

THE GOVERNOR'S COMMITTEE ON PREPARATORY RESEARCH

for the

NEW JERSEY CONSTITUTIONAL CONVENTION

**THE COURTS OF NEW JERSEY - PART I
THE PRESENT SYSTEM**

by

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

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A. The Courts

The courts of New Jersey are, for the most part, provided for in Article VI (known as the Judiciary Article) of the present State Constitution which was adopted in 1844. Article VI, Section I, provides:

"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."

The Constitution also provides for a Court of Pardons (Article V, Par. 10) and a Court of Impeachment (Article VI, Sec. 111, Par.1).

Pursuant to the above provision, the Legislature by statute has established the Courts of Common Pleas,¹ Courts of Oyer and Terminer,² Courts of Quarter Sessions,³ Courts of Special Sessions,⁴ Orphans' Courts,⁵ civil district courts,⁶ criminal judicial district courts,⁷ county traffic courts,^{7a} and small cause courts.⁸ The Legislature has also empowered municipalities to establish local courts of limited civil and criminal jurisdiction, such as the police courts, recorder's courts, magistrate's courts and family courts.

While the Constitution provides for the election of a surrogate in each county,⁹ the powers and authority of surrogate courts are established by legislative enactment.¹⁰

B. Their Jurisdictions

The jurisdiction of a court, both as to territory and the nature and

extent of its authority, determines whether it is called a higher court or lower court. At the base of the structure of New Jersey's present judicial system are the justice of the peace courts, the local small cause courts and the local police courts which have limited jurisdiction in both civil and criminal cases. Just above them are the district courts, civil and criminal, and the county traffic courts, with county-wide jurisdiction in civil matters and in criminal matters in certain designated counties. (See notes 6, 7 and 7a.)

The next tier of courts is what are commonly known as the county courts. While their jurisdiction territorially is confined to each county, the courts have broad authority as to the nature of the cases that may be brought before them. Civilly, an action for damages may be instituted in the Common Pleas Courts for any sum, just the same as it could be done in any of the higher courts (Circuit Court or Supreme Court).¹¹ Appeals in certain cases from the police and traffic courts and in workmen's compensation cases are also heard in the Common Pleas Courts. The Court of Quarter Sessions has county-wide jurisdiction to try, with a jury, all criminal offenses of an indictable nature, except murder or treason.¹² The Courts of Special Sessions have similar jurisdiction, except they may try such criminal cases without a jury where the defendant waives his right of trial by jury.¹³ The Courts of Oyer and Terminer have jurisdiction to try all cases of an indictable nature, including murder and treason.¹⁴

The Orphans' Courts have jurisdiction over matters involving administration of the estates of decedents, mental incompetents, minors and others; guardianships, fiduciaries, adoptions and disputes involving the existence of wills.¹⁵ Surrogates have statutory powers to probate wills,

audit accounts of fiduciaries and to perform other specified functions concerning the administration of estates.¹⁶

The Circuit Courts are constitutional courts of general civil jurisdiction. For the most part, the same type of actions-at-law for damages as may be brought in the Common Pleas Courts and in the Supreme Court may be instituted in the Circuit Courts.¹⁷

The Supreme Court exercises the jurisdiction of the old English courts of King's Bench, Common Pleas and Exchequer.¹⁸ It has original jurisdiction in civil cases for damages similar to the Circuit Courts and Courts of Common Pleas. It has exclusive original jurisdiction in matters pertaining to the great prerogative writs of certiorari, mandamus, quo warranto and prohibition. This court also passes on appeals from the Common Pleas, Quarter Sessions and Circuit Courts and has "supervisory jurisdiction, by certiorari, of all inferior tribunals," including public agencies and officials.

The Prerogative Court is an historic constitutional court, having jurisdiction over probate matters, trust and decedent estates, and certain fiduciaries. Much of its jurisdiction is concurrent with that of the Orphans' Court.¹⁹ It also determines appeals from the Orphans' Courts.

The Court of Chancery has jurisdiction over the broad domain of equity jurisprudence. In addition to the historic and traditional field of a court of equity, i.e., to afford relief where none was available in the other established courts, this court's power in New Jersey now extends to many other fields by virtue of statutory provisions and decisional law.²⁰

The Court of Errors and Appeals in the last resort is the highest court in the State. It has ultimate appellate jurisdiction in all cases.

Appeals from the Chancery and Supreme Courts are taken to this court. In some instances, as in appeals from the Circuit Court and Court of Oyer and Terminer (in murder cases), appeals may be taken directly to the Court of Errors and Appeals.

