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CONSTITUTIONAL COURT REFORM IN NEW JERSEY[1]

"The people of New Jersey have been so long accustomed to congratulate themselves upon the excellence of their judicial system and to admire their own self-righteousness that they have become supinely indifferent to the advance of enlightenment in the legal world around them. New Jersey justice has become not only a proverb, but it has passed beyond into a senile and decrepit old age.

"The bench of New Jersey are noble-minded and well-meaning men. The members of the bar of New Jersey struggle manfully to establish right and educe truth in their forensic contests, the ministerial officers of the courts labor to make their process effective, but all are handicapped by a cumbersome, ancient and patched-up machinery."[2]

This acidulous comment on the New Jersey court system was published 61 years ago, but expresses the sentiments of many New Jersey Bar members today who are still laboring under the handicap of the same cumbersome, ancient and even more patched-up machinery.

This machinery is set up by Article VI of the New Jersey Constitution, providing as follows:

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1. Acknowledgment is made of the assistance of Miss Doris J. Dewis in compiling the material used in this article.

2. 4 N. J. L. J. 39.

"SECTION I

1. *Judicial power; courts; legislative control over inferior courts*

The judicial power shall be vested in a court of errors and appeals in the last resort in all causes, as heretofore; a court for the trial of impeachments; a court of chancery; a prerogative court; a supreme court; circuit courts, and such inferior courts as now exist, and as may be hereafter ordained and established by law; which inferior courts the legislature may alter or abolish, as the public good shall require.

SECTION II

1. *Court of errors and appeals*

The court of errors and appeals shall consist of the chancellor, the justices of the supreme court, and six judges, or a major part of them; which judges are to be appointed for six years.

2. *Court of errors and appeals; judges classed*

Immediately after the court shall first assemble, the six judges shall arrange themselves in such manner that the seat of one of them shall be vacated every year, in order that thereafter one judge may be annually appointed.

3. *Court of errors and appeals; compensation of judges*

Such of the six judges as shall attend the court shall receive, respectively, a per diem compensation, to be provided by law.

4. *Clerk of court of errors and appeals*

The secretary of state shall be the clerk of this court.

5. *Court of errors and appeals; appeals*

When an appeal from an order or decree shall be heard, the chancellor shall inform the court, in writing, of the reasons for his order or decree; but he shall not sit as a member, or have a voice in the hearing or final sentence.

6. *Court of errors and appeals; writs of error*

When a writ of error shall be brought, no justice who has given a judicial opinion in the cause in favor of or against any error complained of, shall sit as a member, or have a voice on the hearing, or for its affirmance or reversal; but the reasons for such opinion shall be assigned to the court in writing.

SECTION III

1. *Power of impeachment; trial; concurrence of two-thirds for conviction*

The house of assembly shall have the sole power of impeaching, by a vote of a majority of all the members; and all the impeachments shall be tried by the senate; the members, when sitting for that purpose, to be on oath or affirmation 'truly and impartially to try and determine the charge in question, according to evidence,' and no person shall be convicted without the concurrence of two-thirds of all the members of the senate.

2. *Suspension of judicial officer impeached*

Any judicial officer impeached, shall be suspended from exercising his office until his acquittal.

3. *Judgment in cases of impeachment; effect*

Judgment in cases of impeachment shall not extend further than to removal from office, and to disqualification to hold and enjoy any office of honor, profit or trust under this state; but the party convicted shall nevertheless be liable to indictment, trial and punishment according to law.

4. *Clerk of court for trial of impeachments*

The secretary of state shall be the clerk of this court.

SECTION IV

1. *Court of chancery*

The court of chancery shall consist of a chancellor.

2. *Prerogative court*

The chancellor shall be the ordinary or surrogate-general, and judge of the prerogative court.

3. *Appeal from orphans' court to prerogative court; removal of cause into supreme court or circuit court*

All persons aggrieved by any order, sentence, or decree of the orphans' court, may appeal from the same, or from any part thereof, to the prerogative court; but such order, sentence, or decree shall not be removed into the supreme court, or circuit court, if the subject-matter thereof be within the jurisdiction of the orphans' court.

4. *Register of prerogative court*

The secretary of state shall be the register of the prerogative court, and shall perform the duties required of him by law in that respect.

Section V

1. *Supreme court; justices*

The supreme court shall consist of a chief justice and four associate justices. The number of associate justices may be increased or decreased by law, but shall never be less than two.

2. *Circuit courts; jurisdiction; docketing of final judgment in supreme court*

The circuit courts shall be held in every county of this state, by one or more of the justices of the supreme court, or a judge appointed for that purpose; and shall in all cases within the county except in those of a criminal nature; have common-law jurisdiction concurrent with the supreme court; and any final judgment of a circuit court may be docketed in the supreme court and shall operate as a judgment obtained in the supreme court from the time of such docketing.

3. *Review of final judgments in circuit courts*

Final judgments in any circuit court may be brought by writ of error into the supreme court, or directly into the court of errors and appeals.

SECTION VI

1. *Courts of common pleas; judges*

There shall be no more than five judges of the inferior court of common pleas in each of the counties in this state, after the terms of the judges of said court now in office shall terminate. One judge for each county shall be appointed every year, and no more, except to fill vacancies, which shall be for the unexpired term only.

2. *Courts of common pleas; commissions of judges*

The commissions for the first appointments of judges of said court shall bear date and take effect on the first day of April next; and all subsequent commissions for judges of said courts shall bear date and take effect on the first day of April in every successive year, except commissions to fill vacancies, which shall bear date and take effect when issued.

SECTION VII

1. *Justices of the peace; number*

There may be elected, under this constitution, two, and not more than five, justices of the peace in each of the townships of the several counties of this state, and in each of the wards, in cities that may vote in wards. When a township or ward contains two thousand inhabitants, or less, it may have two justices; when it contains more than two thousand inhabitants, and not more than four thousand, it may have four justices; and when it contains more than four thousand inhabitants, it may have five justices; provided, that whenever any township not voting in wards contains more than seven thousand inhabitants,

such township may have an additional justice for each additional three thousand inhabitants above four thousand.

2. *Population of townships and wards*

The population of the townships in the several counties of the state and of the several wards shall be ascertained by the last preceding census of the United States, until the legislature shall provide, by law, some other mode of ascertaining it."

Criticism and recommendation for change in the New Jersey court system has been a continuous process over a great many years, slumbering between peaks of feverish activity. The year 1941 commenced with another movement for court reform by constitutional change, led by Governor Edison's inaugural address.

According to the editorials and articles printed in the New Jersey Law Journal since its first issue in 1878, the greatest dissatisfaction with the court system has been the size and composition of the Court of Errors and Appeals, the separation of the system into distinct branches of law, equity and probate, the lack of administrative direction over the judiciary as a whole, and the expense of court actions to the litigants.

We have arbitrarily chosen to begin this resumé of the history of the reorganization movement at 1878 because the New Jersey Law Journal began publication in that year, faithfully noting the activities of the reformers.

Agitation for court reform began much earlier than 1878. It has its roots in the Constitutional Convention where much dissatisfaction was expressed with the inclusion of lay judges on the Court of Errors and Appeals. The lay element on this court was provided for as a compromise measure, to offset the undemocratic appointment of the judiciary by the governor.[3] The composition of the Court of Errors has been a target for criticism even unto the present day.

