PROTEST.

To the Senate and General Assembly and Governor of New Jersey:

I respectfully protest, in the interest of plain citizenship of this State, against all such shuffles of our system of courts as proposed by the Commission to suggest revision.

A compact automatic court of final review would be a great gain, but this is utterly insignificant compared with other needed reforms. In our small State we need home, domestic courts of unlimited jurisdiction. We want the business all done at onr county seats and at the court houses, and we want all the records of judicial proceedings kept there. I submit our present system below and the Commission's proposition, with my own, in parallel columns, with remarks following them:

ARTICLE VI.

JUDICIARY.

Section I.

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

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

5. 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. 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.

Relates to impeachments.

Section IV.

1. The court of chancery shall consist of a chancellor.

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

3. 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. 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. 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. 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. 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.

An outline of the proposed new judicial system for the State is given as follows by the Commission:

A Supreme Court, consisting of a chief justice and eighteen assistant justices appointed by the Governor, by and with the advice and consent of the Senate, and to be divided into three divisions, the members of each to be designated and selected by the Governor.

The first division is to be the Court of Last Resort, to consist of five of the judges, who during their term of office shall sit only in that court. The Legislature is to have authority to increase the number of these judges to seven. This Appellate Division is to have all the power and jurisdiction of the present Court of Errors and Appeals.

The second division is to be the Law Court, to consist of

Crandall's Proposition.

Section 1.

The judicial power is hereby vested in County Courts and Orphans' Courts for the several counties of this State, with such inferior municipal court of civil and criminal jurisdiction as the Legislature shall, from time to time, create, and a Supreme Court of Review.

Section 2.

The several county courts shall succeed to and be invested with all jurisdiction heretofore exercised by the Supreme Court, Circuit Courts, Courts of Common Pleas, Courts of General Quarter Sessions of the Peace and Courts of Oyer and Terminer and the Court of Chancery.

The several orphans' courts shall succeed to and be invested with all the power and jurisdiction which they have heretofore exercised, together with that exercised by the Prerogative Court and that exercised coordinately with them by the Court of Chancery.

The Supreme Court of Review shall succeed to and be invested with the powers and jurisdiction heretofore exercised by the Court of Errors and Appeals, in the last resort in all causes, with such other jurisdiction and under forms of procedure as the Legislature shall, from time to time, prescribe.

seven judges, the presiding judge to be called the chief judge. This division is to have all the power and jurisdiction which the Supreme Court now has.

The third division is to be the Chancery Division and is to consist of the remaining seven judges, the presiding judge to be called the chancellor of the division. This division is to have all the power and jurisdiction of the present Court of Chancery and the Prerogative Court.

The Law and Equity procedures and practices are to remain practically the same as now. In order to prevent unnecessary expense and delay the Legislature is to have the power to pass laws for the speedy transfer of a cause from the equity division to the law division, and vice versa, when a cause is started in the wrong court.

The present justices of the Supreme Court are to remain in office until the expiration of the terms to which they have been appointed. The Chancellor and Vice-Chancellor are to be appointed to the Supreme Court, to hold office there until the expiration of their present term.

There is to be a County Court in each county (two in first-class counties, if necessary), to have all the power and jurisdiction now exercised by the Orphans' Court, the Quarter Sessions, the Common Pleas, the Special Sessions, Oyer and Terminer and the County Circuit Court. These judges are to be appointed by the Governor, with the advice and consent of the Senate.

Section 3.

That the jurisdiction of the several county courts and orphans' courts of this State shall be exercised by county court judges, who shall be appointed for a term of five years by the Governor, by and with the advice of the Senate, of counsellors-at-law having exercised their office ten years, and of five years' residence in the county in which they are appointed to exercise their office, and the Governor shall, by and with the advice of the Senate, appoint at least one judge in every county and such additional judges as the Legislature shall, from time to time, prescribe; and in case of inability to exercise the office for a space of six months, by death, resignation, impeachment or removal from the county of any judge, the Governor shall take notice of the vacancy, and immediately appoint a judge to fill such vacancy; and in case such vacancy occurs between sitings of the Legislature, such *ad interim* appointed shall hold his office till the adjournment, *sine die,* of the succeeding Legislature and his successor shall be appointed during said session.

Section 4.

That the jurisdiction of the Supreme Court shall be exercised by five judges, who shall be appointed by the Governor, by and with the advice of the Senate, for a term of five years, and that the Legislature shall have power to increase or diminish the number of judges of this court from time to time.

Section 5.

The Legislature shall prescribe the salaries of the judges of the several courts of this State and the time of payment, and which salaries may be increased or diminished as the Legislature may prescribe.

Section 6.

The county clerks of the several counties shall be *ex-officio* clerks of the county courts of their several counties.

