Address and Statements

ON THE

Pending Amendments

TO THE

State Constitution

BY

Governor John Franklin Fort

Delivered June, 1909

AT ATLANTIC CITY

BEFORE THE

New Jersey State Bar Association

AND

Justice Francis J. Swayze

of the Supreme Court

AND

Judge Charles C. Black

of the Circuit Court

Lakewood, N. J.
LAKEWOOD PRESS
1909

Address of Governor Fort

Governor Fort said:

There are five separate proposed amendments to the State Constitution to be submitted to the people for their approval at a special election to be held on the fourteenth day of September next.

The First Amendment.

The first amendment simply abolishes that provision of the State Constitution which now permits foreclosure of mortgages in the Circuit Court and Common Pleas. This has practically always been a dead letter; it has been the rarest of exceptions when any foreclosure has occurred in the Circuit Court, and seldom, if ever, in the Common Pleas. If the court amendments be adopted, to which I shall refer hereafter, the Circuit and Common Pleas Courts will both be abolished. This amendment is of little concern, but as the present provision of the Constitution is of little concern also, this amendment can furnish no just ground for opposition and should be adopted.

The Second Amendment.

This makes the Court of Pardons, for the parole and pardon of persons convicted of crime, to consist of the Governor and four citizens, to be appointed to the court by the Governor, to hold their office for five years.

The present Court of Pardons is composed of eight, namely: The Governor, Chancellor, and the six special judges of the Court of Appeals. If the court amendment, to which I shall refer hereafter, be adopted, the six special judges will be legislated out and there will be no Court of Pardons, unless this second amendment prevail. This is a good amendment, whether the court amendment be adopted or not.

The four citizens can give practically their whole time to the work. The cases asking for pardon are about five hundred a year, and they need most careful examination.

I can see no reason why the second amendment should fail on any ground.

The Third Amendment.

This amendment relates solely to the courts of the State. There have been no changes in the organization of the courts of our State since the Constitution of 1884. We have had good courts, and while our State was small and litigation not very

large, they were admirably adapted for the administration of civil and criminal justice. But, conditions have now changed and the present necessity for the practically continuous sitting of our highest court is apparent to all who are familiar with existing conditions. This need, for the past five years, has resulted in the removal of the justices of the Supreme Court from sitting in the counties in the trial of causes. This in my view is greatly to be regretted.

The influence of the Supreme Court Justice upon local judicial conditions was always wholesome and of the greatest value. Any system which removes or curtails the usefulness of the Supreme Court Justice is a mistake. Our present Court of Errors and Appeals is a cumbersome body. It is composed of sixteen judges, which is nine more judges than that constituting the Court of Appeals of New York. It is eleven more than almost any of the other states, and thirteen more than some. It exceeds by seven the Supreme Court of the United States. The mere statement of these facts is enough to demonstrate the need of a change. It is not only unnecessarily large, but because of its size, it is excessively expensive. And beside this the large number of judges lengthens the conferences of the court and thereby makes greater delays in deciding cases.

The pending amendments makes the appellate division of the Supreme Court—which becomes the court of last resort—consist of seven judges—the same as the State of New York, and charges these judges with the appellate work and no other. Under this system we shall have more frequent terms of the Appeals Court and a more expeditious determination of causes. Delays in the final determination of cases often amount to almost a denial of justice to the litigant.

Under our present system a person or corporation against whom a decision or verdict has been given in the trial court, at law, can sue out a writ of error and harass the successful party by two appeals on review, delaying a payment of a just claim for two years and causing much annoyance and expense. The pending amendments, if adopted, will cure all this.

The Supreme Court is preserved as it is, with all its powers, except those relating to writs of error, and the justices of this court will sit constantly in the courts of the county, dispensing justice between litigants. All inferior county courts, of which we now have so many, will be consolidated into a single court, called the "County Court," with all civil and criminal jurisdiction, thus simplifying the County Court system and procedure.

The scheme of court reorganization, as proposed by the pending amendments, represents the best thought of the leaders of the Bar of the State, and of the judges themselves, as well as of the thoughtful business men of the State who have reflected upon them.

Commission is Praised.