3. KEASBEY, LAWYERS AND COURTS IN NEW JERSEY, page 421.

In the 1880's the reorganization movement was influenced by the New York Code and the English Judiciary System. The English system requires some explanation because so many Court Plans for New Jersey have been based upon it. It contemplates a high Court of Justice divided into three divisions: law, equity and probate, all divisions being well integrated by administrative control.

In 1885, two plans for court reform were introduced by joint resolution to the assembly. The first confined itself to the Court of Errors and Appeals, providing that its composition consist of the chief justice and the two senior associate justices of the Supreme Court and the chancellor and the two senior vice-chancellors, thereby reducing the number of the court and eliminating the laymen who were to be specially appointed to the Court of Pardons. The plan met with no general approval and was ignored by the legislature of 1886. The other resolution of 1885 provided for a court of twelve judges in three divisions, the first division for common law cases and jury trials, the second for equity, probate and divorce cases, and the third for appeals, the senior judges to hear the appeals. This plan had the advantage of leading to a gradual fusion of law and equity, but it also died in the legislature.

In 1894, a commission was appointed to consider the judiciary problem but the amendments proposed by it were not adopted. The following year, the judiciary committee of the senate proposed a plan to do away with the lay element of the Court of Appeals and to permit the legislature to divide the Supreme Court into divisions and confer on each and every division thereof the jurisdiction of the court as established, provided that each division consist of at least two judges. The Court of Chancery under this plan was to consist of the chancellor and four vice-chancellors appointed by the governor and given the jurisdiction of the chancellor and the court. The editor of the Law Journal noted that "the objection to the plan is that it

makes the Supreme Court in effect the Court of Appeal from its own decisions as well as from the decision of Chancery."[4]

In the following year there was attempted a purely legislative reform of the county courts. The legislature passed an act abolishing the inferior court of common pleas, courts of oyer and terminer and jail delivery and courts of general quarter sessions of the peace in the several counties and establishing a county court having jurisdiction over all crimes, misdemeanors and offenses of an indictable nature. This attempt to unify the criminal jurisdiction of the counties was declared unconstitutional in *Schalk v. Wrightson,* 58 N.J.L. 50, 32 A. 820, by the Supreme Court because the act provided for the election of the county judges, whereas, the Constitution clearly required common pleas judges be appointed by the Governor and confirmed by the Senate.

In 19 N.J.L.J. 35 (1896) the editor of the Law Journal made the excellent suggestion that since there would shortly be four vacancies in the offices of the lay judges, the Governor (Griggs) should appoint four vice-chancellors to fill these places. Said the editor: "This would give us a court consisting of nine lay judges, five equity judges and two judges who might be either laymen or lawyers, as the governor should determine. The fourteen trained judges would control the court, and questions of law and equity would be decided in the last resort by the best law and equity judges in the state, and not by member of one court alone, but of two different courts."

In 1896, Senator Vorhees of Union County introduced certain amendments abolishing the Court of Chancery and providing for a single court which should be partitioned into three sections: the Chancery division; the Law division; and the Appellate division. It was understood the act was prepared by William H. Corbin of Jersey City. "Upon the introduction of this measure, however, it was at once discovered that various

4. 18 N. J. L. J. 65.

prominent lawyers[5] of the state took another view, and there was a hearing; in fact, several hearings"[6] at which the lawyers appeared before the committee and argued in favor of a separate court of appeals.

As a result of the last hearing, the Senate appointed a committee of lawyers to see if they could actually agree upon desirable constitutional amendments. The committee consisted of Thomas N. McCarter of Newark; Eugene Stevenson of Paterson; Samuel H. Grey of Camden; Frederick W. Stevens of Newark; J. Frank Fort of Newark; Frank Bergen of Elizabeth; G. D. W. Vroom of Trenton; Gilbert Collins of Jersey City; and J. H. Pancoast of Gloucester. "This committee wrestled with the subject for a week or more and made a report, dated March 9, which recommended an absolutely independent Court of Appeals, to consist of a president judge and four other judges. The Supreme Court should be continued, to consist of a chief judge and six associate judges. The other courts to remain substantially the same, except that final judgments in the Circuit Courts and Courts of Common Pleas and upon all indictments, should be brought by writ of error directly to the Court of Errors and Appeals. The Circuit Courts were to be held by the justices of the Supreme Court and not by judges appointed for the purpose."[7]

One of the members of the Committee, Mr. Frank Bergen of Elizabeth, disagreed with his fellow-members, and strenuously protested against the creation of an independent court of appeals. Mr. Bergen proposed his own plan for one Supreme Court, divided into common law, equity and appellate divisions, proposing that "the judges to sit in the appellate division shall

5. Thomas N. McCarter of Newark; James Buchanan of Trenton; Samuel H. Gray of Camden; J. Franklin Fort of Newark; Washington B. Williams of Jersey City; Thomas Kays of Newton; and Gilbert Collins of Jersey City.

6. 19 N. J. L. J. 98.

7. 19 N. J. L. J. 98 (1896).

be designated from time to time by the governor and return again to the work of the trial court." Of this plan, the editor of the Law Journal said: "This gives the governor a good deal of power which may be found to be dangerous, and the English plan from which the idea of divisional courts is taken does not now include the rotation in office of the judges of appeal. The Court of Appeal, although a division of the Supreme Court, is a separate court from the high court of justice, which includes the three divisions of the Queen's Bench, Chancery, and Probate and Divorce. The Justices of the Court of Appeal consist of the chancellor and ex-chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Probate Division, and five Ordinary Judges of Appeal. Only two or three of all these judges ever take part in the trial of causes at law or in equity. The experience and example, therefore, of the English Courts, are not against an independent court of appeal."[8]

The 1800's ended without any structual change in the courts. But the new century began with continued agitation and in the summer of 1900 the State Bar Association, meeting in Atlantic City, adopted a court plan that later developed into an amendment submitted to the voters in 1903.

This amendment provided:

Court of Errors and Appeals

"1. The Court of Errors and Appeals shall consist of a chief judge and four associate judges.

"2. In case any judge of said court shall be disqualified to sit in any cause, or shall be unable for the time being to discharge the duties of his office, whereby the whole number of judges capable of sitting shall be reduced below four, the governor shall designate a justice of the Supreme Court, the chancellor or a vice-chancellor, to discharge such duties until the disqualification or inability shall cease.

8. 19 N. J. L. J. 100 (1896).

"3. When a writ of error shall be brought, any judicial opinion in the case, in favor of or against any error complained of, shall be assigned to the court in writing; when an appeal shall be taken from an order or decree of the Court of Chancery, the Chancellor, or vice-chancellor shall inform the court in writing of his reason therefor.

"4. The jurisdiction heretofore exercised by the Supreme Court by Writ of Error shall be exclusively vested in the Court of Errors and Appeals."

Court of Chancery

"1. The Court of Chancery shall consist of a chancellor and such number of vice-chancellors as shall be provided by law, *each of whom may exercise the jurisdiction of the court;* the court shall make rules governing the hearing of causes and the practice of the court where the same is not requested by statute."