The Court of Pardons and the Court for Impeachment are not judicial tribunals in the general sense of this term but have limited special jurisdiction. The Court of Pardons "may remit fines and forfeitures, and grant pardons, after conviction, in all cases except impeachment." The Court of Impeachment, consisting of the Legislature, has jurisdiction to impeach and to try cases involving the misconduct in office of state officials, including members of the executive, judicial and legislative branches.

Each court has the right to establish rules of procedure applicable to that particular court.

C. Their Judges

While the Constitution and statutes provide for each one of the foregoing courts and their individual jurisdictions, the judges of these courts, in many instances, are required by the same Constitution and laws to function in more than one of these courts, or are empowered to do so if they so desire.

In the lowest courts--justices of the peace, small cause courts, local police, traffic and family courts, and (except in the larger counties) the district courts--it is true that the judge serves only in one court. However, in all of these instances the judge serves on a part-time basis and is permitted to engage in business or in the practice of law, besides performing his judicial duties.

In the next level of courts--the county courts of Common Pleas, Oyer and Terminer, Quarter Sessions and Special Sessions, and the Orphans' Court--the same judge sits in all of them. Here again, except in the larger counties, the judges function only part-time on the bench, devoting the remaining time to their private law practices. With the same exception as to the larger counties, judges of the juvenile and domestic relations courts also serve as part-time judges.

The Circuit Court Judges and 13 Advisory Masters in the Court of Chancery serve only in their respective courts. The ten Vice-Chancellors of the Court of Chancery also serve as Vice-Ordinaries of the Prerogative Court. By statute, these judges may not practice law in any of the courts of New Jersey.²¹ This does not necessarily preclude them from maintaining a strictly office practice. However, only in exceptional instances do any of the foregoing judges maintain a private law practice of any kind. Generally, these judges serve full-time.

The Court of Chancery, strictly speaking, consists of the Chancellor alone. (Constitution, Art. VI, Sec. IV, Par. 1). The work in this court has, however, increased to such an extent since 1844 that it is now necessary for the Chancellor to have ten Vice-Chancellors and 13 Advisory Masters. Technically, they merely advise him as to what his judgment should be in a given case; actually, they hear and decide (without juries) all matters referred to them, and serve as judges within their spheres, just as Circuit Court or Common Pleas Court Judges do in the law courts, usually with juries.

The Chancellor, who constitutionally is the Court of Chancery, is thus in actual practice the administrative head of an important and busy

court of broad jurisdiction, with 23 other judges to assist him in administering equity jurisprudence throughout the State. The Chancellor is also the head of the Prerogative Court as the Ordinary, or Surrogate-General. As will be noted shortly, the Chancellor is also a member of the Court of Errors and Appeals and of the Court of Pardons.

The Supreme Court consists of the Chief Justice and eight Associate Justices. Besides their duties arising out of the court's original and appellate jurisdiction, the Justices of the Supreme Court are also members of the Court of Errors and Appeals and are ex-officio judges of the Court of Common Pleas, the Orphans' Court, the Court of Oyer and Terminer and the Court of Quarter Sessions of the counties to which they are assigned.²² They are also designated by statute to sit as Circuit Court Judges²³ although, as a matter of practice, they are rarely, if ever, called upon to do so. In the smaller counties the statute provides that no session of the Court of Oyer and Terminer shall be held in the absence of a Supreme Court Justice, unless the appropriate Justice authorizes, in writing, a Common Pleas Judge to serve. Supreme Court Justices also charge grand juries, particularly where special investigations seem to be called for; appoint park commissioners and jury commissioners; and hear motions on pending matters either in their home towns, at Trenton, or at the county seat of any one of the counties to which they are assigned. The Chief Justice is, of course, the administrative head of the Supreme Court and also of the Circuit Court.

The Chancellor, Vice-Chancellors, as already noted, and Justices of the Supreme Court are not precluded by law from private law practice but rarely does one of these judges avail himself of this opportunity.

The Court of Errors and Appeals consists of the Chancellor, the

nine Justices of the Supreme Court, and six special Judges--sixteen in all. However, all sixteen judges do not always sit at one time. Thus, in appeals from the Court of Chancery, the Chancellor does not sit. Nor do the Justices who decided a case in the Supreme Court sit when their decision is appealed to the highest court. The Chancellor is the presiding judge of the Court of Errors and Appeals, but when he is disqualified from sitting or is absent for other reasons, the Chief Justice becomes the presiding officer.

