

THE GOVERNOR'S COMMITTEE ON PREPARATORY RESEARCH

for the

NEW JERSEY CONSTITUTIONAL CONVENTION

**THE COURTS OF NEW JERSEY -- PART III
(C) LAW COURTS IN A UNIFIED JUDICIAL SYSTEM**

by

**G. Dixon Speakman
Member of the New Jersey Bar**

**State of New Jersey
Alfred E. Driscoll, Governor
May 1947**

THE COURTS OF NEW JERSEY: PART III

(C) LAW COURTS IN A UNIFIED JUDICIAL SYSTEM

For many years it has been recognized by those who have studied the New Jersey court system that there is no sound reason for maintaining three separate courts where actions at law may be commenced and tried. Various changes have been suggested and some of the suggestions have been submitted to the people of the State in the form of amendments to the present Constitution, but they have all failed of adoption.¹ It is the purpose of this monograph briefly to summarize the major proposals suggested over the past 75 years or more.

Agitation for court reform began soon after the adoption of the present Constitution a century ago. In 1885, two plans for court reform were introduced by joint resolution to the General Assembly. One of these provided for a court of 12 judges in three divisions, the first being for common law cases and jury trials. It died in the Legislature. Amendments to the Judicial Article proposed by a commission appointed in 1894 were not adopted. In 1895 the Senate Judiciary Committee proposed a plan which, among other things, would have permitted the Legislature to divide the Supreme Court into divisions and confer on each the jurisdiction of the court as established. Nothing came of this.

In the following year the Legislature tried its hand at reform of the county courts. It passed an act abolishing the inferior Courts of Common Pleas, Oyer and Terminer and Jail Delivery, and Quarter Sessions in the several counties, and instead established a County Court having

1. For a history of attempts at court reform in New Jersey by constitutional amendment down to 1941, see William W. Evans, "Constitutional Court Reform in New Jersey," 7 Univ. of Newark Law Rev. 1-41, Dec. 1941

jurisdiction over all crimes, misdemeanors and offenses of an indictable nature. The Supreme Court struck down the legislation as unconstitutional in Schalk v Wrightson, 58 N. J. Law 50, because the act provided for the election of county judges, whereas the Constitution required them to be appointed by the Governor with the advice and consent of the Senate.

Amendments were proposed in the Legislature of 1896 which would have abolished the Court of Chancery and set up a single court of three divisions -- Chancery, Law and Appellate. Hearings were held at which lawyers attacked the plan, arguing in favor of a separate court of appeals. The Senate then appointed a committee of lawyers to see if they could agree upon a set of amendments. The committee consisted of outstanding members of the Bar of New Jersey, and after a week of study and discussion it brought in a report recommending an independent Court of Appeals. The Supreme Court would be continued and would consist of a chief justice and six associate justices. The other courts would remain substantially the same, but the Circuit Courts were to be held by the justices of the Supreme Court and not by judges appointed for that purpose. One member dissented; he was against an independent appeals court and proposed a Supreme Court divided into common law, equity and appellate divisions.

Despite all this agitation for court reform, the century closed without any structural change being made in the judicial system. However, in 1900 the New Jersey State Bar Association adopted a court plan which later ripened into an amendment that was submitted to and rejected by the voters in 1903. It provided for a Court of Errors and Appeals, a Court of Chancery and, with respect to actions at law, the following:²

2. Ibid, pp. 11-12

"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."

These amendments were defeated at a special election held in September, 1903, on a very light vote.