The Supreme Court

"1. The Supreme Court shall consist of a chief justice and four associate justices. The number of associate justices may be increased or decreased by law, but shall never be less than two. The court may sit in divisions at the same or different times and places."

Common Pleas

"The Court of Common Pleas shall be constituted and held in each county in such manner as may be provided by law."

Civil Officers

"1. Judges of the Court of Errors and Appeals, Justices of the Supreme Court, the Chancellor, the Vice-Chancellors, the Judges of the Circuit Court, and of the Court of Common Pleas, shall be nominated by the governor and appointed by him with the advice and consent of the Senate; all persons now holding any office in this paragraph named, except the judges of the

Court of Errors and Appeals, as heretofore existing, shall continue in the exercise of the duties of their respective offices according to their respective commissions or appointment, the judges of the Court of Errors and Appeals, except those first appointed; the justices of the Supreme Court, the Chancellor and the Vice-Chancellor shall hold their offices for the term of seven years, etc."[9]

The Constitutional amendments were defeated in the special election held September, 1903. As was expected, a small proportion of the electors voted. Upon the amendment providing for a new court of appeals, 20,480 negative and 17,771 affirmative votes were cast.

In spite of this disappointing rejection of the amendment, plans for court revision went forward. In 1906, a report of the commissioners on the revision of the judiciary system was published recommending a Supreme Court in three divisions. This plan was embodied in an amendment that passed both houses of the legislature, in 1908 and 1909, and in the latter year was submitted to the electorate.

This amendment reads as follows:

"SECTION I

"The judicial power shall be vested in a court for the trial of impeachments, a Supreme Court, County Courts, and such other courts, inferior to the Supreme Court, as may be established by law, which inferior courts the Legislature may alter or abolish as the public good shall require.

"Strike out all of Sections II, IV, V, VI and VII of Article VI, change the number of Section III of Article VI to Section II, and insert the following sections in Article VI:

"SECTION III

"Any judge of any of the courts of the State may be removed

9. SESSION LAWS OF 1903, page 351.

for disability continuing for one year, or for refusal to perform the duties of his office, by a vote of two-thirds of all the members of the Senate and of two-thirds of all the members of the House of Assembly voting separately, after a hearing before both Houses in joint session.

"SECTION IV

"1. The Supreme Court shall be organized in three divisions, namely, the Appeals Division, the Law Division, and the Chancery Division. It shall consist of a Presiding Justice of the Appeals Division who shall be styled the Chief Justice, a Presiding Justice of the Law Division, who shall be styled the President Justice, and a Presiding Justice of the Chancery Division, who shall be styled the Chancellor, and eighteen Associate Justices, which number may be increased by law.

"2. The Appeals Division shall consist of the Chief Justice, and six other Justices of the Supreme Court to be assigned by the Governor. A Justice of the Supreme Court assigned by the Governor to the Appeals Division shall serve in said division until the end of his term.

"The remaining justices shall be assigned by the Supreme Court to the Law or Chancery Division, as the business of the Court may require.

"3. Whenever the number of causes before the Appeals Division shall be so great that the Division cannot promptly hear and determine them, the Governor shall, when authorized by statute, temporarily assign five of the justices of the other divisions to sit in the Appeals Division, which shall thereupon sit in two divisions for the hearing and decision of causes pending at the time of such assignment.

"4. Four justices shall be necessary to constitute a quorum on the final hearing of any cause in the Appeals Division, but the Supreme Court may provide by rule for the making of interlocutory orders by a lesser number of justices or by one justice;

such orders to be subject to revision by the Appeals Division.

"On the hearing of a cause in the Appeals Division, no justice who has given a judicial opinion in the cause in favor of or against the judgment, order or decree under review shall sit at the hearing to review such judgment, order or decree, but the reasons for such opinion shall be assigned to the Court in writing.

"5. A majority of all the members of the Supreme Court, to be presided over by the Chief Justice, shall constitute a quorum for the assignment of justices, and for the appointment of officers, and the enactment of rules.

"SECTION V

"1. The Appeals Division shall have and exercise the appellate jurisdiction heretofore possessed by the Court of Errors and Appeals, the jurisdiction heretofore possessed by the Supreme Court on writ of error, and the jurisdiction heretofore possessed by the Prerogative Court on appeal, and by the Ordinary on appeal, and such further appellate jurisdiction as may be conferred upon it by law, together with such original jurisdiction as may be incident to the complete determination of any cause on review, saving, however, the right of trial by jury.

"2. The jurisdiction heretofore possessed by the Supreme Court and the Justices thereof not hereby conferred on the Appeals Division, and the jurisdiction heretofore possessed by the Circuit Courts and the judges thereof, and such further original jurisdiction not of an equitable nature, and such further appellate jurisdiction from inferior courts as may be conferred by statute, shall be exercised by the Law Division of the Supreme Court and by the several justices thereof, in accordance with rules of practice and procedure prescribed by statute, or in the absence of statute by the Supreme Court.

"3. The jurisdiction heretofore possessed by the Prerogative Court and the Ordinary, not hereby conferred on the Appeals

Division, and the jurisdiction heretofore possessed by the Court of Chancery and the Chancellor, and such further original equity jurisdiction as may be conferred by statute, and such further original jurisdiction as is now conferable on the Prerogative Court shall be exercised by the Chancery Division and by the Chancellor and the several justices of said division in accordance with rules of practice and procedure prescribed by statute, or, in the absence of statute, by the Supreme Court, but the justices of that division shall be under such control and supervision by the Chancellor as shall be provided by the Supreme Court.

"4. Terms of the Supreme Court presided over by a single Justice of the Law Division for the trial of issues joined in or brought to the Law Division of the Supreme Court shall be held in the several counties at times fixed by the Supreme Court. Until so fixed, such trial terms shall be held at the places and times now fixed by law for the holding of the Courts of Common Pleas in the several counties.

"5. The Supreme Court may provide by rule for the transfer of any cause or issue from the Law Division to the Chancery Division, or from the Chancery Division to the Law Division of the Supreme Court, and from the County Court to the Law Division or the Chancery Division of the Supreme Court, and for the giving of complete legal and equitable relief in any cause in the court or division where it may be pending.

* * *

"SECTION VI

"The County Courts shall have and exercise, in all cases within the county such original common law jurisdiction concurrent with the Supreme Court, and such other jurisdiction heretofore exercised by courts inferior to the Supreme Court and the Prerogative Court as may be provided by law. The final judgments of the County Courts may be brought for review before the

Supreme Court in the Appeals Division. Until otherwise provided, the jurisdiction heretofore exercised by the Courts of Common Pleas, Orphans' Courts, Courts of Oyer and Terminer, Courts of Quarter Sessions, or by the judges thereof, shall be exercised by the County Courts pursuant to rules prescribed by the Supreme Court. The justices of the Law Division of the Supreme Court shall be ex-officio judges of the County Courts. All other jurisdiction or authority now vested in any court, judge or magistrate with jurisdiction inferior to the courts in this section mentioned, and not superseded by this article, shall continue to be exercised by such court, judge or magistrate until the Legislature shall otherwise provide.

