appellate jurisdiction rested entirely with the provincial court, he saw his opportunity and drafted the Act of October 28, 1701, as a substitute of his own for a

until finally Lloyd and James Logan became reconciled to each other, the celebrated Andrew Hamilton became attorney general, Keith was again governor, and by compromise with Lloyd carried through his favorite project of establishing a separate court of chancery, with himself as chancellor, in the year 1720, and the end was reached at last in the Act of May 22, 1722, the act which to-day you commemorate.

But the story has not been fully told. A strange series of events followed. Under the royal charter all laws had to be sent within the period of five years out to England for royal approval, and the crown had six months thereafter within which to express its approval or disapproval. It so happened that this Act of 1722 was the only act in that long period of forty years of struggle that escaped the action of the crown. Whether that result was due to artifice, design or craft I know not, but at all events it is an interesting tale. The original manuscript of the Act of May 22, 1722, was found by Mr. Paris, the agent of the colony in 1739, while in London making a list of such acts as ought to meet with crown approval. He found it in a neglected corner in the office of the privy council, and blowing off the dust, observed that it was marked with the word "Supplied." The time was long since out for approval or disapproval. What did the marking mean? Supplied how? By what? Paris gives no explanation, and it is necessary to go back in point of time. Thirteen years before Paris' discovery, and four years after the date of the Act of 1722, a new controversy had broken out over the extent and control of the admiralty jurisdiction in which John Moore, who was David Lloyd's great rival at the bar and chief political antagonist in the public affairs of the province, happened to be the king's deputy collector of customs. He alleged officially that a man named Lawrence Lawrence was in debt to the crown in the sum of twenty thousand pounds, and in his efforts to collect the money, he persuaded Anthony Morris to issue a special process from the Supreme Court of Pennsylvania under

its alleged original jurisdiction, seizing the person of Lawrence under a capias. Lawrence instantly protested that the Supreme Court had no such original jurisdiction and could not issue such a writ, and petitioned the assembly for relief. As I have said, Lloyd was always a strong antagonist of the admiralty. Moreover by one of those curious instances occuring in our early Pennsylvania history of a man holding several offices at the same time, Lloyd was the Chief Justice of Pennsylvania and Speaker of the House at that very moment. He saw, great lawyer that he was, this being some months before the time had expired for the disapproval of the crown, that he had a chance to save his judicial establishment under his Act of May, 1722. He had passed through the house, he being Speaker and in absolute control, on the 27th of August, 1727, three months before the time allowance of the crown had expired, an act which in title and in substance clearly was an act intended to be substituted in all its parts for the Act of May 22, 1722, so that if the crown disapproved the original act it could be argued that before being called on to approve or disapprove a repealer by implication was sent for the crown to consider. This, I take it, explains the word "Supplied," but now mark Lloyd's astuteness: He inserted into the very bowels of the new Act of 1727 an express provision forbidding the Supreme Court to exercise original jurisdiction in cases of admiralty and of customs, intending, of course, to cut up by the roots the action of his rival Moore. The presence of that little clause in the supplementary act, as was intended, drew the fire of John Moore and he saw nothing else. He followed the Act of 1727 to London and, forgetting all about the Act of 1722, concentrated his efforts on the disapproval of the Repealing Act. He succeeded, and as a consequence the rejection of the Repealing Act reëstablished the original act. Thus your Act of May 22, 1722, was saved. Nothing in our early legislative annals can match this in interest, and it gives a dramatic touch to the establishment of your jurisdiction, stamping upon this commem-

orative occasion a hall mark all its own. Lloyd clinched the situation in November, 1731, by an act expressly reviving and restoring the Act of May 22, 1722.

Let me sum up by saying that the Act you commemorate to-day rests on three pillars of support, each one of them strong enough to carry the burden: first, that the time limit having expired and no disapproval coming from the crown, the Act of 1722 was saved; next, that even had disapproval come, it could be said there was a substitute for it, and the substitute being disapproved, the original act was restored; and third, there was a supplementary act of express revival. On this triple foundation your jurisdiction rests. It is on this basis that the superstructure so well described by the Chief Justice has been built. After forty years of struggle the courts of Pennsylvania rested on a statute, "broad-based upon the people's will," which for two hundred years has bestowed its blessings upon the Commonwealth, displaying "the gladsome light of jurisprudence, the loveliness of temperance, the solidity of fortitude, and the stability of justice."

There were present at the ceremonies: Chief Justice ROBERT VON MOSCHZISKER and Justices ROBERT S. FRAZER, EMORY A. WALLING, ALEX. SIMPSON, JR., JOHN W. KEPHART, SYLVESTER B. SADLER and WILLIAM I. SCHAFFER, of the Supreme Court of Pennsylvania;

Governor William S. Sproul, Lieutenant Governor Edward E. Beidleman, State Treasurer Charles A. Snyder, Secretary to the Governor Harry S. McDevitt;

Attorney General George E. Alter and the following Ex-Attorney Generals: Hampton L. Carson, M. Hampton Todd, John C. Bell, Francis Shunk Brown and William I. Schaffer, the latter now a justice of the Supreme Court.

Former Justice Fox, of the Supreme Court; Judge William H. Keller, of the Superior Court; Judges Wm. M. Hargest, Frank B. Wickersham and John E. Fox, of the Courts of Dauphin County;

And the following members of the Bar: Messrs. Abraham M. Beitler, J. H. Rady Acker, J. Hampton Barnes, Dimner Beeber, Francis B. Bracken, Henry P. Brown, Theodore F. Jenkins, William Clarke Mason, Thomas J. Meagher, Howard W. Page, Joseph H. Taulane, Albert B. Weimer, Thomas R. White, Owen J. Roberts, Ira Jewell Williams, Charles J. Hepburn, William A. Carr, Edwin O. Lewis and William Righter Fisher, A. M. Holding, Harold B. Beitler, Paul A. Kunkel, John A. Herman and Wm. Pearson.