Section 7.

The Legislature shall, from time to time, prescribes venues for actions and proceedings and modes of procedure of justice by these courts efficient.

Section 8.

The Legislature shall prescribe the terms, methods and modes of procedure for winding up and finishing and disposing of the business pending in the Supreme Court, the Court of Chancery, the Prerogative Court and the Court of Errors and Appeals, in the last resort in all causes.

By common consent the conditions for the administration of justice is unsatisfactory in New Jersey. Inasmuch as thirty of our sister States have satisfactory systems, it is discreditable for us to haggle along in the ruts of Saxon barbarism. But a change does not imply improvement. We want a change that will adapt the machinery of justice to the dispatch of business, easily and economically.

One trouble seems to be to agree on diagnosis as to the fundamental defects of the present system of courts. It seems to me that all honest men must concur in the observation that for want of courts of unlimited jurisdiction in each county of this State the adequate administration of justice is simply impossible. That we do actually worry along with the present system is plainly imputable to our patience in endurance and skill in baffling obstacles.

The advocates of the scheme of revision proposed cannot for one moment assume that our citizens are so gullible as to believe there is any business excuse for having the records of a foreclosure on lands in Cape May, divorce proceedings, judgments for damages and breaches of contract kept at Trenton instead of the counties where the land lies and the parties reside. Who does not know that a judgment obtained at Mt. Holly by proper provision of law can be executed in Essex just as well as to be sent to Trenton? It seems platitudinous to say that courts should be adapted to the business. Adjusted to do the business of the citizens speedily, easily and economically. If justice costs more effort, time and money than it comes to, nobody wants it in this age. The plan proposed is as well adapted to serve judges and their retenues as the present is to serve judges of all grades, Vice-Chancellors, Injunction Masters, Clerks and Stenographers, and no better as I see.

This scheme of shuffling the judges and Chancellors around into different positions with respect to themselves only looks like an opiate to keep the people quiet while the present hierarchy changes its clothes and carefully preserves itself. Same Supreme Court and Chancery records and Clerks in Trenton; same Chancery Chambers at Camden, Trenton, Newark and Jersey City. But it may be said provision is made for a separate Court of

Review. It must be admitted that this is a necessary reform as far as it goes, but it is trifling compared with the gain of having local courts of unlimited original jurisdiction. In such great States as Ohio and Indiana, and all the other States, in fact, they have complete local courts, and by means of new trials, amendments, rehearings, the concrete causes are kneaded over till justice is so nearly worked out that there is, outside of the caprice and litigious spirit of the parties, little need of a Court of Review at all. Its main usefulness is to create and preserve uniformity in the rules of right and property. But, as said before, the utterly useless Supreme Court and the Court of Chancery is by this proposed revision preserved with all their inherent defects. Rules for new trials, cases certified, certioraries, mandamuses, quo warrantos will be hawked from all parts of the State to the Terms of Court at Trenton as heretofore, and the expense and delays incident thereto will in no wise be mitigated. The value of justice consists largely in its speediness. A large share of the prerogative proceedings in the Supreme Court are prosecuted for no other object than delay. When a writ is awarded to review an ordinance, a municipal contract or a tax proceeding, the relator can easily secure a year's delay, and where a respondent has his rights questioned by these proceedings, he goes into a calculation as to whether he will follow the controversy, or submit to actual injustice by submitting to default. This delay is unavoidable, because the whole prerogative business of the State has to be submitted to this single tribunal with two weeks of hearing, and if decision be filed by the next term it is expeditious. Then error lies to the court of last resort, and if they be concluded in six months, or a year, it is all the expedition that can be accomplished.

But if this business was distributed into each of the twenty-one counties wherein the causes arise, the controversies could be threshed out with deliberation and leisure for each case without waiting for any term.

This business could be done in local courts inexpensively. On mere application to the judge a rule could be issued to the custodian of any of the records in the county commanding him to bring the original proceedings before him for review, and upon

inspecting the records witnesses could be subpœnaed and testimony taken and the controversy shook out thoroughly and speedily. This is the universal practice in the sister States.

They have all been through the mill of English inherited procedure and abandoned it forty years ago. When the inhabitants of this whole State was less than the county of Essex the plan proposed might, as it has practically been, be tolerated, but it would be an insufferable affliction to-day.