* * *

"1. The Chief Justice of the Supreme Court, the President Justice of the Law Division, the Chancellor and the Associate Justices of the Supreme Court shall be nominated by the Governor and appointed by him, with the advice and consent of the Senate. They shall not be less than 35 years of age, and shall have been practicing attorneys in the State for at least ten years. They shall hold office for the term of seven years; shall, at stated times, receive for their services a compensation which shall not be diminished during their term of office, and they shall hold no other office under the government of the State, or of the United States, and shall not engage in the practice of law during their term of office. The Chancellor and the Chief Justice of the Supreme Court, and the Vice-Chancellors and Associate Justices of the Supreme Court, in office when this amendment takes effect, shall be Justices of the Supreme Court until the expiration of their respective terms.

"The Circuit Court Judges in office when this amendment takes effect shall be continued in office with the powers of the Justices of the Supreme Court at the circuit until the expiration of their respective terms. They may hold the County Courts,

subject to assignment by the Law Division of the Supreme Court.

"2. The Governor, by and with the advice and consent of the Senate, shall appoint one judge of the County Court in each county, and such additional County Judge or Judges in any county as may be authorized by law. The County Judges may hold court in any county subject to the control of the Supreme Court. The County Judges shall not be less than 30 years of age, and shall have been practicing attorneys in this State for at least five years. They shall hold office for the term of five years; shall at stated times receive for their services such compensation, which shall not be diminished during their term of office, as the Legislature in its discretion shall fix for each county, and they shall hold no other office under the government of the State or of the United States, and shall not engage in practice of the law in the courts of the county where they hold court during their term of office. The judges of the Common Pleas in office when this amendment takes effect shall be the judges of the County Courts until the expiration of their present terms."[10]

* * *

32 N.J.L.J. 258 carries the obituary of this amendment to the Constitution with this explanation: "The reason for the defeat of the amendments was probably not that the majority of the voters of the state did not at heart approve of them, but that so few votes were cast, and these mainly by those who were objectors. One of the difficulties in securing any amendments to a state constitution, where partisan questions are not involved, lies in the fact that only a small body of the voters will go to the polls and express their opinion upon the issues."

In 1908, another idea for court revision was advanced by John J. Crandall, known as the "American Plan." This scheme contemplated a so-called two court system comprised of a review court at the state capital, and a court of unlimited original

10. SESSION LAWS OF 1909, page 378.

jurisdiction in the county. The local courts were to have power to thresh out every form of justice including law, equity, decedent's estates and crimes of every nature. The author of the plan cited the judiciary of Pennsylvania, Indiana, Kansas, Maryland, West Virginia, Nebraska and Tennessee as examples of the American Plan.[11]

The rejection of the 1909 amendments to the Constitution dealt a severe blow to the movement for structural reform of the courts. Attention then turned to practice reform. The Practice Act of 1912 was a long step forward, abolishing the old technicalities of pleading, simplifying the matters necessary to be stated in complaints, admissions and answers, and facilitating the transfer of causes begun in the wrong court.

In 1925, Governor Silzer made an address to the New Jersey State Bar Association which revived the court reform movement. The next year the committee on court reform of the State Bar made a report suggesting that the association seriously consider an amendment which would provide for the following courts:

"(1) A court for the trial of Impeachments;

"(2) A Court of Pardons;

"(3) A court of Appeals, consisting of a Chief Justice, and at least six and no more than eight associate Justices;

"(4) A Supreme Court of three divisions with all the jurisdiction throughout the State now possessed by the New Jersey Supreme Court, the Court of Chancery, the Circuit Courts, and at common law by the Court of Common Pleas, said Court to be divided into three divisions as follows:

"(a) An Appellate Division, consisting of one or more departments, with all the appellate jurisdiction now possessed by the Supreme Court on appeal, writ of error and the prerogative writs.

"The Appellate Division should have the power on an appeal

11. Reported in 31 N. J. L. J. 130.

to it to pass not only upon such questions as may be raised on a strict writ of error, but also as to whether or not a verdict is against the weight of the evidence, is excessive or inadequate. An appeal from the Appellate Division to the Court of Appeals should be a matter of right in a limited number of cases only, (such as in capital cases, or where it is claimed that a right has been denied under the Constitution, or where the constitutionality of an Act of the Legislature is involved). In all other cases an appeal to the Court of Appeals could not be taken unless allowed either by the Appellate Division or by the Court of Appeals itself.

"(b) A Law Division with original jurisdiction in all actions at law now possessed by the Supreme Court, Circuit Courts and the Courts of Common Pleas.

"(c) An Equity Division, presided over by the Chancellor, which Division should have all the jurisdiction of the present Court of Chancery, with an appeal from any final judgment or decree direct to the Court of Appeals, with a right saved to the Legislature to provide that an appeal from any statutory authority of the Court, such as in matrimonial actions and matters of alimony, should be to the Appellate Division of the Supreme Court.

"By rule of Court it would be easy to keep the cases brought in the Supreme Court in their proper division.

"(5) In each county there should be provided two Courts:

"(a) County Courts having jurisdiction in all probate, workmen's compensation and criminal causes, with appeals to the County Courts from Police Courts, Small Cause Courts and from decisions from the Workmen's Compensation Aid Bureau, and from such other inferior tribunals as the Legislature may from time to time establish;

"(b) District Courts having jurisdiction throughout the given county only.

"Appeals from the District Courts, County Courts and from

the Supreme Court, under the plan proposed, would be direct to the Appellate Division, and would there be final, except in a limited number of cases of importance which could be carried to the Court of Appeals."[12]

This plan is patterned closely after the system of courts existing in the State of New York, and is quite similar to the proposed 1909 amendment with the addition of a Court of Appeals.

The committee (composed of Morgan Hand, William C. Jones, Jessie C. Buckman, Runyon Colie and James D. Carpenter, Chairman) in their report said:

"There is no sound reason for the maintenance of three separate courts in each county where actions at law may be commenced and tried. With this system of Courts in effect, the number of judges in the Supreme Court can be increased by the Legislature as conditions warrant, to take care of the business and the judges in cases of necessity could be transferred from work on the law side of the court to the equity side, and vice versa, and it would be possible to have these rotate so that each judge would spend part of his time on the law side of the court, part on the equity side, and part in the Appellate Division on the order of the Chief Justice. This would undoubtedly be of benefit to the judges themselves. The judges with peculiar aptitude or ability in a particular branch of the court could be kept there.

"The system now in effect is not adequate for present day conditions. There is no sound reason why there should be three courts, the Supreme Court, Circuit Court and Common Pleas Court, each having practically the same original jurisdiction in actions at law. Moreover, the same judges who now sit in the Supreme Court hearing appeals, rules to show cause, etc., now sit in the Court of Errors and Appeals, as a court of last resort, and every case as a matter of right can be taken on appeal from

12. 49 N. J. L. J. 199, 200.

the lowest court to the highest, no matter whether questions of any importance to the state or parties are involved or not. Under the plan for a system of courts which your committee suggests there would be but one appeal as a matter of right, and that to the Appellate Division, except in a very limited number of cases where questions of serious importance are concerned. If in the ordinary case an appeal could be taken to the Court of Appeals, only where the Appellate Division in the Court of Appeals allows an appeal, the work of the Court of Appeals would be greatly decreased, many appeals which are now prosecuted to the court of last resort as a matter of right would necessarily stop at the Appellate Division, and it would be our hope that the judges in the Court of Appeals, with less work to do, would have more time to devote to the work of this court. Certainly they would not be under the pressure that the Chancellor and Supreme Court Justices now labor under."[13]

On July 20, 1926, the Legislature adopted six proposed constitutional amendments. They provided:

"(1) a four year term for the governor and state senators.