The commissioners who drafted the proposed reorganization amendments were former Justice of the Supreme Court Bennet Van Syckel, than whom no judge ever had greater experience or was recognized as a man who was more loyal to the interests of the people; with him were former Governors Griggs and Murphy, and Charles L. Corbin and John R. Hardin, two distinguished lawyers. They canvassed the whole matter with great care to secure public sentiment both within and without the legal profession, and tried to formulate a system that would be simple and meet with popular approval.

The present Court of Chancery is not changed, except in name. The chancellor still remains as do the vice-chancellors—their title only changing; they are hereafter Justices of the Supreme Court, assigned to the equity division, and I cannot see why they should not, under a rule of the court, while sitting in the equity division, be styled vice-chancellors, to perpetuate exactly as it is our present chancery system.

Our Chancery Court and practice is good and it is gratifying that it is not changed in effect or procedure in any way by the proposed amendments. I feel that if the people understood the advantages of these amendments as I do, there would not be a vote against them.

I may be pardoned, after several years' of membership in the County Court, Supreme Court and Court of Appeals, if I express my personal adherence to these court amendments, and urge them upon the favorable consideration of the people of the State.

In addition to all I have here said, the item of expense to the State, by adopting the court amendments, will be reduced over thirty-five thousand dollars in judicial salaries alone.

The Fourth Amendment.

This amendment simply increases the salary of the Senators and members of the Assembly from five hundred to one thousand dollars per year. The laborer is worthy of his hire. The people of the State need no information on this amendment beyond that which their own intelligent judgment will be able to afford them. If they wish their representatives reasonable compensation for their work, they will vote for the amendment; If they think the present compensation sufficient, they will vote against it.

The Fifth Amendment.

This has been called the "political amendment," because it relates to the terms of the Governor, Senators, Assemblymen and county officers. It also separates the National and State from the municipal elections. Briefly what it does is to make

the National, State and county elections occur in November of the even years and the municipal elections for local offices, in November of the odd years. It separates local affairs from National and State issues and causes the one election to come one year and the other the next. In order to do this, State and county offcers must have terms to begin and end in even years. So the Governor and Senators' terms are made four years and Assemblymen two years, but the Legislature meets annually as at present. Sheriffs are made four years and County Clerks and Surrogates six years. That is, all these officers will hereafter be one year longer than heretofore.

I can speak disinterestedly, as it does not affect my term of office. The office of Governor should be four years. The present term is three. If the scheme to separate the State and local elections is desired, it is necessary either to lengthen the Governor's term to four years or reduce it to two. A Governor hardly becomes familiar with his duties, and the needs of the State, until after his first year. If he is eligible to re-election, and has only a two-year term, the half of his second year is taken up in the re-election contest. Four years, with ineligibility to re-election, is ideal, and a Governor can accomplish something during his term.

Every two-year term Governor with whom I have talked I find agrees with the views which I here express.

Favors Assembly Districts.

Another part of this amendment is that creating assembly districts. At the present time the members of the legislature are elected by the counties as a whole, under a decision of the Supreme Court.

Prior to this decision of the Supreme Court, assemblymen were elected undr the present constitution by assembly districts.

The amendment pending provides that the members of the General Assembly shall be elected by the legal voters of the several counties every second year. It is further provided that the legislature shall in 1910, and at the first session thereafter, after each United States census (which occur every ten years), "divide and arrange each county of this State into a district or districts for the election therein of a member or members of the General Assembly."

In the large counties of this State there are several assemblymen in each county; Hudson having twelve; Essex, eleven; Passaic, five, etc. Each county having more than one assemblyman will be divided into as many districts as there are members in the county. The result of this will be to localize the members of the Legislature and make them more truly representative of the people.

There is a great demand in this State for the assembly district plan. The amendment contains a provision against gerrymandering districts and requiring, subject to court review, that the Legislature shall equalize the population in the respective districts in such a way as to assure contiguous territory and an equal number of people in each district. With the court review proposition, which will prevent the juggling of districts for political purposes, the assembly plan proposed in this amendment will be ideal. Every county will be entitled to at least one representative. Our house of assembly is small; the number of members cannot exceed sixty under the present constitution. As the population of the State increases, the wisdom of the district system will be all the more apparent. If an assemblyman represents a particular district in a county, the people of the district will know the representative whom they may approach and advise with in relation to legislation in which they are especially interested. Taken as a whole, the proposed amendments are exceedingly conservative, and in my judgment all in the interest of the people of the State.