In 1909, another amendment was submitted to and rejected by the people of the State. This amendment was based upon the recommendations contained in a report made by the commissioners on the revision of the judiciary, in 1906. It eliminated all the constitutional courts except the court of impeachment and provided for the establishment of a Supreme Court in three divisions, one of which was to be known as the Law Division headed by the Presiding Justice. In place of the Circuit Courts and the Courts of Common Pleas there were established County Courts with original jurisdiction in common law actions concurrent with the Supreme Court, and such other jurisdiction theretofore exercised by courts inferior to the Supreme Court and Prerogative Court as might be established by law.³

From 1909 until 1941 various plans were suggested by different individuals and organizations but none of them was ever submitted to the voters of the State. Among these various proposals were: (1) the report by the committee

3. For details of the amendment, see Evans, op. cit., pp. 10-17

on court reform of the State Bar Association in 1926, after interest in court reform had been revived by an address made by Governor Silzer before the New Jersey State Bar Association in 1925, and (2) the recommendations of the Judicial Council in 1932 in its annual report to the Legislature.

With respect to actions at law, the 1926 report recommended an amendment that would provide, among other things, for:

"(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***

"(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.***

"(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 County Courts from Police Courts, Small Cause Courts and from decisions of the Workmen's Compensation Aid Bureau, and from such inferior tribunals as the Legislature may from time to time establish;

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

The Bar committee in its report said:⁴

"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 action at law..."

The 1926 Legislature adopted six proposed constitutional amendments, one providing for a reorganization of the state judiciary with a new Court of Appeals and a new Court of Pardons. However, this amendment was not submitted to the people in 1927.⁵

The 1932 recommendations of the Judicial Council -- which was established by act of the Legislature in 1930, to make a continuous study of the organization and relation of the various courts of the State, counties and municipalities, report to the Governor thereon and cooperate with the Legislature in drafting bills regarding the courts and their practice -- were as follows:⁶

"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 here- . in 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 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. ***

"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 spe-

5. Despite the defeat of the judiciary amendment, the interest of the State Bar Association continued unabated. See the address of James D. Carpenter, member of the committee on Reorganization of New Jersey's Judicial System acting for the State Bar Association, before the December 1929 meeting of the Union County Bar Association, 53 N.J. Law Journal 9-14

6. For text see 15 N.J. Law Journal 231, summarized in Evans, op. cit., pp. 30-35

cial 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 that 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."

These suggested amendments failed to go through the Legislature and therefore never came to a referendum vote.

In his inaugural address on January 21, 1941, Governor Charles Edison stressed the need of court reform,⁷ a subject to which he came back again and again in his subsequent addresses on the subject of constitutional revision.⁸

Popular interest was such that by joint resolution the 1941 Legislature created a Commission on Revision of the New Jersey Constitution which, after long and thorough study, brought in a report in May 1942. The revised Constitution proposed by it in that report made the following provisions with regard to courts having jurisdiction over law actions (Art. V) The most essential are indicated:

"Section I: Judicial Power

"1. The judicial power shall be vested in a Supreme Court and a Superior Court, and in inferior courts of original jurisdiction which may from time to time be established, altered and abolished by law. Such inferior courts may be integrated with the Superior Court in any manner and to any extent, not inconsistent with this constitution, as may be provided by law. ***

"Section III: Superior Court

"1. The Superior Court shall consist of such number of justices as may be authorized by law,

7. Minutes of the House of Assembly, 1941, p. 50

8. See, for example, his "Speeches on the Constitutions of New Jersey," 1943, pp. 23-27, and "A New Constitution for New Jersey, Addresses...1941-1944," 1944-

but not less than twenty-five, each of whom may exercise the powers of the court, subject to rules of the Supreme Court. The Superior Court shall have original general jurisdiction throughout the State in all cases.

"2. The Superior Court shall be divided into a law section, to exercise civil, criminal, and matrimonial jurisdiction, and an equity and probate section, to exercise all other jurisdiction of the court, each section having such parts as may be provided by rules of the Supreme Court.