"(2) biennial legislation sessions.

"(3) creation of water supply districts with election of commissioners.

"(4) two zoning amendments for municipalities to enact residence zone ordinances.

"(5) popular vote on amendments at general instead of special elections.

"(6) reorganization of the state judiciary with new Court of Appeals and new Court of Pardons."[14]

But in 1927, only the zoning amendment and the amendment providing for biennial sessions of the legislature and increasing the length of terms of office for the governor and legislators,

13. 49 N. J. L. J. 200 and 201.
14. 49 N. J. L. J. 275.

were submitted to the people. The first was accepted by the electorate, whereas the second was not.

Undaunted, the court reform movement went on! At the December 1929 meeting of the Union County Bar Association, James D. Carpenter (member of the committee on the Reorganization of New Jersey's Judicial System acting for the State Bar Association) made an address in which he pointed out the shortcomings of the courts and the reasons for suggested changes. In part, Mr. Carpenter said:

"The system has broken down under the pressure of business. It is idle to talk about what causes this pressure. We have facts and not theories confronting us. There are probably more cases pending in New Jersey at the present moment than all the Judges in the State can possibly dispose of in the next two years, if not another case is commenced within that time. * * *

"At the opening of the present Term of the Court of Errors and Appeals the Chancellor announced that some 54 cases on the calendar of the preceding Term had not even been considered by the Court and that, because the Court could not consider more than about 105 cases at a Term, argument could not be heard in more than fifty cases in the present Term. This is an open confession by our Court of Last Resort, that the business of the Court is increasing beyond the ability of the Court to transact. It is apparent that the increase of trial Judges and the increase of cases will cause an increase in appeals; they will continue to increase. If our Court of Last Resort cannot dispose of more than 105 cases a term, and if each Term the list of unheard and undecided cases continues to grow, an intolerable condition is impending.

"In the Supreme Court there is a similar condition. Parts I and II are behind in their work, and how, under present conditions, the Court can catch up is a mystery. * * *

"Two years ago the State Bar Association voted in favor of having an independent Court of Appeals. An amendment to

provide for it was prepared by a Committee of the Association. This amendment, after being passed by one Legislature, was not passed by a second Legislature, and hence this most necessary amendment, was not even submitted to the voters. A Committee on Reorganization of the Courts was, however, continued by the State Bar Association.

"Mr. Lum, President of the State Bar Association, has recently appointed a Committee to prepare a plan for reorganization of our judicial system, and that Committee is now at work on the subject.

"That Committee has so far unanimously agreed that there should be in New Jersey an independent Court of Appeals, consisting of a Chief Justice and six Associate Justices, a majority of whom should constitute a quorum. It has practically agreed that below this Court there should be a Supreme Court, having at least three Appellate Divisions with jurisdiction to hear appeals in all matters of law, equity and crimes, and also have the jurisdiction now possessed on appeal by the Supreme Court, and all the jurisdiction now possessed on appeals from the Court of Chancery and Prerogative Court by the Court of Errors and Appeals. It has been suggested that this provision should be so worded as to give the Legislature power to increase the number of divisions and the number of Judges in all parts of the Court as conditions from time to time may require.

"Whether the Court of Chancery should be a division of the Supreme Court or an entirely separate Court, as at present, is now seriously being considered by the Committee. There are cogent reasons for making the Chancery Division a branch of the Supreme Court, and making the Judges of that Court Supreme Court Judges, sitting in the Chancery Division. It is suggested that the judges now sitting in the Circuit Courts should be Supreme Court Judges assigned to sit in the law division, each having the power at present possessed by a Justice of the Supreme Court.

"The Supreme Court should have jurisdiction throughout the State and the Committee is considering ways and means for providing that pleadings should be filed in the offices of the county clerks in the county where the venue is laid, and providing that the venue should be indorsed on each paper filed. In this event all writs would be issued by the county clerks in actions in the Supreme Court, and, where attachments are issued, a copy would have to be forwarded by the county clerk immediately to the clerk of the Supreme Court in order to bind lands of the defendant throughout the State.

"One of the reasons in favor of having a Supreme Court with three Divisions, the Appellate, Law and Chancery, is that the Court of Appeals might be given the power to assign Judges to any Division of the Supreme Court to sit in any other Division of that Court. This would provide a facility for transacting business unknown in our judicial system today. When the work of any division gets behind, Judges from other Divisions could be assigned to help clean it up.

"The committee favors a provision that, in constituting the Appellate Division, one Judge should be selected from the Law Division, one from the Chancery Division, and the third as the Court of Appeals might determine. The reasons for this are obvious. One of the defects of our present system is that the Chancellor, who is preeminently an equity Judge, is always barred from sitting on appeals in the Court of Errors and Appeals from decisions of the Court of Chancery, although the Chancellor himself necessarily participates in but few decisions in his own Court. It is the feeling of the committee that there ought to be a law Judge and an equity Judge sitting on every appeal in the Appellate Division.

"The State Bar Association's Committee also favors a provision that the Appellate Division should sit at such times and at such places as business shall require. This would enable this Division to sit in Jersey City, Newark, Paterson, Trenton, Cam-

den or elsewhere as business requires. Such a provision would conserve the time of the members of the Court and counsel and make tedious trips to Trenton day after day unnecessary. At present the Judges of our Supreme Court and Court of Errors and Appeals spend at least three hours of each Court day in traveling to and from the State House. Under the system which the Committee is trying to work out a large part of this time would be saved. The saving in time to members of the Bar, if such a provision were incorporated under our law, would be enormous, and the money saved for clients would more than defray all the costs of the changes proposed.

"The Committee likewise favors having but one term per year in the Court of Appeals and in the Supreme Court.

"The Committee is seriously considering a provision allowing any Judge of the Supreme Court, as proposed, to grant prerogative writs, excepting the peremptory writ of mandamus, arguments thereon to be heard, however, in the Appellate Division. Why should it be necessary under present-day conditions for counsel to be required to go from one end of the State to another to locate a particular Justice of the Supreme Court, who is assigned to sit in a given Judicial District, to apply for a prerogative writ, most of which, after all, are no more than orders to show cause? These writs are not so sacred that any competent Judge now sitting in the Circuit Court or Court of Chancery should not have the power to grant them. The time-honored custom of requiring counsel to go to one particular Judge for a prerogative writ should give way to the need of the times.

"Why should not the Prerogative Court be done away with? It is wholly unnecessary. The State Bar Association's Committee contemplates recommending abolishing it and providing an appeal direct from the Orphans' Court to the Appellate Division. This will abolish one unnecessary appeal in matters involving estates and will reduce the cost of litigation to inter-

ested parties and will not reduce efficiency in any degree. This provision also would give the fees in large estates to the counties, where they belong, and take them from the Prerogative Court.

