PUBLIC HEARING

Before

N.J. Legislature. ASSEMBLY, JUDICIARY COMMITTEE,

ON

ASSEMBLY CONCURRENT RESOLUTION NO. 16 - PROPOSING AN AMENDMENT TO ARTICLE VI, SECTION II, PARAGRAPH 3, OF THE CONSTITUTION OF THE STATE OF NEW JERSEY - RE RULE-MAKING POWER OF THE SUPREME COURT.

Held:
Assembly Chamber
State House
Trenton, New Jersey
May 12, 1960

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Samuel L. Biber (Chairman)

Assemblyman Alfred N. Beadleston

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ASSEMBLYMAN SAMUEL L. BIBER (THE CHAIRMAN): We will now open the public hearing as to Assembly Concurrent Resolution No. 16.

My name is Samuel Biber, and I am Chairman of the Judiciary Committee of the General Assembly. To my left, sitting at the table, is Assemblyman Beadleston from Monmouth County. This hearing has been scheduled to concern itself with a consideration of Assembly Concurrent Resolution No. 16.

Who desires to speak?

ASSEMBLYMAN FREDERICK H. HAUSER: I do.

This ACR 16, by Mr. Musto and myself, would amend Article VI, Section II, paragraph 3, of the Constitution to read as follows:

"The Supreme Court shall make rules governing the administration of all courts in the State and, subject to such laws as may be enacted by the Legislature, the practice and procedure in such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted." The part that Mr. Musto and myself are interested in is the part about the Rules of the Supreme Court being subject to such laws as may be enacted by the Legislature.

Now, there is an age-old historic variation of opinion on who should have the supreme power in any event in any governmental society. Battles have been waged; wars have been fought; tyrants have been chased from the Thames River over to the continent of Europe; other tyrants have been exterminated by violence; Charles I was run out; Charles II ran the Parliament out; all battling over the question of

who has the final say.

I think it's safe to venture the opinion that running the gamut of the history of mankind, and that includes the history of the Greeks and the Romans and European nations and the organized society of the American states - I think it's safe to say today that the supreme power is vested in the legislative bodies. I don't think anybody in England would challenge the superior authority of Parliament. I know that the French Parliament teeters back and forth, depending on who the strong man in the Russian Union of Soviet Socialist Republics so far as power is concerned. But in the so-called democratic republics, or the republican democracies, that exist, according to our own theories the Legislatures are generally recognized as having supreme power. I don't think there is any question in Washington that the great power is vested in Congress; the Supreme Court can make decisions.

Legislators have gone down the line, from Henry Clay to others of strong determination and, here some 10 years ago, if I remember correctly, there was a decision by the New Jersey Supreme Court under the late esteemed and indefatigable Chief Justice Arthur T. Vanderbilt in the Wimberry case, in which - and I don't have the decision in front of me - it was either a direct statement by the court or <u>obiter dictum</u> that the power to make the rules of the courts was vested in the courts themselves. I don't think I do any violence to the memorable genius of Chief Justice Vanderbilt if I say that there are those who disagree with the thing. Practicing lawyers, theorists, professors of law - of which I was one for 20 years - have looked at this thing with some askance, because, whether

it's the number of days for the time to answer, or whether it is some other mechanical manifestation of the material reporting of the courts or their assemblage, it seems to be a matter of public concern rather than one for the cloistered precincts of the Justices themselves.

This constitutional amendment would set into the Constitution and make clear what "subject to law" means. "Subject to law," according to what I just mentioned, meant, to the courts, subject to the law of the court - I am talking about the rules, of course - and the words "subject to law" here would mean subject to the law enacted by the Legislature.

ASSEMBLYMAN BEADLESTON: Would that in any way, then, be contrary to the provisions of Senate Bill No. 73, which is known as the Rules of Evidence Bill that was introduced on January 25th by Senators Cowgill, Lynch, Fox, and Jones, which, as I understand it, resulted from many meetings with and without the judicary, trying to arrive at some compromise between the two positions? I can assume - maybe I can rephrase my question: I would assume that the Constitutional Amendment would not in any way bar what we are doing in Senate Bill 73, because it says "subject to such laws as may be enacted," and if we enacted that law, leaving certain rights to the courts and certain to the Legislature, with certain procedures of veto, and so on, I would think that would come under the provisions of your amendment. Am I correct?

ASSEMBLYMAN HAUSER: That is correct, Assemblyman Beadleston. I don't see any conflict. What I see in Senate 73, and I haven't studied it, but what I see with a quick glance, looking at it, and from what I read in the public

press, it seems as though this is a compromise. It is not a compromise that satisfies me, although I have no reason to condemn it and I would have no reason to even speak against it.

ASSEMBLYMAN BEADLESON: Well, couldn't we pass S-73 without passing your constitutional amendment?

ASSEMBLYMAN HAUSER: Yes, you could. I dislike compromise. I'm a strong, determined man like you are, Al, and I believe that if say in the Constitution that the Legislature has the right to make the rules for the procedure in the court, that that is our privilege. I really sincerely and honestly believe it is. On the other hand, if we take a thing like this - this is very patently a compromise in which everybody gets into the act.