"3. Any justice of the Superior Court may grant prerogative writs, returnable in an appellate division which shall otherwise have original jurisdiction relating thereto, and shall determine in such manner as the rules of the Supreme Court may prescribe, and without a jury, questions of fact arising therein; or the hearing may be in the first instance before a single justice, whose decision, both as to law and fact, shall be reviewable by the appellate division. ***

"Section V: Judicial Officers

"6. A justice of the Superior Court may exercise the powers of a judge of any court established by law in the county or counties to which he may be assigned, and may hold any such court with like jurisdiction, powers and duties as a judge thereof. ***"⁹

The arguments on the proposed Judiciary Article advanced at the hearings held by a Joint Legislative Committee which sat through the summer of 1942 to ascertain the sentiment of the people of New Jersey as to change in the Constitution, were long and varied. There were strong proponents for the unification plan, a few equally strong in opposing it, and some who asked for modification of the Article in one respect or another. After a review of the reported testimony,¹⁰ it seems quite clear that the balance of the argument

9. Report of the Commission on Revision of the New Jersey Constitution, 1942, pp. 46-49. And see the Committee's Summary and Explanation," pp. 22-25, relating to the proposed Judicial Article.

10. Record of Proceedings before the Joint Legislative Committee..., 1942. See appropriate headings in Index to Record of Proceedings prepared for the Governor's Committee on Preparatory Research for the New Jersey Constitution Convention, for reference to the various phases of the argument.

was very definitely in favor of court reform. A great deal of the argument was addressed to the very question of improving the structure and procedure of the law courts, and the solution was found in the unification plan advanced by the Commission.

Nothing came of the Commission report for the time being, the Legislature being of the opinion that the question of revision should not then be put to the electorate. Governor Edison led those pressing for revision, and when his term was at an end, Governor Walter E. Edge took up the campaign with undiminished vigor. He made the question the outstanding subject of his inaugural address of January 18, 1944. Among the basic principles relating to revision, he said, was:¹¹

"First, to reorganize the judiciary: This requires, in my thinking, the establishment of a unified court structure to consist of a Supreme Court of seven judges with appellate jurisdiction only; and a Superior Court, consisting of at least one justice appointed from, resident in, and sitting in each county -- with State-wide original jurisdiction in all civil and criminal cases; having Appellate Divisions to hear appeals in all cases as a matter of right. ***"

An unofficial committee had already been working on a draft Constitution, and the program for revision was formalized by the appointment of a Joint Legislative Committee, constituted under Senate Concurrent Resolution No. 1, adopted January 11, 1944. It drew up a proposed revised Constitution and at once proceeded to hold hearings thereon (February 1, 2, 3, 9 and 15, 1944). The result was the revised Constitution submitted to the voters on November 7, 1944, which was rejected. Article V of that Constitution dealt with the

11. Journal of the Senate, 1944, p. 52

judiciary.¹² It abolished the present Supreme Court, Circuit Court and Court of Common Pleas, all three of which now have practically concurrent jurisdiction over common law actions, and substituted in their place a Superior Court with original general jurisdiction throughout the State in all cases. The essential provisions of the 1944 proposed Constitution with respect to courts having jurisdiction over actions at law were:

"Section I

"1. The judicial power shall be vested in a Supreme Court and in a Superior Court and in inferior courts of original limited jurisdiction, which inferior courts may from time to time be established, altered and abolished by law. Such inferior courts may be integrated with the Superior Court in any manner and to any extent, not inconsistent with this Constitution, as may be provided by law. ***

"Section III

"1. The Superior Court shall consist of such number of justices as may be authorized by law, but not less than twenty-seven, each of whom may exercise the original jurisdiction of the court subject to rules of the Supreme Court. There shall be at least one Resident Justice of the Superior Court for each county who shall be appointed from the residents of the county and who shall reside in, and shall annually be assigned by the Chief Justice to sit in the law section of the Superior Court in said county, but who shall be subject to assignment, from time to time, to sit without the county, only, if and when his duties within the county shall not require his presence there.

"2. The Superior Court shall have original general jurisdiction throughout the State in all cases.