"One of the causes of congestion and delays in our Courts today is that in any case, no matter how trivial, an appeal may be taken as a matter of right or spite to the Court of Errors and Appeals. The State Bar Committee favors limiting appeals to the Court of Appeals to the more important cases where questions of law are involved. So far the Committee favors limiting appeals to cases where convictions have been entered for murder or treason, and cases where the constitutionality of a statute is questioned for the first time, and also cases from the Appellate Division where either that division or the Court of Appeals allows an appeal because of the importance of the case or the legal questions involved. There should be a provision permitting the Appellate Division to certify questions of law to the Court of Appeals. In all other cases appeals would be heard in the Appellate Division and the judgment of that division would be final. It is proposed that the Appellate Division should have the power not only to consider questions of law, but also whether the verdict below is excessive, inadequate or against the weight of the evidence.

"The Committee further favors a provision to be inserted in the Constitution that all cases shall be decided within six months after being submitted for decision. Another provision that is favored is that no Judge participating in a decision of a case in a lower Court should hear an appeal in the same case in an upper court.

"The Committee favors by statute providing a District Court in each county of the State, taking from the justices of the peace all jurisdiction in civil cases. It also favors a provision that all Judges shall be appointed by the Governor.

"Many of these changes which are now being considered are

entirely new to New Jersey. Some of them would have to be secured through amendments to the Constitution, while others would have to be provided by statute. But there is nothing new or novel in any of them. This is substantially the system that has existed for many years in New York with great satisfaction, and it is substantially the system in the Federal Courts.

"The Committee, too, is seriously considering whether the lay Judges should not be given the right to allow certain equitable remedies in cases pending before them, such as an equitable set-off. Where a party at law is entitled to an equitable set-off, why should he be compelled to commence an expensive separate action in a different Court to obtain the relief to which he is entitled? This is a matter which is new to us in New Jersey, but not elsewhere. Why should we not get up to date?

"All of us can agree, I think, upon the absolute necessity of having an independent Court of Appeals at the earliest possible moment. We cannot longer have Justices of the Supreme Court attempting to perform the multitudinous duties of that office, and then attempt in addition to do the major portion of the work in the Court of Last Resort.

"The time has long passed when the position of lay Judge in the Court of Last Resort should be abolished. There are lay Judges who are lawyers and who grace that Court by their learning, wisdom and industry. There have been lay Judges in that Court, however, who have had no legal training, but whose vote is just as powerful on an important legal question as that of the most learned jurist. There is not another State in the Union which has lay Judges in its Court of Last Resort, and we now, in the interest of efficiency and economy, must make the change.

"The work of recasting our judicial system is difficult and much hard work must be done to accomplish a change. The people of the State must be taught what the defects of our judicial system are and the necessity for changes. When they under-

stand conditions as we do they will be as anxious for relief as we are.

"After all, it is the business of the people of the State, which is executed through us as their agents. They must be taught that the expense of litigation in New Jersey can be greatly lessened; that litigation can be greatly speeded; that present delays are not necessary, and that unless there is a change and that an early one, our entire judicial system will soon be utterly swamped.

"The task of educating the people on this question belongs to the lawyers. We know conditions—our clients do not. They merely grit their teeth at the expense and chafe at the delay. We, all of us, must bear the burden of spreading the news of the need for relief. If we do, they will help us and thereby help ourselves."[15]

In 1930, another approach was made to reorganizing the courts. The idea, this time, was to get at it via legislative means instead of by constitutional amendment.

An act was passed by the New Jersey Legislature creating and establishing a judicial council of fourteen members whose duty it is to make a continuous study of the organization and relation of the various courts of the state, counties and municipalities and make reports to the governor thereon and co-operate with the legislature in drafting bills regarding the courts and their practice. The members[16] of the council worked rapidly and made their first report to the governor in December, 1931. On the basis of their work, twelve bills relating to the judiciary were introduced into the Senate.

Of these bills, five became acts. The first provided "That hear-

15. 53 N. J. L. J. 9-14.

16. Members of the Judicial Council in 1930 were W. Holt Apgar, Charles L. Carrick, Clarence E. Case, Harry R. Coulumb, Nelson Y. Dungan, William W. Evans, Dallas Flannagan, Frank B. Jess, Vivian M. Lewis, William E. Stevens, Russel S. Wise, Joseph G. Wolber, and Arthur T. Vanderbilt, Chairman, and Edward T. Toner, Secretary.

ing of rules to show cause why a new trial should not be granted as to Supreme Court issues should be referred to the Circuit Judge who heard the case." The second provided "that a respondent on any appeal to the Supreme Court shall have the right, on being served with notice of appeal to inform his adversary that he will consent to a pro forma judgment, without prejudice, in the Supreme Court, in order to expedite the final disposition of the case by the Court of Errors and Appeals." The third provided "that common pleas judges hereafter appointed in counties having a population of 300,000 or over, shall devote their entire time to their judicial duties and shall not engage in the practice of law." The fourth "gives the Chief Justice of the Supreme Court the power to assign common pleas judges to hold the circuit court in any county whenever, in his judgment, the administration of justice would be expedited thereby. In the absence of any such assignment by the Chief Justice, it gives the Supreme Court Justice presiding in the County, the power to assign the Common Pleas judges to the trial of cases in the Circuit Court of the county." Unfortunately "the legislature failed to adopt the other section of the bill which would have given the Chief Justice the power to assign the Circuit Court judges. Its desirability is apparent. The purpose back of these bills is to give the power to mobilize the judicial 'man power' of the law courts in whatever part of the state the Chief Justice as the 'general' of the judicial forces in the law side, shall think necessary to expedite the administration of justice. Heretofore, the responsibility has been the joint one of the Supreme Court justices, with respect to the circuit judges, and nobody's responsibility so far as the use of the Common Pleas judges outside of their own county, was concerned. The fact that the trial work of the Court of Chancery is practically up to date, in contrast to the woeful congestion of untried cases at the circuits, may be accounted for by the fact that the law casts a duty on the Chancellor, as the Court of Chancery under the Constitution, to see

that the work of his court is promptly attended to, whereas, there has been an entire absence of any such individual responsibility in the law courts." The fifth act "requires the officers of the several courts of the state to furnish information to the Judicial Council upon request."[17]

These acts greatly relieved the congestion of the courts in a very short time, but it was still thought necessary that we have a change in the court structure. Therefore, in 1932, the Judicial Council suggested the following amendments to the State Constitution:[18]

"SECTION I

"1. The judicial power shall be vested in a court of appeals; a supreme court; a court of chancery; a circuit court; a court for the trial of impeachments, and, except as herein otherwise provided, such inferior courts as now exist, and as may be hereafter ordained and established by law, which inferior courts the legislature may alter or abolish as the public good shall require.

"SECTION II

"1. The court of appeals shall possess the jurisdiction heretofore vested in the court of errors and appeals in the last resort in all causes, except as otherwise provided in this constitution; and shall also possess the appellate jurisdiction heretofore vested in the prerogative court. It shall have exclusive appellate jurisdiction in all causes where judgment of death is involved. It may provide by its rules that two or more of its members shall hear and determine applications for relief pending appeal in cases involving restraints, appointment of receivers or other change in status. It shall have the power to prescribe the stage of the proceedings at which it will consider appeals from interlocutory orders.