The six special Judges are paid on a per diem basis and may pursue their professions, trades, or businesses when not serving as judges in the court of last resort.

The Court of Pardons, with its special kind of jurisdiction, considers approximately 1,000 applications for clemency or ameliorating action per year. This court consists of the Governor of New Jersey, the Chancellor and the six special Judges of the Court of Errors and Appeals. The Governor must be part of the majority of the court in any affirmative action it takes.

Comment

While there have been numerous critiques, analyses and articles concerning New Jersey's court system since 1844, none can be found that supports or justifies its existence in its entirety as presently constituted.²⁴

The New Jersey court system has been generally criticised for its overlapping jurisdictions, the multiplicity of duties of the members of the higher courts, inordinate delays in the administration of justice, and a general lack of supervision by any one administrative head of the courts, with

the attendant inefficiency in operations.

New Jersey's judicial system was the object of study and report by the Judicial Council in 1931 and 1932 and by a Commission appointed by the Governor and the Legislature in 1942.

The Judicial Council made the following observations in its 1932 report to the Legislature: ²⁵

"In the appellate courts of other states it now takes anywhere from six weeks to two months to obtain a decision, while in our Court of Errors and Appeals and the Supreme Court it takes anywhere from eight months to two years. This deplorable situation cannot be attributed to the judges of those courts; on the contrary, the wonder is that the situation is not worse. The evil is inherent in the organization of these courts. The chancellor, as the president judge of the Court of Errors and Appeals, gives but a portion of his time to the work of that court; he has his other duties to perform in attending to the extensive administrative machinery of the Court of Chancery, in performing his duties as ordinary or surrogate-general and in acting as a member of the Court of Pardons. The justices of the Supreme Court must divide their time between their duties in the Court of Errors and Appeals and their work in the three terms of the Supreme Court. In addition, they are obliged to hear motions, charge grand juries, open terms of court in the several counties in their respective judicial districts, and most of them are compelled, in addition, to hear homicide cases in their judicial districts. The six judges of the Court of Errors and Appeals specially appointed likewise divide their time between the work of that court and the duties of the Court of Pardons, and in addition are permitted to, and in fact do, engage in private practice or private business pursuits.

"The judicial system provided by the Constitution of 1844 was perhaps suited to the needs of the state at the time the Constitution was adopted. In 1840 the state had a population of 373,306 and its largest city, 17,290. In 1930 the state had a population of 4,041,384 and its largest city, 442,337. In other words, a single city today has a population considerably in excess of that of the whole state in 1840. Agriculture has long since yielded its supremacy to manufacturing and commerce. The state is now the home of hundreds of thousands of commuters who

occupy land formerly devoted to farming. The judicial system suited to an agricultural civilization is clearly outworn. It must be replaced with a system more in keeping with modern economic and social demands. There is no reason why New Jersey cannot provide a system of courts in which appeals may be disposed of within two months, as in Connecticut, New York or Massachusetts, and in which trials may be had within a reasonable time."

The Commission on Revision of the New Jersey Constitution, 1942, known as the Hendrickson Commission, in its "Report to the Governor, the Legislature and the People of New Jersey," made the following pertinent comment:²⁶

"New Jersey has the most complicated scheme of courts existing in any English speaking state. These courts were modeled after the chief English courts of the period before the American Revolution. They were continued here first under the Constitution of 1776 and then under the Constitution of 1844. Indeed, the jurisdiction of these courts can only be ascertained even today by an historical inquiry into the jurisdiction before the Revolution of their predecessor courts in England. In England three-quarters of a century ago, and in nearly every other American State as well, the court structure was simplified into a simple system consisting generally of (1) a Supreme Court with appellate jurisdiction only, (2) a trial court of general jurisdiction with appellate divisions, and (3) lower courts of limited jurisdiction created by the Legislature with local or special jurisdiction. Of all the common law jurisdictions New Jersey alone has lagged, due to the difficulties of amendment under the present constitution, in simplifying its judicial system.

"Due also to the same cause, New Jersey is the only common law State except Delaware in which the highest judges have a multiplicity of duties in different courts. Thus, the Chancellor is not only the Court of Chancery, and the Ordinary or Surrogate-General, but he also is a member of and part of the time the presiding judge in the Court of Errors and Appeals, as well as a member of the Court of Pardons, as it is popularly called. The nine Supreme Court Justices are not only members of the Court of Errors and Appeals, but they also sit in the appellate terms of the Supreme Court three times a year, and in addition thereto they have responsibilities of presiding justices in the courts of the twenty-one counties. The special judges of the Court of Errors and Appeals, popularly called 'lay judges,' are not only judges of that court but members of the Court of Pardons, and in addition, they are permitted to practice law or engage in private business. That such multiplicity of function is

unbusinesslike and results not only in diminution of judicial efficiency but delay in the disposition of the business of the courts is too obvious to require argument. Not only is a simplification of the judicial system essential; a simplification of the functions of each judge is needed.