But it is said that it seems essential that equity jurisdiction shall be administered by some judge of special aptitude for this special business. That a *nisi prius* law judge has his faculties somehow so tortured that he cannot handle Chancery remedies. It will be noticed all the time that the Vice-Chancellors will be judges under the plan proposed, and the only change will be in name and the circumstance of not deriving his authority from a certificate of reference from the Chancellor. But the law and equity faculties are to be exercised by different judges, and whether the judges will spontaneously divide as incompatible natures or whether the Governor will make the separation does not appear, but the proposition that justice is scientifically divisable is not only absurd in itself, but is wholly destitute of historical support in actual experience. When law and equity in the other States is administered by the same judge they simply follow the practice of the Court of Exchequer in England. When a cause is at issue in the Exchequer the Clerk inspects the pleadings, and if equity relief is called for, he dockets the cause on the equity side of the term docket. The Barons go at the work in a business way. They divide. Some hear jury causes and some equity, and in cases of importance in equity several sit together. On the law side, if questions of difficulty arise, they congregate in conference. Under the plan of local courts such counties as Mercer, Camden and Atlantic two judges will be required to do the business. They can arrange between themselves who shall hear the civil and criminal list and who hear the equity list or a part of each. The two judges in one of the counties in Pennsylvania the other day tossed a penny to determine who should hear the equity list.

There is altogether too much ado about equity. There is a great deal of equity proceedings that is purely statutory, such as winding up the affairs of insolvent corporations. This jurisdiction may just as well be given to the Circuit Court, as it is in many of the States. So of divorce and foreclosure.

But as established justice is the object of all judicial proceeding, it must be determined by the concrete controversy when formulated whether the jury functions must be called in or whether specific performance, an accounting or a trust executed. Now, in the determination of the question whether a definite controversy shall be docketed on the law or equity side, who shall decide, the law or equity judge? Chancellor Runyon said that when an equity case was cleverly formulated anybody could see the right that wanted to. Of course, there are difficult cases of testamentary construction, of vendor's liens, specific performance of contracts, &c., but it is an indictment against the intelligence of any judge to insinuate that in the present state of the general literature of rights that he cannot cope with them. Again, it is an actual fact that the administration of justice is almost exclusively in the hands of lawyers, and if they have a fair opportunity and time enough, they will winnow the controversy so thoroughly that the chaff will disappear from the wheat so plainly that any judge can discern it. But the long and short of it is the subject presents no debatable question. If there be any reason for chasing the Court of Chancery all over the State, the reason must be found outside of the nature of its business.

Commerce is very timed. It cannot brook costly and protracted protection. There will be less fictitious controversies if a weigh-master is always on hand with his scales ready.

But the monstrous suggestion is made that county courts shall be established to succeed to the jurisdiction of the Orphans' Court, Common Pleas, Circuit Court, Quarter Sessions, &c., and to be conducted by judges specially appointed for this purpose. This inherited appendix of the old English system of having a spawn of inferior courts and judges has been exercised out of our sister States long ago, and in England to-day they only exist in curious history. An Inferior Court implies an Inferior Judge, and these twin abominations, one of the sad legacies of the

Georges, have been so thoroughly rubbed out of nearly all of our sister States that their scars are not visible. In the plan proposed it will take a county judge, a law judge and an equity judge to fill the seat of justice. If they have salaries enough, they will probably consent to the squeeze and have room enough in this single seat and likely consent to be the only bodies on earth that can occupy the same space at the same time, yet a real judge would make a better appearance if he occupied the whole seat of justce himself. It is a profound mistake to suppose that there is in the nature of the business any more necessity for dividing jurisdiction into Orphans' Court, Law and Equity than there is for the creation of courts for mechanics liens, foreclosures, negligence, insurance, divorce, ejectment, manslaughter, larceny and adultery. Every subdivision of jurisdiction into separate courts a man, a real man, has to be subdivided to make a judge to fit the specialty, an all-round man fit a diamond-pointed niche. In two-thirds of the States the same judge can be seen presiding at the trial of a right to administer, an issue in ejectment, an indictment for stealing chickens or shop-lifting, exceptions to a receiver's account on winding up an insolvent corporation and a petition for divorce. The court clerk keeps the business properly indexed, and the business of a county is an open book to its citizens. They have all the same sized judges as public servants. They do not in all counties have the same salaries. A single judge in Ocean, Salem and Cape May should not have the same salary as the four judges in Essex. The fitness of things will regulate this. But the judicial faculty should be the same size in Atlantic as Hudson. And a judge that is personally too consequential to preside at the trial of a citizen for assault and battery is too ponderous for the public service.

One of our most important jurisdictions—that of the Orphans' Court—is now so afflicted with inherited ecclesiasticism that between the Surrogate, the Orphans' Court Judge, the Ordinary and the Court of Chancery, that estates are frequently dissipated into proctor's fees, costs and delay.