17. Second Report of Judicial Council, December 15, 1931.
18. 15 N. J. L. J. 231.

"2. The court of appeals shall consist of a president justice and six associate justices. Five members of the court of appeals shall constitute a quorum.

"3. The final judgment of any court of law having original jurisdiction may be taken by appeal direct to the court of appeals, where the trial judge shall certify that by reason of the exigencies of the case or the importance of the questions involved it is advisable that an appeal go direct to the court of appeals, if the court of appeals, upon the presentation of such certificate, shall allow such appeal. * * *

"5. If the court shall fail to hear any case within two months after the appeal therein is perfected or shall fail to decide any case within two months after it shall have been argued or submitted, the president justice shall certify such failure to the governor, who, may, if in his judgment the public good require, appoint special justices of the court of appeals in the manner hereinafter provided, who shall constitute a special court of appeals vested with power coordinate with the court of appeals to hear and determine appeals.

"SECTION III

"1. The supreme court shall possess the appellate jurisdiction heretofore vested in the supreme court, except where judgment of death is involved; and the original jurisdiction, civil, criminal and otherwise, heretofore vested in the supreme court, except in actions at law inter partes not involving prerogative writs. It shall determine in such manner as it may by rule prescribe, and without the aid of a jury, questions of fact arising in certiorari, quo warranto, mandamus, prohibition and habeas corpus; and in any such proceedings, other than reviews of judgments of courts of record, the hearing shall be in the first instance before a single justice of the supreme court, whose decision, both as to law and fact, shall be appealable to the supreme court.

"2. Judgments of the supreme court in the exercise of its appellate jurisdiction, including reviews of judgments of courts of record by the supreme court by certiorari or otherwise, shall not be appealable except in cases (a) where the supreme court may allow an appeal to the court of appeals, or (b) where the court of appeals may allow an appeal from the supreme court to the court of appeals.

"3. The supreme court shall consist of a chief justice and six associate justices. The number of associate justices may be increased or decreased by the legislature, but shall never be less than two. The supreme court may sit in parts; and each part shall possess the jurisdiction of the court; each part shall consist of not less than three justices. Each justice may exercise the powers of a judge of any of the courts of law in the judicial district to which he is assigned and may hold any court of law in his judicial district.

"4. The supreme court shall have exclusive jurisdiction of appeals from the circuit court and all other courts of law, except as otherwise provided in this constitution. On such appeals the supreme court shall consider questions of law involving errors of the trial court, and may also set aside judgments, wholly or in part, where the verdict or finding of fact is against the weight of the evidence, or excessive or inadequate.

"5. The chief justice shall have the power to assign the justices to the several parts of the supreme court and to the several judicial districts of the state, to assign the circuit court judges to the several counties, and to assign the judges of the inferior courts of law to such counties and duties as the public good may require; and to supervise their work. He shall by rule regulate the practice and procedure in the supreme court, the circuit court and the inferior courts of law.

"6. If the court shall fail to hear any case within two months after the appeal therein is perfected or shall fail to decide any case within two months after it shall have been argued or sub-

mitted, the chief justice shall certify such failure to the governor, who may, if in his judgment the public good require, appoint special supreme court justices in the manner hereinafter provided.

"SECTION IV

"1. The court of chancery shall consist of a chancellor as heretofore and shall possess the jurisdiction heretofore vested in the court of chancery and the original jurisdiction heretofore vested in the prerogative court.

"2. The vice-chancellors, to be appointed as hereinafter provided, shall aid and assist the chancellor in such manner and by such procedure as he may by rule or otherwise prescribe.

"3. The chancellor shall exercise complete control of the work of the court as heretofore, and shall by rule regulate the practice and procedure of the court. He shall on or after the first day of December in each year file with the clerk in chancery a detailed statement of the work of the court of chancery for the year ending the first day of September next preceding.

"SECTION V

"1. The circuit court shall possess the original jurisdiction in actions at law inter partes not involving prerogative writs heretofore vested in the supreme court, and the jurisdiction heretofore vested in the several circuit courts.

"2. The circuit court shall consist of such number of circuit court judges as shall be provided by law. Each circuit court judge may exercise the jurisdiction of the court. * * *

"SECTION VII

"1. There shall be a county court in each county, which shall possess all the jurisdiction heretofore vested in the court of common pleas, orphans' court, court of oyer and terminer, court of quarter sessions, and court of special sessions. The judges of

the county courts shall possess all the powers heretofore vested in the judges of the court of common pleas, orphans' court, court of oyer and terminer, court of quarter sessions, and court of special sessions. Each judge of the county court may exercise the jurisdiction of the court. The county court and the powers of the judges thereof may be altered or abolished by the legislature as the public good may require.

"SECTION VIII

"1. The governor shall nominate and appoint, by and with the advice and consent of the senate, the president justice and associate justices of the court of appeals, the chief justice and associate justices of the supreme court, the chancellor, the judges of the circuit court, and the judges of the county court; the chancellor shall nominate and appoint, by and with the advice and consent of the senate, the vice-chancellors; all of whom shall hold office for a term of seven years; they shall at stated times receive for their services a compensation which shall not be diminished during the term of their appointment; * * * On certificate from the president justice of the court of appeals, as provided in paragraph five of section two of this article, or from the chief justice of the supreme court, as provided in paragraph six of section three of this article, the governor may nominate and appoint, by and with the advice and consent of the senate, special justices of the court of appeals and special justices of the supreme court to hold office until such time as the president justice of the court of appeals or the chief justice of the supreme court, as the case may be, shall certify to the governor the ability of the court to hear cases within two months after appeals therein are perfected and to decide them within two months after argument or submission; such special justices shall at stated times receive for their services a compensation which shall not be diminished during the time they shall hold such office; * * *

"SCHEDULE

"1. Immediately after the adoption of these amendments, the governor shall nominate and appoint, by and with the advice and consent of the senate, from the persons holding, immediately prior to the adoption of these amendments, the offices of chancellor, chief justice, justices of the supreme court, judges of the court of errors and appeals, vice-chancellors and circuit court judges, a president justice and six associate justices of the court of appeals, each for a period of time coincident with his unexpired term. * * *"

These judicial amendments failed to go through the legislature and so were never submitted to the electorate.

After Governor Edison's inaugural address spurred on the court reform movement in 1941, the New Jersey Law Journal published two interesting court plans for the Bar's consideration.

The most interesting and most seriously considered plan is that proposed by Alfred C. Clapp, based on the suggestions of Dean Roscoe Pound of Harvard. It contemplates an amendment to the Constitution reading as follows:

"ARTICLE I[19]

"Section 1. The judicial power shall be vested in a court of justice which shall have three branches, a court of appeals, a supreme court and a district court.

"Section 2. (a) The court of appeals shall consist of the chief justice of the court of justice who shall preside, the chief judge of the court of appeals, and five associate judges, or a major part of them.

"(b) The supreme court shall consist of the chief judge of the supreme court and judges of that court; and shall be divided into a chancery division sitting in vicinages, a matrimonial divi-

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sion sitting in vicinages, a criminal law division sitting in each county, a civil law division sitting in each county, a probate division sitting in each county and such other divisions as may hereafter be established.