ASSEMBLYMAN BEADLESTON: This Senate No. 73.

ASSEMBLYMAN HAUSER: Yes, S-73 is one of those things where everybody gets into the act. The Governor gets into the act, the court gets into the act, the court announces rules, and if the Legislature doesn't like the rules, the Legislature vitiates or negates the rules by statutory enactment; then along comes the Governor and gets into the act because he is allowed to either sign or veto the bill. So we have this legalistic prestidigitation going on which would be unnecessary if we amend the Constitution.

ASSEMBLYMAN BEADLESTON: Despite the fact that Senate Bill No. 73 is a compromise, with everybody in the act, there is nothing that would, in your judgment, preclude the Supreme Court from setting aside Senate Bill No. 73?

ASSEMBLYMAN HAUSER: That's right.

ASSEMBLYMAN BEADLESTON: Now, if we adopted Assembly Concurrent Resolution No. 16, and it was adopted by the electorate, then they could not possibly set aside Senate Bill 73.

ASSEMBLYMAN HAUSER: That's correct.

ASSEMBLMAN BEADLESTON: Then they complement each other rather than contravene each other?

ASSEMBLYMAN HAUSER: I would say so.

ASSEMBLYMAN BIBER: Mr. Hauser, what is your understanding with respect to the power of the Supreme Court to make and establish rules governing the administration of the courts?

ASSEMBLYMAN HAUSER: Well, as I read my Constitution - I was not a delegate to the Convention, but I have a doctor's degree in constitutional law, conferred by New York University - I would say this, that the Constition, of course, is the fundamental law of this land, and in New Jersey is the fundamental law of New Jersey. I would say that, if you read the Constitution, you will find that when they mention the three branches of government, they have to mention one first, so they mention the legislative. We all know that the residuary power, the final power, to do or not to do is vested in the people. Now, the courts do not really represent the people as such. The Governor in his own way does, and he is the manifestation of the wholeness of the people, whether he be King, President, Governor, or what, together with a certain amount of being the social head of the State. But the real representatives of the people are the ones who are sent to their law-making body and elected by them to come here and make laws; they are the legislators. When I say "make laws"

I think that it not only means to make the law of the statute, but I think it means to make the law of the rules and procedure of the court, and judges, of course, as we know, are appointed. I think we have a much better system than New York and I like to see the system whereby judges are appointed. We have a good system, we have good judges, and they have been good whether they have been appointed by Governor Driscoll or Governor Meynor, or any of their predecessors. And we have a wonderful court system. But I think the public is better protected and the public is better represented if the rules of procedure in these courts are laid down by the law-making body, the Legislature. And, not being a delegate to the Constitutional Convention, I can't say that that is what they meant, but, to me, as I read, as a lawyer or as a legislator or as a former college professor - when I read "subject to law," that means to me one thing, subject to the law-making power of the law-making body elected by the people to make the laws, and not by appointed jurists who are not responsible directly to the public. And, to settle the thing, Mr. Musto and I put this constitutional amendment proposal in.

I want to reiterate, so that we don't lose sight of the fact, I have nothing against Senate No. 73 except that it is an attempt to compromise something that I think ought to be finally resolved some day by constitutional amendment.

ASSEMBLYMAN BIBER: Well, isn't that your understanding that at the present time the Supreme Court has the power of making the rules governing the administration of the courts without any qualification?

ASSEMBLYMAN HAUSER: Why that power was self-arrogated. The Legislature never gave the Supreme Court the power to make its own rules of procedure. The Supreme Court arrogated that unto itself. I don't say they have abused it or misused it.

ASSEMBLYMAN BIBER: Do I understand then that the purpose of this bill is to clarify the powers that the court would have and the powers which the Legislature would have with respect to the making of rules for the governing of the courts?

ASSEMBLYMAN HAUSER: Yes, it would clarify it to the extent that the court would not have the power to make the rules of procedure but the Legislature would. The court can keep on being a court; the court can still hold up legislation against the Constitution itself and decide whether it fits in or not. But the Rules of Procedure, such as the number of days that people would have to answer an action, for example, would be in the hands of the public representatives where it belongs.

ASSEMBLYMAN BIBER: Do you feel that this bill should spell out more plainly and more explicitly just what is embraced by the practical procedure of the courts, that there would be no controversy?

ASSEMBLYMAN HAUSER: Are you talking about --

ASSEMBLYMAN BIBER: I am talking about ACR 16.

ASSEMBLYMAN HAUSER: I think that ACR 16 is set up about as clear as it can be, "subject to such laws as may be enacted by the Legislature." I don't think that this in any way interferes with the judicial power of the court. It's simply

administrative - its rules, its practice and procedure - and that I say should be set up by the Legislature.

Senate 73 is a compromise and, as I said before, it gets the Judiciary, the Legislative, and the Executive Departments all into the act. It's harmless, it's a compromise and, in my opinion, doesn't settle anything.

ASSEMBLYMAN BIBER: Is there anything else?

ASSEMBLYMAN HAUSER: Thank you. That's all.

ASSEMBLYMAN BIBER: Is there anyone else who desires to be heard? If not, I will consider this public hearing closed. Thank you very much.

HEARING CONCLUDED.

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