We have a good constitution. Under it our people have been prosperous and the State well governed. It does not need much modification and has had very little since it was adopted in 1844. These amendments will improve it and strengthen popular government. They will simplify our judicial system; they will separate our local affairs from State and National affairs, and I believe nothing but good can result from their adoption.

These amendments have passed two Legislatures of the State with practically little, if any, opposition. Those best versed in our State's history and in its government believe that the adoption of these amendments will be promotive of the public good.

For myself I am heartily in favor of all the amendments. If the people understood them and the great advantage to accrue from their adoption, I cannot think there would be any votes against them.

JUDGE BLACK

(Judge Charles C. Black of the Circuit Court, who was the Democratic candidate for Governor of the State in 1904, in a letter to the press, has made the following clear and forceful statement of the advantages to the people if adopting the pending Court Amendments).

Mr. Black writes:

I have been asked to give a concise statement of the proposed constitutional amendments affecting the judicial system of the State, to be voted upon by the people on September 14 next. As these proposed amendments are not a political issue such a statement can be made for publication without violating that unwritten and good old time-honored principle observed in New Jersey, that judges should refrain from participating in the turmoil of political discussion.

What the Judicial Amendments Propose.

They propose that: "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."

The Supreme Court shall be organized in three divisions, namely: the Appeals Division, presided over by a presiding justice, styled a "Chief Justice," and the Chancery Division, presided over by a presiding justice, who shall be styled the "Chancellor."

The Appeals Division shall consist of the Chief Justice and six other justices to be assigned by the Governor. The remaining justices shall be assigned by the Supreme Court to the Law or Chancery Division, as the business of the court may require.

The Appellate Division shall have and exercise the appellate jurisdiction, and such original jurisdiction as may be incident to the complete determination of any cause on review.

The Law Division shall exercise the jurisdiction heretofore possessed by the Supreme Court and the Circuit Courts in accordance with rules of practice and procedure prescribed by statute, in the absence of statute by the Supreme Court.

The Chancery Division shall exercise the jurisdiction heretofore possessed by the Court of Chancery and the Chancellor 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 this division shall be under such control and supervision by the Chancellor as shall be provided by the Supreme Court.

The Supreme Court may provide by rule for the transfer of any cause or issues from the Law Division to the Chancery Division, or from the Chancery Division to the Law Division of the Supreme Court; or from the County Courts 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.

The Chancellor and the Chief Justice of the Supreme Court and the Vice-Chancellors and the Associate Justices of the Supreme Court in office when these amendments take effect shall be Justices of the Supreme Court, until the expiration of their respective terms.

To those familiar with the judicial system of the State, it is clear that if these amendments are adopted by the people, they will abolish a long list of existing courts, viz: Court of Errors and Appeals, the Supreme Court, the Prerogative Court, the Court of Chancery, the Circuit Court, the Common Pleas Court, the Court of Oyer and Terminer and the Quarter Sessions, and substitute in their places a Supreme Court, composed of three divisions, with appellant, common law and chancery jurisdiction, the same as now exists in the several courts abolished, and County Courts.

A common law suit or a suit to be tried by a jury, then as now, may be brought either in the Supreme Court, tried at the county seat with a jury, or in the County Court. The procedure shall be in accordance with the rules of practice and procedure prescribed by statute as now, or in the absence of statute by the Supreme Court, a most important provision for the prompt and effective disposition of litigation, because the court itself is the best qualified expert body to regulate the mere formal procedure of a law suit, developed by actual experience as observed in the trial of cases. This is modeled after the present English system.

What Will the State Gain?

First—The reasonable certainty as to jurisdiction by the court of the proposed litigation, which now is confused and uncertain in a considerable class of litigated cases, sometimes requiring a protracted litigation to ascertain whether the litigant is in the right court before the real controversy over the subject matter of the law suit is actually commenced.

Second—A greater elasticity and flexibility in the formal procedure. The unwary and inexperienced cannot be so easily checkmated; the court itself will have the power to prescribe the practice and procedure in the absence of statute.