"(c) The district court shall consist of the chief judge of the district court and judges of that court; and shall be divided into a civil division, a criminal division, a juvenile and domestic relations division, each sitting in each county in such districts as shall be provided by law, and such other divisions as may hereafter be established.

"(d) The chief justice of the court of justice shall be the administrative head of the court; and the chief judge of each of the three branches thereof shall be answerable to him for the administration of his respective branch.

"Section 3. (a) By rules of the court of justice which in these respects shall not be altered or abolished by law, provision shall be made:

"1. Providing for appeals, writs of error if any and prerogative writs; and establishing such appellate terms in the supreme court as shall be deemed advisable.

"2. Fixing the number of members of the supreme court and specifying the number thereof that shall be appointed respectively to the aforesaid vicinages, counties, and (if so provided) appellate terms; and fixing the number of members of the district court and specifying the number thereof that shall be appointed respectively to the aforesaid districts; provided that any increase in the total number to be appointed to either court shall not become effective unless ratified by law.

"3. Fixing the jurisdiction of the branches of the court of justice, the jurisdiction of the divisions of the supreme court and appellate terms if any and the jurisdiction of the divisions of the district court.

"4. Providing for the administration of such branches, divisions and appellate terms, if any; and fixing the extent of the

aforesaid vicinages; and

"5. Establishing hereafter such additional divisions of the supreme court and such additional divisions of the district court, as shall be deemed advisable.

"(b) The members of the court of appeals and the chief judges of the supreme and district courts, sitting together, or a major part of them, shall have the power to promulgate and change rules of the court of justice and to provide as to the relaxation and dispensation thereof by any member of the court; and shall appoint such court reporters as they may deem necessary.

"Section 4. (a) The members of the court of justice shall be counsellors at law nominated by the governor to the office and appointed by him thereto with the advice and consent of the senate; provided, nevertheless, that the chief justice of the court of justice may, without creating a vacancy in such office and without change in compensation, assign any member to any branch, division, vicinage, county, district or appellate term to which he has not been appointed, for such period of time as the business of the court may demand."

The alternative to constitutional amendment is reform of the courts by legislation. In 64 N.J.L.J. 277, was published the report of the special committee[20] of the State Bar Association, appointed to study methods of improving appellate practice and procedure by statute or rule of court in cases of law, equity or probate jurisdiction.

The committee's first proposal can be concretely expressed in its recommendation that there be passed a statute substantially as follows:

"Appeals, subject to suspension and amendment in any part

20. Members of the committee were Malcolm G. Buchanan, Edwin C. Caffrey, Edward A. Markley, Bartholomew A. Sheehan and George W. C. McCarter, Chairman.

thereof by the court, as experience will show to be expedient.

"SCHEDULE A—RULES

"Leave to appeal to the Court of Errors and Appeals from judgments of the Supreme Court is granted in the following cases:

"a. Cases in which the constitutionality of any Act of Congress or of the Legislature of this state is involved.

"b. Cases involving title to a public office.

"c. Transfer inheritance tax cases.

"d. Cases on certiorari, except certioraris to inferior courts.

"That the reform is desirable will admit of little doubt. It will do what has not yet been attempted to be done, namely, diminish the labors of the Judges of the Court of Errors as such. There will be eliminated from the compulsory jurisdiction of the court of last resort appeals from the Supreme Court in all cases commenced in the Circuit Courts, in the Courts of Common Pleas, all criminal cases other than capital cases, all District Court appeals, all certioraris to Recorders Courts, Justices of the Peace, and similar inferior tribunals. It will therefore leave the members of the Court of Errors and Appeals more time to devote to the causes which they do consider.

"Litigants have a right to a fair trial and to a full and adequate consideration by one appellate court. Further than that it is submitted their rights do not go. The court of last resort should exist to consider questions of law and to decide cases of outstanding importance to the community in general, as distinguished from the litigants themselves. This plan permits the courts by general rules to select classes of cases which it deems obviously of sufficient importance to require its consideration, and reserves the right to make a preliminary investigation of any case. This selective procedure is not new. It has worked for years in the Supreme Court of the United States and the Court of Appeals of New York. Without such a selective power the

Supreme Court of the United States would be overwhelmed with cases. With it that court keeps up with its docket. The same is true with the New York Court of Appeals, one of the most highly thought of state courts of last resort.

"In all cases at law originating in courts inferior to the Supreme Court, there is of course an appeal to the Supreme Court. Three of the highest judges in the state sitting together are certainly an adequate appellate tribunal, in the sense to which every litigant is entitled to one. Inasmuch as the Supreme Court sits in three branches, its own appellate jurisdiction has three times the man power of the Court of Errors. Each judge has only to consider one-third of the appellate cases coming before the Supreme Court, and conferences between three judges can obviously be more easily arranged than between a greater number. So far as law cases are concerned therefore, the satisfactory tribunal inferior to the Court of Errors and Appeals already exists.

"The committee also recommends that there be inserted at the appropriate place in the Revised Statutes, a Statute substantially as follows:

"BE IT ENACTED, Etc.

"1. Any party aggrieved by any order or decree of the Chancellor made in such cases as the Chancellor shall by rule provide, may apply for a rehearing before three vice-chancellors sitting together for that purpose.

"2. The Chancellor may refer any such rehearing to three vice-chancellors, excluding the vice-chancellor upon whose advice the order or decree complained of was made. Such vice-chancellors are hereby empowered to sit together and hear such rehearing, and report thereon to the Chancellor and advise what order or decree should be made therein.

"3. Such rehearing shall be called an appellate rehearing, and the right to it shall be in addition to such right of rehearing as

has heretofore existed. Such bench of three vice-chancellors may be called the Appellate Division in Chancery.

"4. From an order or decree of the Chancellor made in accordance with the advice of the Appellate Division in Chancery no appeal shall be taken to the Court of Errors and Appeals without the leave of that court first had and obtained.

"The committee also recommends that both the Court of Errors and Appeals and the Supreme Court hold more terms each year than the three terms now held annually by each of those courts.

"An obvious advantage of these more frequent terms lies in the smaller number of cases at each term. The court would have fewer cases to consider and so could come to a conclusion in all but the most difficult cases sooner after argument or submission than now. The Court could assimilate its practice to that of the Supreme Court of the United States which hears cases for a short time then adjourns to consider them before hearing any new cases."

The present agitation for court reform in New Jersey will come to naught because of the lack of public interest in any of the changes proposed and the opposition of political organizations. Few lawyers practice in the Court of Appeals. The great majority of the Bar have never been heard in argument before that august tribunal and hence the interest of the influential body of lawyers is not exerted in the direction of change. If the change could be effected whereby a smaller Court of Appeals could be evolved composed of judges considering nothing but ultimate appeals, there is no doubt a great improvement would result in our judicial system. No matter how earnest, how conscientious the judge may be, his capacity for production is limited and he cannot be expected to hand down opinions of learning and erudition if pressed for time and overcome by the weight of an excessive judicial burden.

The review of the efforts, the similarity of suggestions for

improvement, the constant renewal of application for change, indicate that a very considerable group of practitioners demand revision of the court system. Such a change may come but it will only be at the hands of a militant governor, aided and abetted by a sympathetic legislature and approved by a sufficiently interested electorate. At this time, the net result seems to be far distant.

WILLIAM W. EVANS.