This jurisdiction should be at once stripped of its peculiar ecclesiastical and Chancery jurisdiction, and should not longer be preserved by the constitutional amendments proposed by the

committee. Nothing but a local court with unlimited jurisdiction and with a judge combining Orphans' Court, the powers of the Ordinary and the Court of Chancery can put this important branch of the administration of justice in a shape to meet the requirements of its business. This jurisdiction requires judges of the same or superior stature to those who do the role of Injunction Masters and advise the Chancellor to sign a decree of separation from bed and board. There is not a lawyer in this State who cannot put his finger upon cases where estates are being frittered away by the work of this heterogeneous system. A judge in Wisconsin puts his heavy hands on guardians, executors and administrators and litigious heirs and legatees, and brings them to book, and we all know the crying need for the exercise of his office in this State.

No matter what talents these inferior judges may have, they act and feel, and reflexively are looked upon by the public as shining by some kind of reflected light from their superiors. An Orphans' Court judge is petitioned to remove an administrator, and instead of joining in active solution of the concrete case with counsel, the judge is likely to paralyze the counsel with the remark that he has consulted the Chancellor or Justices Hendrickson, Swayze or Reed, and to avoid a reversal the prayer of the petition is granted or denied. And when one of these judges puts on an air of independence and decides, the discussion in the findings discloses a struggle to meet the approbation of his superiors rather than a fundamental solution of the case. Look at this discursion of our Vice-Chancellors.

Why the waste of effort in correlating all the cases English and American except to make such display as to capture the approbation of the Court of Errors. Months of delay occur for no other purpose than to work up rhetorical spectacular to daze the Court of Errors. The reform that is needed is a change that will bring judges of unlimited power right down to the spot where the controversies occur and compel them to engage in the examination of controversies as near their origin as possible; take an active hand in exploring the objects of experience and the subjective qualities of the witnesses and assist in correlating and crystalizing the hard actual facts of the controversy. When

this is performed with honest and industrious painstaking the office of the administration of justice is practically performed. If a special verdict be exhibited, an ordinary justice of the peace can discern the right.

The difficulty in administration is to get a correct special verdict.

Too much higher and superior courts and judges where there is no work and too few and too feeble in the lower courts where all the work is. Pat said it was fun to carry the bricks in a hod up four stories, but he pities the men up there doing all the work. Business can no longer abide these pentecostal terms which are fixed by law mostly for the purpose of greeting the itinerant Supreme Court Justice, who comes with his carpet-bag and sets down in the counties and proclaims to the petit jurors, the grand jurors, the clerks, litigants, lawyers, reporters and gapers that instead of a camp-meeting he proposes to open a King's Court of Assize and Nisi Prius and Oyez, Oyez, I am the Master of Ceremonies. There, with from twenty-five to one hundred cases on the list for trial, litigants, their witnesses and lawyers are compelled to lay around and wait for their time at the Pool of Bethesda, for the Angel will only trouble the waters of healing for a few days, as there are a thousand cripples at Bridgeton and Mt. Holly waiting for his divine afflatus.

It is idle repetition to say that the object of jurisdiction is to administer justice—condensed in United States diction—to do business. An omnipotent judge in his own county could partition the business, civil, criminal and equity, keep in touch with litigants and their counsel, hear motions at his house, sign rules on the church steps, go to Millville, Hightstown or Tuckahoe to take testimony—in other words, conform to the demands of business. Business will not conform to mere artificial rigmarole. It will just die rather than conform to any rules of Sangerfest.

In my plan I have provided for the appointment of these judges resident of the several counties by the Governor, because I believe there is an honest difference of opinion as to whether they should be appointed or elected in their counties.

It is certain that partisan, or rather office-seeking politics, has weakened and is still enfeebling the public service in all its de-

partments, and whether there will be less danger of this virus from the hands of the Governor, or the voice of the ballot, I have no opinion to express; what I want is that the opportunity now presented for a substantial reform shall be improved honestly and in a spirit of true reform. In this change the heads of some favorites will, no doubt, be hit, but the interest of the masses is of vastly more moment than the charming personality of anyone in office.

I am further persuaded that the reform shuffle proposed can not be adopted. The masses will not accept it. They see the judges in the United States courts administering law, equity, admiralty, bankruptcy and criminal remedies, and it is a great mistake to suppose they do not understand it. They openly charged when the last attempt at constitutional tinkering to change the courts was made that there was in this State a judge hierarchy, and that the Legislature was subservient to its dictation, and after the votes were counted many were surprised.

They want courts wherein a poor man or woman can get a divorce, prosecute a corporation, or an orphan can prosecute his guardian's bond.

The young men of the bar have been studying in the schools comparative jurisprudence of the States, of the United States and Continental Europe, and they have found the tendency to rise above the Saxon administration and appropriate the more rational principles of the civil law, and they demand administration more in harmony with the age and the fundamental principles of justice. Antiquity furnishes no sanctuary for mere rot. He that hath ears to hear let him hear.

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