Third—Greater simplicity.

Fourth—Preventing unnecessary delays on appeal. One appeal only from the trial court; now there may be two in a large class of cases, in which the litigants of moderate means predominate, one by writ of error to the Supreme Court, and then a second appeal by writ of error to the Court of Errors and Appeals. So two appeals may be had in some cases from the Orphans' Court.

Fifth—A greater volume of business can be transacted by the same number of judges than is now possible. This will be true especially in the Appellate Court, and in those parts of the State where the trial work is congested the judges can be readily adjusted to business.

Sixth—The sweeping away of many of the meaningless cobwebs which hang over the courts and the unnecessary formalities.

Seventh—By those who have made the calculation it is said that it will be a saving to the State of $35,000 per year for judges' salaries.

Eighth—The proposed amendments will give unity and balance to the judicial system of the State which now is top heavy, and the duty to see that the judicial work of the State is properly carried forward will be lodged in one court, and that court will have the power to have it done and it cannot evade responsibility.

Ninth—They leave untouched the method and procedure of administering equity and common law, separate and by different judges, according to the long-established practice in New Jersey; also the Orphans Court and the criminal courts except in name, presided over by the same judges as now, the county judge, and they leave also untouched our present excellent system of District Courts, giving the Legislature power, as now, to establish or abolish inferior courts.

All this is but saying that the proposed judicial amendments are in the line of progress, though conservative, for a progressive growing State for the purpose of expediting justice. The northern part of the State is gaining in population, which will bring increased litigation. The proposed amendments represent the conservative and best digested thought of the State after ten years of discussion and agitation, having received the sanction of two conservative Legislatures, and they have the unqualified support of such men as Mr. Charles H. Hartshorne, who has written a book on the Courts of New Jersey, and whose unselfish devotion to the public good is unquestioned.

Opposition, if Any.

None that has been openly stated. Undoubtedly preference will always exist for a different system than the one proposed, owing partially to a thorough and accurate knowledge of the subject and partially to that feeling that what has been good enough in the past should not be changed, but the real opposition. if any, should and will come from those litigants—aggregations of wealth, who find in the present system of courts a ready and powerful weapon in the hands of trained and skillful lawyers to tire their less fortunate adversary by appeals, delays, uncertainty and confusion, until the deserving litigant may be ready to take what is offered in settlement, without much regard for the justice of his demands.

This class of opposition, if any, will not assert itself in the open, but will use the inertia and indifference of the people, aided by individual opponents, and doubtless under cover of some organizations, to accomplish the defeat of the amendments.

If there is one thing more important than another for the State to provide, it is that the means of obtaining justice should be prompt and expeditious, with no unnecessary delays and uncertainties. It is believed by those who have given the subject the best thought that the adoption of the proposed judicial amendments will greatly aid in this object and tend to keep New Jersey up to her ideal standards of Jersey justice.

JUSTICE SWAYZE

(The following is a statement as to the Court Amendments prepared by MR. JUSTICE SWAYZE of the Supreme Court, and is a clear statement of the character of this Amendment and of the advantages to the people if they adopt it).

Section V, Paragraph 1, of the third amendment gives the Appeals Division of the Supreme Court (1) the appellate jurisdiction heretofore possessed by the Court of Errors and Appeals, (2) the jurisdiction heretofore possessed by the Supreme Court on writ of error, (3) the jurisdiction heretofore possessed by the Prerogative Court and by the Ordinary on appeal, (4) such further appellate jurisdiction as may be conferred upon it by law, (5) such original jurisdiction as may be incident to the complete determination of any cause on review, saving, however, the right of trial by jury.

This language is necessarily technical and requires explanation.