"The courts of New Jersey also suffer through the lack of a single responsible head. Thus, while the Chancellor is designated as the president judge of the Court of Errors and Appeals, because he is the Court of Chancery he cannot sit on appeals from his court. In such appeals, which comprise a substantial part of the work of that court, the court is presided over by the Chief Justice. Again, while the Chancellor has limited rights of supervision over the Vice-Chancellors and his Advisory Masters, he has no jurisdiction whatsoever over the numerous judges of the law courts. Neither has the Chief Justice, or even the entire Supreme Court for that matter, any substantial power of direction as to the work of the judges of the law courts. What is needed, therefore, to effect a businesslike administration of the courts is a single responsible executive head with competent administrative assistance. In this field the Federal Courts with a Director of the Administrative Office of the United States Courts have set an example which the several States would do well to emulate.

"Another matter in which the courts of New Jersey have lagged has been in the tradition of separate courts of law and equity, resulting frequently in resorting to two trial courts to dispose of a single controversy. Law and equity have long since been merged in every State except New Jersey and Delaware. In the United States courts under the Federal rules of civil procedure legal and equitable controversies are disposed of in a single case. A merger of law and equity in this State would tend to bring our practice in line with that of the Federal Courts and other American jurisdictions.

"A citizen when obliged to litigate is entitled to have his right to a speedy disposition of his case guaranteed by the constitution. The present constitution sets up no standards as to what constitutes a reasonable time within which to try a case or dispose of an appeal. There is no provision under the present constitution making it easy to send the judges where they are most necessary to relieve any congestion in litigation. Nor is there any provision for setting up temporarily appellate and trial courts when the

work of either system of courts falls in arrears. Without the power in the Chief Justice to assign judges to areas where litigation is congested, and without any provision for setting up temporary special courts to meet emergencies, a citizen's right to a speedy disposition of his case becomes recognized only in the breach."

NOTES

1. R. S. 2:6-1
2. R. S. 2:11-1
3. R. S. 2:12-1
4. R. S. 2:13-1
5. R. S. 2:7-1
6. R. S. 2:8-1 to 4.1; R. S. 2:8-48.1 et seq.
7. R. S. 2:212-1; R. S. 2:212-4 and R. S. 2:212-4.1
- 7a. R. S. 2:229-1
8. R. S. 2:9-15
9. N. J. Const., Art. VII, Sec. II, Par. 5
10. R. S. 2:7-12 et seq.
11. R. S. 2:6-8; Allara vs. Stevens, 104 N.J.L. 240
12. R. S. 2:12-2
13. R. S. 2:13-1
14. R. S. 2:11-6; Andrews vs. Swartz, 156 U.S. 272; 15 S.Ct. 389; Ex parte Daniecki, 117 N.J.Eq. 527
15. See Revised Statutes, Title 3, Administration of Estates, Decedents and others; see State vs. Kelsey 64 N.J.L.1, affirmed 65 N.J.L. 680, for history of legislation relating to the Orphans' Courts and powers of the ordinary in the Prerogative Court.
16. R. S. 2:7-12 et seq.; Mellor vs. Kaighn, 89 N.J.L. 543
17. R. S. 2:5-7; see Nitti vs. Public Service Ry. Co., 104 N.J.L. 67
18. See Traphagen vs West Hoboken, 39 N.J.L. 232
19. For history of this court see In re Dittman's Ex'rs., 87 N.J.Eq. 297, and In re Thompson, 85 N.J.Eq. 221

20. For history of Court of Chancery in New Jersey see In re Vice-Chancellors, 105 N.J.Eq. 759; Pennsylvania R. R. Co. vs. National Docks & N. J. Junction Connecting Ry Co. 54 N. J. Eq. 647
21. R. S. 2:5-4; 2:2-3; 2:2-14
22. R. S. 2:4-4
23. R. S. 2:5-1
24. See editorial N. J. Law Journal, April 17, 1947, page 1
25. Judicial Council of New Jersey, Third Report, Dec. 15, 1932, pp.7-8
26. Report, pp. 22-23

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