12. Cf., the proposed frame of a modern, unified court system given by Roscoe Pound, former Dean of the Harvard Law School, in his address, "Organization of the Courts" given before the N.J. Bar Association at its annual meeting in 1941, reprinted in 64 N.J. Law Journal 293, and again in 70 N.J. Law Journal, 125. See, also, the well considered plan proposed by Alfred C. Clapp in "Constitutional Provisions for a Unified New Jersey Court System," 64 N.J. Law Journal 565. Both of these articles received prominent consideration in connection with the 1942 draft Constitution and those who appeared at the 1942 hearings on the Hendrickson Commission Report.

"3. The Superior Court shall be divided into

- (1) a law section, to exercise civil and criminal jurisdiction at law; and matrimonial jurisdiction and jurisdiction in cases involving the allowance of alimony and maintenance and the custody of children, without jury trial; and
- (2) an equity and probate section, to exercise all other jurisdiction of the court,

but either section shall exercise the jurisdiction of the other when the ends of justice so require. Each section of the Superior Court shall have such parts as may be provided by rules of the Supreme Court. ***

"Section V

"7. A Justice of the Superior Court may exercise the powers of a judge of any court established by law in the county or counties to which he may be assigned and may hold any such court with like jurisdiction, powers and duties as a judge therein."

The latest proposal for judicial reorganization is that advanced in the recent report of the Special Committee of the Essex County Bar Association Concerning Constitutional Revision of the Judicial Article.¹³ It recommends the creation of a single state-wide court, called the Supreme Court, with original jurisdiction over actions at law. The proposal is substantially that of the 1944 revision set forth above. With reference to this recommendation the committee report says:

"Most proposals for constitutional revision of New Jersey's judicial structure contemplate merger of the law courts into a single tribunal of statewide jurisdiction. In its several branches, the court thus constituted would try cases and also serve as an appellate tribunal for certain of its own determinations as well as all decisions of any inferior courts and administrative agencies created by the legislature.

"In criminal matters, the new court would hear all cases now brought in the Courts of Special Sessions, Quarter Sessions, Oyer and Terminer and

13. Reprinted in N.J. Law Journal for June 5, 1947

Supreme Court. Civil actions now commenced in the Courts of Common Pleas, Circuit Court and Supreme Court would also be brought in the new court. In the same way, this court would amalgamate the functions of the Surrogate and Orphans' Court in the administration of decedents' estates.

"The merger of law courts would not eradicate the inherent variety and complexity of matters which are brought into litigation. Nor would the creation of a single forum obliterate the differences, for example, between an indictment for assault and battery and an application of executors to sell real estate in order to pay estate taxes. However the existence of a confusion engendered by the variety of courts, many hearing the same general type of case, would be eliminated. Moreover, as members of a single court having equal rank among themselves, the entire body of judges would be available for assignment as needed. Minimum standards of accomplishment in the dispatch of judicial business could be established, and the comparison invited by the example of able and efficient judges would tend to improve the standards of the entire membership of this court. The great variety of special procedures which are now encountered, according to the court in which the action is brought and the subject matter of the proceeding, could be replaced by uniform sets of rules governing all practice and procedure.

"In effecting these improvements it would not be necessary to blaze new trails. The system of federal courts and those of most other states having a comparable volume of judicial business have long since been revised in the interests of simplicity, uniformity and efficiency in the conduct of litigation. The improvements desired in New Jersey can be accomplished by a selective choice from among alternatives which have been tried and proved successful in other jurisdictions."

The foregoing briefly summarizes the major proposals for changing the present system under which we maintain three separate courts having concurrent jurisdiction over original Common Law Actions. By and large it can be said that there has been over the years virtual unanimity of opinion that the present system cannot be justified. The only differences of opinion have been as to the remedy. The 1909 proposals whereby a County Court was to be created

having concurrent jurisdiction within the county with the state-wide Supreme Court, and the 1944 proposals, whereby the law section of a state-wide Superior Court would sit in each county of the State, represent a fair composite of the different views as to the best remedy. All of the other suggestions and proposals throughout the years merely represent variations, under other names, of the foregoing two proposals.