(1) The first change is a change only in the number of the judges who will act and in the name of the court. At present sixteen judges may sit; the number is less only when some

of the judges have already expressed an opinion in the cause or when some are absent. Under the proposed change, seven only will sit, and as these seven will sit only as a court of appeal, none will be disqualified by reason of having already given an opinion in the case, certainly after the system is in full operation; temporarily some may be disqualified, and in case the Appeals Division is selected from the judges already in office, as seems probable. (2) This does away with a double appeal. At present a litigant who is dissatisfied with a decision in the Circuit Court on the trial, may appeal first to the Supreme Court, and if he loses there, may again appeal to the Court of Errors and Appeals. This advantage of a double appeal is resorted to at present for the most part by defendants in personal injury cases who desire to wear out the patience of their adversaries, and by convicted criminals who are enabled by the double appeal now allowed, to postpone the imprisonment to which they have been sentenced, or in certain capital cases to postpone the day of execution. In fact this double appeal is now seldom resorted to except by defendants in criminal cases. In civil cases, most litigants prefer to appeal direct to the Court of Errors and Appeals. The amendment allows only one appeal. (3) At present in cases involving the probate of wills and the administration of estates and in matters of the guardianship of infants, the first proceeding is before the surrogate; from his action there is an appeal to the Orphans' Court; from the action of that court there is an appeal to the Prerogative Court or the Ordinary, (these are but names for the Chancellor); from the Chancellor sitting as Ordinary or as the Prerogative Court, there is an appeal to the Court of Errors and Appeals. Thus under the present system, if litigants are determined, there are three appeals in matters involving the settlement of estates and the property and persons of infants. Under the proposed system, there would be but two appeals, one from the Surrogate to the County Court, and one from the County Court to the Appellate Division; and the Legislature is authorized even to take away the appellate jurisdiction of the County Court, so that litigants may appeal direct from the Surrogate to the court of last resort, if the Legislature so enacts. (4) The Legislature may confer further appellate jurisdiction upon the Appeals Division. This needs an explanation. It leaves the matter for future Legislatures as need may arise. (5) The amendment gives the Appeals Division such jurisdiction as may be incident to the complete determination of any cause on review, saving the right of trial by jury. At present the Court of Errors and Appeals has no original jurisdiction. It has sometimes been questioned whether it has power to dispose finally of any cause or whether it must send the case back with orders as to what is to be done by the lower

court. The new provision meets this difficulty and authorizes the Appeals Division to do what is necessary for a complete determination of the cause. The provision reserving the right of trial by jury is necessary for the reason that the spirit of our Constitution requires that the final determination of the facts in a trial at law shall be by a jury. This provision is merely meant to preserve the present right of trial by jury.

In short, the object of Paragraph 1, of Section 5, of the third amendment, is to simplify and shorten proceedings on appeal.

Section V, Paragraph 2. The object of this paragraph is to confer upon the Law Division the present jurisdiction of the Supreme and Circuit Courts, and such further jurisdiction as the Legislature may choose to give it. It is necessary to provide in this way, since the Circuit Courts will in name cease to exist if the amendments are adopted, and the Supreme Court will become really supreme instead of being a mere name. The Law Division is to be composed of seven judges instead of nine as at present. Its functions will be the same as those now exercised by the Supreme and Circuit Court, except in appeals, which will go direct to the Appeals Division. The substantial change here seems to be merely in name; instead of the judges being called Justices of the Supreme Court and Circuit Court Judges, all will be called Justices of the Supreme Court and will do the same trial work as the Circuit Judges and Supreme Court Justices do now.

This paragraph, however, contains one most important clause. The jurisdiction is to be exercised by the Law Division in accordance with the rules of practice and procedure prescribed by statute, or in the absence of statute, by the Supreme Court. Our present system of practice and procedure is based upon the old English practice and procedure dating centuries ago, with some modifications in the direction of greater simplicity and some technicality made some fifty years ago. The present procedure is very technical. For example, when a man is sued upon an ordinary book account or promisary note, the declaration, as it is called, that is to say the complaint, or state of demand, of the plaintiff need not give the defendant any information at all as to what the suit is about. Ordinarily the defendant is puzzled by being informed that he was indebted to the plaintiff for goods sold, for work and labor, for money loaned, for money had and received by the defendant for the plaintiff's use, for interest, and upon an account stated. The puzzled defendant is obliged to employ a lawyer to tell him what it means and even the lawyer can only guess what the suit is all about. Again, it has recently happened, and has not been infrequent, that in litigations over the right to office in a munici-

pal corporation—a town, city, borough, or township, or in a private corporation,—railroad or business corporation,—the party complaining has asked for a writ of certiorari and the court has thought he ought to have asked for a quo warranto or a mandamus. He has failed without even having the merits of the case considered, merely because he has failed to use the proper magical words, just as the man in the story said Open, Barley, when he ought to have said Open, Sesame. Apparently, the draughtsmen of this amendment have had this and similar troubles in mind, and have therefore empowered the Legislature by statute or the Supreme Court by rule to prescribe mere practice and procedure. Probably this power would be exercised in the first instance by the court, which is more familiar with the difficulties that arise and can act more promptly and effectively; but the court is made subject to the Legislature, and if it goes too far, can be brought back, and if it does not go far enough can be stirred up. At the time our present practice and procedure began, the law was more technical than now, and a man had no right unless he could find a precedent for a remedy to enforce his right. Now an ordinary man, not a lawyer, will ask himself first, have I a legal right; if he has the law ought to find him a remedy. So far as concerns practice and procedure, all that is really essential is that the defendant should have notice of the claim made against him, and he should have a day in court and a fair hearing, and that the judge should see that a record is made up showing the exact point tried out and determined so that the point may be settled once and for all. The amendment puts it in the power of the court and Legislature to secure greater simplicity and avoid technicalities; but it does not alter any legal rights nor empower the court or legislature to do so; it merely relates to questions of the method of procedure.

Paragraph 3 contains a similar provision as to the practice and procedure in the Chancery Division. Probably there is less need of reform here as the Court of Chancery has never thrown a man out of court if he had a good case merely because he had failed to use certain magical words. He did not, for example, lose his case because he asked for an injunction when he was not entitled to it; if he asked for general relief and proved himself entitled to do something, he got what he was entitled to. The trouble here has been that often a man would have a good case but would be thrown out of court, because of peculiar system, the result of the historical development of chancery procedure out of the Roman Law and the development of what is called procedure at law out of the English Common Law. The main difference between the Courts of Chancery and the Courts of Law has been that the former tried cases without a jury and

said to a man you must do so and so or refrain from doing so and so, while the latter tried cases with a jury and never said to a man he must do or not do a particular thing, but only that he must pay damages if he failed in his duty. Now it often happens that in order to do complete justice the Court of Chancery ought to make a man pay damages, or a court of law ought to tell him exactly what he should do or not do. To accomplish this at present requires two suits, one in Chancery, one at Law. Then again it sometimes happens that a man makes a mistake and goes into Chancery when he ought to proceed in a court of law. It is these difficulties which seem to have led to the adoption of Paragraph 5, of Scetion V. This paragraph authorizes the Supreme Court to provide by rule for the transfer of a cause or issue (which mean the same thing) from the Law Division to the Chancery Division, or from the Chancery Division to the Law Division, or from the County Court to either division, and for the giving of complete legal and equitable relief in any cause in the court or division where it may be pending. The object is to have the whole matter finally settled in one suit.

Paragraphs 4 and 6 of Section V, hardly seem to need explanation. One requires a Justice of the Supreme Court to hold courts in the several counties. That is done now. The other authorizes the Legislature to alter powers and jurisdiction conferred on any court since 1844. This date is fixed because our present Constitution which was adopted in that year, preserves intact the then existing jurisdiction. But for this provision it might be said that the Legislature could not hereafter change the powers which the courts now have in 1909. In short, this paragraph seems intended to preserve all the present rights of the Legislature to change the power of the courts.

Stated briefly, the object of Section V seems to be to simplify and expedite legal proceedings.

How to Vote.

These amendments are of vital importance to the fundamental law of the State, and it is surprising that the people do not take more interest in them. The amending of the Constitution is of vastly greater importance than the electing of some official.

At the top of each amendment two words will be printed on the ticket to be voted. These words are:

FOR

AGAINST

If you vote for the amendment just run your pencil through the word *against* in this way ~~AGAINST~~. You will then vote for the amendment.

There are five amendments on the ticket and you will need to mark out the word "against" in that way five times where it occurs on the ticket to vote for all the amendments.

EVERY CITIZEN SHOULD VOTE. In this case it is not only a privilege but a **DUTY.**

The election takes place at a **SPECIAL** election held over the entire State, on

TUESDAY, SEPTEMBER 14, 1909.